



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Kevin P. Walek
Assistant Director

CFTC Letter No. 09-19
Exemption
February 25, 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 email correspondence dated March 4, 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"), as well as subsequent conversations with Division staff on March 13, 2009. By your correspondence you request exemptive relief from the requirement of Regulation 4.22(d) that requires that the Pool's financial statement prepared for the period ending December 31, 2008 be certified by an independent public accountant, due to the fact that the Pool has only a nominal amount of assets and has only three investors, one of whom is proprietary.¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool began operations in December of 2007. From January 1, 2008 until December of 2008, the Pool had only 2 investors, one of whom is the CPO. In December of 2008, the Pool accepted another non-proprietary investor, bringing the total number of Pool participants as of December 31, 2008 to 3. The Pool's total net asset value as of December 31, 2008, was approximately \$1XX,XXX, roughly 42% of which was owned by the CPO. You have further attached waivers executed by the Pool's 3 participants evidencing their consent to the exemption from the certified Annual Report requirement.

Regulations 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 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. Accordingly, pursuant to the authority delegated by Regulations 140.93 and 4.12(a), the Division believes that granting the request on behalf of the "A" is neither contrary to the purposes of Regulation 4.22 nor to the

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

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public interest. Therefore, "X" is hereby granted relief from the certification requirement of Regulation 4.22(d) for the Pool's fiscal year ending December 31, 2008.

The relief granted in this letter is conditioned on [1] the distribution of an unaudited Annual Report for Pool's fiscal year ending December 31, 2008 that otherwise complies with Regulations 4.22(c) and (d) and filing of the same with NFA, and [2] the future filing on behalf of "A" a certified Annual Report for the period January 1, 2008 through December 31, 2009 in accordance with Rules 4.22(c) and (d). This in no way shall excuse "X," or "A" 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 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, 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