



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-19
Exemption
February 19, 2014
Division of Swap Dealer and Intermediary Oversight

RE: “A”, a registered commodity pool operator and commodity trading advisor for “B”

Dear :

This letter is in response to your letter dated February 7, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) for “B” (the “Pool”), an exemption from the requirement of Commission Regulations 4.7(b)(3) and 4.22(d)(1), to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ending on December 31, 2013. You request this exemption from the certification requirement on the basis that the Pool had just one participant at the end of the 2013 fiscal year, who also is a controlling member and principal of the CPO.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You request, on behalf of the CPO and the Pool, an exemption from the certification requirement in Commission Regulations 4.7(b)(3) and 4.22(d)(1). On December 31, 2013, the Pool, which is an exempt pool operated pursuant to Commission Regulation 4.7, was valued at \$. The Pool has just one participant, “C”, who is also a controlling principal of the CPO and its holding company, and oversees the daily operations of both the CPO and the Pool. Your request for relief is limited in that you request exemptive relief from the certification requirement for just one year, 2013.

In support of your request, you state that the Pool has just one participant, “C”, a futures industry professional and principal of the CPO who is intimately familiar with the daily operations of the CPO and the Pool. Further, you emphasize that because “C” is the only participant, he alone would bear the costs of hiring an independent accountant to audit and certify the Pool’s 2013 financial statements. Although Division staff has historically interpreted Commission Regulation 4.22(c)(8) to exclude controlling principals from the “participants”

RE: "A"

Page 2

required to receive an annual report each year, "C" has also submitted a signed waiver, relinquishing any right he has to receive a certified annual report for the Pool's 2013 fiscal year.

Commission Regulation 4.7(b)(3) provides a CPO an exemption from filing and distributing an annual report in accordance with Commission Regulation 4.22(c) with respect to an exempt pool it operates in accordance with Commission Regulation 4.7; provided, that the CPO files with NFA and distributes to each participant an annual report for the exempt pool that complies with Commission Regulation 4.7(b)(3) within 90 calendar days of the end of the exempt pool's fiscal year or permanent cessation of trading, whichever is earlier. Commission Regulation 4.22(d)(1) requires financial statements in such annual reports to be audited by an independent public accountant. The principal purpose of financial reporting required by Commission Regulations 4.7(b)(3) and 4.22(d)(1) is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

Based upon the representations made in your letter, the Division believes that granting the request of the CPO is neither contrary to the purpose of Commission Regulations 4.7(b)(3) and 4.22(d)(1) nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the Division will grant the CPO's request for exemptive relief from the requirement in Commission Regulations 4.7(b)(3) and 4.22(d)(1) to audit the financial statements in the annual report for the fiscal year ending on December 31, 2013. Further, the relief granted in this letter is conditioned on the CPO's filing for the Pool an unaudited 2013 Annual Report that otherwise complies with Commission Regulation 4.7(b)(3) and 4.22(d) with NFA. Due to the current proprietary nature of the Pool,¹ as well as "C's" signed waiver and his access to the information that would be provided to him in an annual report, the Division will not require the CPO to distribute the 2013 Annual Report to its sole participant.

This relief is based upon the representations that you have made to the Division. Any different or omitted facts may result in a different determination and may render any relief set forth in this letter void. Therefore, you must notify the Division immediately in the event that the operations or activities of the CPO or the Pool change in any material way from those represented to the Division.

This relief shall not excuse the CPO from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder, including, but not limited to, Part 4 of the Commission's regulations.

¹ You have indicated in your requesting letter that the CPO plans to solicit and accept funds from other participants for investment in the Pool during the 2014 fiscal year and intends to, for the 2014 and future fiscal years, distribute to participants and file with NFA annual reports in full compliance with Commission Regulations 4.7(b)(3) and 4.22(d).

RE: "A"

Page 3

Moreover, this letter represents the views of the Division, and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight