



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5436  
Facsimile: (202) 418-5547  
*kwalek@cftc.gov*

Division of Clearing and  
Intermediary Oversight

Kevin P. Walek  
Assistant Director

CFTC Letter No. 09-04  
Exemption  
March 26, 2009  
Division of Clearing and Intermediary Oversight

Re: "X," a registered commodity pool operator for "A"

Dear :

This is in response to your correspondence dated March 5, 2009, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), as well as numerous subsequent communications with Commission staff. You request on behalf of "X," the commodity pool operator ("CPO") for "A" (the "Pool"), an exemption from the requirement of Regulation 4.22(c) that the CPO file for the Pool a final liquidation report within 90 days of the permanent cessation of trading.<sup>1</sup> You propose instead that you be permitted to file the annual report for the Pool for its fiscal year ending December 31, 2008, styled as a report "in liquidation." You request that this final "in liquidation" report constitute the final liquidation report for the Pool required under Commission Regulation 4.22(c).

Based upon the representations made in your communications, we understand the facts to be as follows. The CPO has filed an exemption from registration for the Pool under Commission Regulation 4.7. During 2008, the CPO began the process of liquidating the Pool's investments in an orderly manner, and as of December 31, 2008, the Pool had ceased assuming new trading positions and had distributed to participants all proceeds except for approximately \$2X,XXX,XXX (this amount represents roughly 8% of the Pool's total net asset value as of December 31, 2007). You further state that as of December 31, 2008, the Pool had no equity in any commodity futures trading accounts, and the CPO is not currently actively managing any futures or conducting any futures-related activity for the Pool.<sup>2</sup>

---

<sup>1</sup> Commission Regulations referred to herein are found at 17 C.F.R. Ch. I (2008).

<sup>2</sup> Based on earlier financial statements submitted to NFA, the Pool also had no equity in any commodity futures trading accounts as of December 31, 2006, December 31, 2007, or September 30, 2008. In fact, based upon representations made to Division staff, the CPO is uncertain if the Pool ever conducted any futures-related trading activity.

You state that Pool has not liquidated the remaining \$2X,XXX,XXX because these investments are largely illiquid given current market conditions. You represent that the Pool's remaining investments can be categorized as follows:

- \$1X,XXX,XXX in bank loans,
- \$1,XXX,XXX in corporate bonds,
- \$3X,XXX in preferred stock,
- \$3,XXX,XXX in common stock, and
- \$3X,XXX in warrants or options.

You state that it is the CPO's intent to orderly liquidate these positions, but that the CPO's ability to liquidate the Pool's remaining investments will depend on whether market conditions will allow for sales at prices that are in the best interests of the Pool's participants. You estimate that the orderly liquidation of the Pool's remaining investments would take between 12 and 24 months, during which time the CPO will continue to charge the Pool a fee in accordance with the provisions of the Pool's subscription agreement. You further represent that the Pool will only liquidate these remaining assets, and will not otherwise assume any new positions.

Pursuant to the CPO's plan for orderly liquidation, you request, on behalf of the CPO and Pool, relief from the requirement of Regulation 4.22(c) that the CPO distribute and file a liquidation report for the Pool within 90 calendar days of the permanent cessation of trading. You instead request that you be permitted to file the annual report for the Pool for its fiscal year ending December 31, 2008, styled as a report "in liquidation." This final "in liquidation" report would include a subsequent event footnote explaining that the Pool is currently in liquidation, but due to the illiquid nature of certain assets, the Pool cannot presently provide its participants with a final liquidation report. This final "in liquidation" report would also disclose to participants that the CPO is continuing to charge the Pool a fee in accordance with the provisions of the Pool's subscription agreement, disclosing the rate and the specific amount of the fee charged for the fiscal year ending December 31, 2008. You request that this "in liquidation" report constitute the final liquidation report for the Pool required under Commission Regulation 4.22(c). You additionally represent that the CPO will nonetheless continue to provide quarterly reports to its participants until the Pool has fully completed its liquidation.

Regulation 4.22(c) requires a CPO to file an annual report with the Commission and distribute copies to pool participants within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier. The principal purpose of financial reporting required by Regulation 4.22 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 filing the Pool's annual report for its fiscal year ending December 31, 2008 as an "in liquidation" report, and constituting the final liquidation report required under Regulation 4.22(c), is neither contrary to the purposes of Regulation 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated by Regulations 140.93 and 4.12(a), the Division believes that you have complied with your obligations under Part 4 and that the Pool's "in liquidation" report for the

Page 3

fiscal year ending December 31, 2008 is properly considered a final liquidation report for the Pool under Regulation 4.22(c).

The conclusion reached in this letter, and the relief contained herein, is based solely upon the facts and representations provided to us. Any different, changed or omitted material facts or circumstances might render this letter, and the relief contained herein, void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5463, or Daniel Konar, a member of my staff, at (202) 418-5432.

Very truly yours,

Kevin P. Walek

cc: Regina Thoele, Compliance  
National Futures Association, Chicago