



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Kevin P. Walek  
Assistant Director

CFTC Letter No. 09-14  
Exemption  
February 17, 2009  
Division of Clearing and Intermediary Oversight

Re: Exemptive Relief From the Certification of the Annual Report for "A"

Dear :

This is in response to your correspondence dated February 5, 2009, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission") on behalf of "X," the commodity pool operator ("CPO") for the "A" (the "Pool"). By your letter you request exemptive relief from the requirement of Rule 4.22(d) that the Pool's financial statement prepared for the period ending December 31, 2008, due to the absence of any non-proprietary participants, be certified by an independent public accountant.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool began operations in July of 2007 with two investors, one of which is the sole principal of the CPO and the other his mother. The Pool's total capital contributions are \$3XX,XXX and the Pool's total net asset value as of December 31, 2008 was \$4XX,XXX. The Pool participants receive monthly account statements prepared by a third party accounting firm not associated with the CPO. You have further attached a waiver executed by the Pool's two participants evidencing their consent to the exemption from the certified annual report requirement.

Rules 4.22(c) and (d) require that each registered CPO file a certified Annual Report with the Commission and distribute copies to the pool participants within 90 calendar days of the end of the pool's fiscal year. The principal purpose of financial reporting required by Rules 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. Accordingly, pursuant to the authority delegated by Regulation 140.93 and 4.12(a), the Division believes that granting the request on behalf of the Aviator Fund I, LLC is neither contrary to the purposes of Rule 4.22 nor to the public interest. Therefore, the Aviator Investment Group, Inc., is hereby granted relief from the certification requirement of Rule 4.22(d) for the Pool's fiscal year ending December 31, 2008.

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The relief granted in this letter is conditioned on the distribution of an unaudited annual report for 2008 that otherwise complies with 4.22(c) and (d) and filing of the same with NFA.

This in no way shall excuse the “X,” or “A” from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder, including but not limited to Part 4 of the Regulations.

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

Should you have any questions, please do not hesitate to contact me at (202) 418-5463.

Very truly yours,

Kevin P. Walek

cc: Regina Thoele, Compliance  
National Futures Association, Chicago