



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536
www.cftc.gov

Division of Clearing and
Intermediary Oversight

CFTC Letter No. 09-16
Exemption
August 29, 2008
Division of Clearing and Intermediary Oversight

Re: Request for Extension of Time Period for Filing the Final Annual Report for "A"

Dear :

This is in response to your letter dated July 10, 2008, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), on behalf of "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"). "X" is the CPO of "C", a master fund, and two feeder funds: "A" and "B". You are requesting that the Division permit "X" to prepare, distribute and file by March 31, 2009 the report required by Commission Regulations 4.7(b)(3) and 4.22(c)¹ that would otherwise be due within 90 days of the permanent cessation of trading by "A".

"A" and "B" invest all of their assets in "C". Each fund is incorporated under Bahamas law, has a majority of its directors in common, and is operated by "X" pursuant to a claim of exemption under Commission Regulation 4.7. "X" conducts all of the trading of "C". As of June 30, 2008, the operations of "A" were terminated and all of its participants transferred their participation to "B" by exchanging their shares in "A" for an equal number of shares in "B", at an identical net asset value per share. You represent that "A" and "B" are substantially identical in all material respects. Participants in each fund have the same rights as to profits and losses, liquidation proceeds, share redemption, share transfer, and voting. In addition, the two feeder funds have the same fees and expenses. You note further that the costs of producing the "A" report, which are borne by the participants, will be significantly less if the report is produced in conjunction with the annual reports for "B" and "C", which are due by March 31, 2009. All participants in "A" have received and signed a share exchange agreement to transfer their interests from "A" to "B".

Your letter states that the transfer of participants' interests from "A" to "B" does not constitute the "permanent cessation of trading" by "A", as funds have not actually been returned to the "A" participants, and requests the Division's concurrence with your position that March 31, 2009 is the due date for the 2008 annual report for "A". The Division does not agree with

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2008). Regulations 4.7(b)(3) and 4.22(c) require a CPO to provide to participants, and file with NFA, an annual financial report for each pool the CPO operates within 90 days of the commodity pool's year-end, or the permanent cessation of trading, whichever is earlier.

your assertion that “A” has not permanently ceased trading because its participants have transferred, rather than redeemed, their interests in the fund. “A” has, in fact, ceased operation as of June 30, 2008, and, absent the relief discussed herein, “X” is required to prepare, distribute and file the final annual report for “A” by September 30, 2008 – i.e., within 90 days of the permanent cessation of trading on June 30, 2008.

Regulation 4.7(b)(3) requires that each registered CPO file an annual report for each pool that it operates with the National Futures Association and distribute the same to each participant. The principal purpose of financial reporting required by Regulation 4.7 is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool. The Division recognizes that, because the interests of the “A” participants have been transferred to a substantially identical investment, and because the former “A” participants will continue to receive periodic reports on the value of their investments in “B”, postponing the final report for “A” would not deprive participants of timely information regarding their investments.

Based upon the representations made in your letters, the Division believes that permitting “X” to distribute to participants, and to file with NFA, the final annual report for “A” by March 31, 2009 rather than September 30, 2008, is neither contrary to the purposes of Regulations 4.7 and 4.22, nor to the public interest. Accordingly, pursuant to the authority delegated by Regulations 140.93 and 4.12(a), “X” is hereby granted relief from the requirement of Regulation 4.7(b)(3) to file the final annual report for “A” by September 30, 2008. This exemption is conditioned on “X” distributing to the “A” participants and filing with NFA a final annual report for fiscal year 2008 by March 31, 2009, along with the December 31, 2008 annual report for “B”. This exemption does not relieve “X” from any other applicable requirements of Part 4 of the Commission’s 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. If you have any questions concerning this letter, please contact Eileen Chotiner at 202-418-5467.

Very truly yours,

Kevin P. Walek
Assistant Director

cc: Regina Thoele, Compliance
National Futures Association