



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Kevin P. Walek
Assistant Director

CFTC Letter No. 09-07
Exemption
May 28, 2009
Division of Clearing and Intermediary Oversight

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

Dear:

This is in response to your letter dated May 5, 2009, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"). You request on behalf of "A," the commodity pool operator ("CPO") for "X" (the "Pool"), relief from the reporting requirements of Part 4 of the Commissions Regulations¹ and permission to treat the Pool's Annual Report for the fiscal year ending December 31, 2008 as the Pool's final liquidation report despite the fact that three of the Pool's assets cannot be distributed to participants at this time due to the illiquid nature of those assets.

Based upon the representations made in your correspondence and in subsequent email communications with Division staff, we understand the facts to be as follows. You state that as of December 31, 2008 the Pool ceased trading and from that date until the present has been operating solely due to the retention of certain illiquid assets, including two assets which entitle the Pool to a potential distribution if "Y" Corporation would emerge from bankruptcy and one that would entitle the Pool to a potential distribution if "Z" Corporation would emerge from bankruptcy, that are worth virtually zero. The two assets relating to "Y" Corporation are valued at zero and the asset relating to "Z" Corporation is valued at \$34.77. The Pool had two participants as of December 31, 2008. Additionally, you state that the CPO has satisfied all liabilities of the Pool and is presently in the process of making final distributions to participants. You request that the Annual Report filed for the Pool for the fiscal year ending on December 31, 2008 be considered the final Annual Report for the Pool. In light of those facts presented, you request that the CPO be relieved of its obligations under Part 4 regarding the distribution and/or filing of periodic financial statements, despite the fact that the Pool is unable to make a final distribution to its participants due to the facts presented above.

Regulation 4.22 requires each registered CPO to distribute certain periodic financial statements to pool participants as well as an audited Annual Report, which must also be filed with the Commission. Pursuant to Regulation 4.22(c), a final liquidation report must be filed by

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (2009).

all registered CPOs upon liquidation of the Pool. The Division has determined that, under the circumstances delineated above, and pursuant to the authority delegated by Regulation 140.93 and 4.12(a), a liquidation report would be acceptable to terminate the CPO's reporting obligations under Part 4 with respect to the Pool, provided that the CPO can demonstrate the following indicia of liquidation: the cessation of trading; the closure of all open positions; and the termination of the CPO's entitlement to fees derived from the active management of the Pool. To that end, the CPO must make the following representations in either a footnote in the Pool's liquidation report or in a separate disclosure that is both filed with the Commission and distributed to participants:

- The Pool has ceased trading;
- The pertinent facts regarding the value of any assets currently being held by the Pool that have not been distributed to participants and the reasons for their retention, including, but not limited to, the value of the assets and the percentage of the Pool's NAV that the illiquid assets represent;
- A representation that no additional fees will be deducted from the assets held by the Pool;
- The pertinent facts regarding the disposition of any income generated by the assets held by the Pool, if any;
- A representation regarding whether any assets have been distributed to participants;
- A representation regarding the distribution of assets on a pro rata basis to participants; and
- If the representations listed herein are made in a separate disclosure, a representation that the financial information contained in the Pool's liquidation report remains accurate.

Additionally, upon the issuance of the final distribution, the CPO must make a final disclosure that is to be both filed with the Commission and distributed to the Pool's participants representing that all interests in and assets of the Pool have been redeemed, distributed or transferred on behalf of the Pool's participants.

If the CPO is unable or unwilling to make the above listed representations to the Commission and the Pool's participants or does not otherwise wish to liquidate the Pool, the CPO must continue to comply with the reporting requirements of Part 4.

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. The relief granted herein only relieves the CPO of its reporting obligations under Part 4, and should not be construed as granting relief from the CPO's other obligations thereunder, or from any other applicable provisions of the Commodity Exchange Act or Commission regulations. Additionally, nothing in this letter should be construed as encouraging or permitting the CPO's withdrawal from registration with the Commission or membership with the National Futures Association until such date as the CPO makes a final distribution to participants and files and distributes the final disclosure described above.

Page 3

Should you have any questions, please do not hesitate to contact me at (202) 418-5463 or Amanda Olear, an attorney on my staff, at (202) 418-5283.

Very truly yours,

Kevin P. Walek

cc: Regina Thoele, Compliance
National Futures Association