



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and  
Intermediary Oversight

Kevin P. Walek  
Assistant Director

CFTC Letter No. 09-35  
Exemption  
July 8, 2009  
Division of Clearing and Intermediary Oversight

Re: "A," a registered commodity pool operator for "B"

Dear :

This is in response to your letter dated July 6, 2009, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"). You request on behalf of "A," the commodity pool operator ("CPO") for "B" (the "Pool"), relief from the reporting requirements of Part 4 of the Commissions Regulations<sup>1</sup> and permission to treat the Pool's Annual Report for the fiscal year ending December 31, 2008 as the Pool's final liquidation report despite the fact that approximately 100% of the Pool's assets cannot be distributed to participants at this time due to the bankruptcy of "X."

Based upon the representations made in your correspondence with Division staff, we understand the facts to be as follows. You state that as of XXXXX, the date on which "X" filed its bankruptcy petition, the Pool had approximately 100% of the Pool's net asset value of \$2X,XXX,XXX in options written by "Y". You further state that as of that date the Pool ceased trading and from that date until the present has been operating solely in an effort to maximize the Pool's recovery from the bankruptcy estate. You represent that the CPO filed an Annual Report for the Pool for the fiscal year ending December 31, 2008, which contained information regarding the inability to make a final distribution under the resolution of the "X" Bankruptcy. In light of those facts presented, you request that the CPO be relieved of its obligations under Part 4 regarding the distribution and/or filing of periodic financial statements, despite the fact that the Pool is unable to make a final distribution to its participants due to the ongoing bankruptcy proceedings.

Regulation 4.7(b)(3) requires each registered CPO to distribute certain periodic financial statements to pool participants as well as an Annual Report that is compliant with US GAAP, which must also be filed with the Commission. Pursuant to Regulations 4.7(b)(3) and 4.22(c), a final liquidation report must be filed by all registered CPOs upon liquidation of the Pool. The Division has determined that, under the circumstances delineated above, and pursuant to the authority delegated by Regulations 140.93 and 4.12(a), a liquidation report would be acceptable to terminate the CPO's reporting obligations under Part 4 with respect to the Pool, provided that

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<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (2009).

the CPO can demonstrate the following indicia of liquidation: the cessation of trading; the closure of all open positions; and the termination of the CPO's entitlement to fees derived from the active management of the Pool. To that end, the CPO has made the following representations in the final liquidation report:

- The Pool has ceased trading;
- The pertinent facts regarding the bankruptcy and the frozen assets, including, but not limited to, the value of the assets, the percentage of the Pool's NAV that the frozen assets represent, and the date upon which the bankruptcy petition was filed;
- The pertinent facts regarding the value of any assets presently being held by the Pool that have not been distributed to participants and the reasons for their retention;
- A representation that no additional fees will be deducted from the assets held by the Pool;
- The pertinent facts regarding the disposition of any income generated by the assets held by the Pool, if any;
- A representation regarding whether any assets have been distributed to participants;
- A representation regarding how payouts from the bankruptcy estate will be distributed to participants; i.e., whether distributions will be made as funds are received from the bankruptcy estate or whether payouts will be retained by the Pool until the final payout is received from the estate;
- A representation regarding any write down of the value of the claim against the bankruptcy estate;
- A representation regarding the distribution of assets on a pro rata basis to participants; and
- A representation that the financial information contained in the Pool's liquidation report remains accurate.

Additionally, the CPO must make a final disclosure that is to be both filed with the Commission and distributed to the Pool's participants upon the final distribution to participants representing that all interests in and assets of the Pool have been redeemed, distributed or transferred on behalf of the Pool's participants.

If the CPO is unable or unwilling to make the above listed representations to the Commission and the Pool's participants or does not otherwise wish to liquidate the Pool, the CPO must continue to comply with the reporting requirements of Part 4.

This relief is based upon the representations that you have made to the Division. Any different or omitted facts may result in a different determination. The relief granted herein only relieves the CPO of its reporting obligations under Part 4, and should not be construed as granting relief from the CPO's other obligations thereunder, or from any other applicable provisions of the Commodity Exchange Act or Commission regulations. Additionally, nothing in this letter should be construed as encouraging or permitting the CPO's withdrawal from registration with the Commission or membership with the National Futures Association until such date as the CPO makes a final distribution to participants and files and distributes the final disclosure described above.

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Should you have any questions, please do not hesitate to contact me at (202) 418-5463 or Amanda Olear, an attorney on my staff, at (202) 418-5283.

Very truly yours,

Kevin P. Walek

cc: Regina Thoele, Compliance  
National Futures Association