



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-52
Exemption
April 1, 2014
Division of Swap Dealer and Intermediary Oversight

RE: “A”, a registered commodity pool operator for “B”, “C”, “D”, “E”, and “F”

Dear :

This letter is in response to your letter dated March 17, 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”) for “B”, “C”, “D”, “E”, “F” (collectively, the “Pools”), relief from Commission regulations 4.7(b)(3) and 4.22(d), which require the CPO distribute to its participants, and file with the National Futures Association (“NFA”), a certified Annual Report within 90 days of the close of the Pools’ fiscal year. Instead, you propose to file a 15-month audited Annual Report for the Pools for the period from January 1, 2013, through March 24, 2014, when the Pools completed their final distribution to participants.

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 Pools, an exemption from the requirements of Commission regulations 4.7(b)(3) and 4.22(d) that the CPO distribute and file a certified Annual Report within 90 days of the close of the Pools’ fiscal year. You state that the Pools are all related pools that are operated in a single master-feeder structure, with the feeder funds investing substantially all of their assets into the master fund. You state that the CPO decided to permanently cease trading operations of the Pools, close the Pools and return investor capital. You further state that as of January 31, 2014, the aggregate net asset value of the Pools was approximately \$. You state that the last day of active trading operations was February 28, 2014, and that approximately 95% of the Pools’ assets that were available for distribution were in fact distributed to investors in the form of cash on March 14, 2014. You represent that the Pools’ remaining cash balances were settled on March 24, 2014 and the Pools’ final net asset value was determined on that date. You state that the remaining cash balance was returned to investors on March 31, 2014. In support of your request, you state that the Pools have six participants, five of which are affiliates of the CPO, and have submitted waivers from the same evidencing their

intention of waiving their right to receive an Annual Report for fiscal year 2013. The six participants were invested in the “F”, “E”, and “D”. You state that at no time were there any participants invested in the other feeder fund. Additionally, your request for relief is limited in that you request that the Annual Report requirement not be waived entirely. Rather, you request permission for the CPO to combine information that would be contained in the Pools’ 2013 Annual Report with the Pools’ final liquidation report, creating a 15-month combined Annual Report covering the period from January 1, 2013, through March 24, 2014, when the Pools permanently ceased trading and the Pools’ final net asset value was calculated.

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 pursuant to 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 the permanent cessation of trading, whichever is earlier. 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 to file an unaudited Annual Report for the Pools for the 15-month period from January 1, 2013 to March 24, 2014 is neither contrary to the purposes of Commission regulations 4.7(b)(3) and 4.22(d) 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 relief from the Annual Report distribution requirements in regulations 4.7(b)(3) and 4.22(d), thereby permitting it to file an audited Annual Report for the Pools for the 15-month period from January 1, 2013 to March 24, 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 Pools 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. 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.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight