



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 14-37  
Exemption  
March 18, 2014  
Division of Swap Dealer and Intermediary Oversight

**RE: “A”, a registered commodity pool operator for “B”**

Dear :

This letter is in response to your letter dated February 27, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), and subsequent correspondence with the Division. You request on behalf of “A”, the commodity pool operator (“CPO”) for “B” (“Pool”), relief from the requirement in Regulations 4.7(b)(3) and 4.22(d)(1) that a CPO file and distribute to its participants a certified Annual Report within 90 days of the close of a pool’s fiscal year.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool, which is operated pursuant to an exemption under Regulation 4.7, has been in existence since June 2013, and commenced trading on July 12, 2013. The Pool has two participants, one of whom is a principal of the CPO that directs the trading for the Pool. You further represent that the non-proprietary participant signed the subscription agreement July 4, 2013, and the non-proprietary funds were deposited in the Pool’s account on July 8, and July 26, 2013. On December 31, 2013, the Pool was valued at \$. Your request is limited in that you do not ask for the Annual Report requirement to be waived entirely. Instead, you propose to distribute unaudited financial statements and required tax information for the 2013 fiscal year to the Pool’s non-proprietary participant, and you request permission to subsequently distribute and file with NFA an Annual Report in compliance with Regulations 4.7(b)(3) and 4.22(d) for the period from the Pool’s inception of trading, July 12, 2013 to December 31, 2014. In support of this request, you have submitted a waiver from the non-proprietary participant evidencing his consent to receive unaudited financial statements for 2013 and a certified 18-month Annual Report after the end of the Pool’s 2014 fiscal year.

Commission Regulation 4.7(b)(3) provides a CPO an exemption from filing and distributing an annual report in accordance with Regulation 4.22(c) with respect to an exempt

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pool it operates in accordance with Regulation 4.7; provided, that the CPO files with the National Futures Association ("NFA") and distributes to each participant an annual report for the exempt pool that complies with Regulation 4.7(b)(3). Commission Regulation 4.22(d) requires, among other things, 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) 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 purposes of Commission Regulations 4.7(b)(3) and 4.22(d) nor to the public interest. However, the Division feels that the period covered by the certified Annual Report should begin on July 8, 2013, the date the Pool received funds from a third-party participant, instead of the date the Pool began trading. 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 to file and distribute a certified Annual Report for 2013, thereby permitting the CPO to file a certified Annual Report for the Pool for the 18-month period from July 8, 2013 to December 31, 2014.

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. Further, the relief granted in this letter is conditioned on (1) the immediate distribution to the non-proprietary participant of unaudited financial statements and tax information for the Pool's 2013 fiscal year; and (2) the distribution to the Pool's participants and the filing with NFA of a certified Annual Report containing combined financial information for the period beginning July 8, 2013 and ending December 31, 2014, in full compliance with Commission Regulations 4.7(b)(3) and 4.22(d).

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. 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.

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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