



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5436
Facsimile: (202) 418-5547
kwalek@cftc.gov

Division of Clearing and
Intermediary Oversight

Kevin P. Walek
Assistant Director

CFTC Letter No. 09-25
Exemption
March 2, 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 6, 2009, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission") as well as your subsequent email and telephone communications with Division staff on behalf of "X," the commodity pool operator ("CPO") for "A" (the "Pool"). By your letter you request on behalf of the CPO an exemption from the requirements of Commission Regulation 4.22(d),¹ which requires that the Pool's Annual Report for the fiscal year ending December 31, 2008 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 June of 2007, has only had one participant, and currently has no participants. On June 4, 2008, the Pool's sole participant redeemed its entire position, \$3XX,XXX, from the Pool. No new capital has come into the Pool since, and the Pool currently only has nominal assets (totaling less than \$1,XXX) for the purpose of keeping open two checking and savings accounts. You have further attached a waiver executed by the Pool's sole participant evidencing its 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, notwithstanding the previous relief granted by the Division to "X" concerning the certification of the Annual Report for the Pool's fiscal year ending December 31,

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

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2007, "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 the distribution of an unaudited Annual Report for 2008 that otherwise complies with Regulations 4.22(c) and (d) and filing of the same with NFA. This in no way shall otherwise 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. Additionally, please be advised that if in the future the Pool once again admits participants, the Pool and the CPO will be required to comply with the full panoply of requirements contained in the Commodity Exchange Act or in the Commission's Regulations issued thereunder.

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