



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Kevin P. Walek  
Assistant Director

CFTC Letter No. 09-21  
Exemption  
March 18, 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 7, 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 "A" (the "Pool"). By your correspondence you request exemptive relief from the requirement of Regulation 4.22(d),<sup>1</sup> which 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 three participants, a nominal amount of assets, and has only been in operation for six months.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool began operations in July of 2008 and currently has only three participants. The Pool's total capital contributions amount to \$1XX,XXX, and as of December 31, 2008, the Pool had a total net asset value of \$8X,XXX. You have further attached waivers executed by the Pool's three 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 "A" is neither contrary to the purposes of Regulation 4.22 nor to the 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.

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

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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 July 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