



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-44
Exemption
March 26, 2014
Division of Swap Dealer and Intermediary Oversight

RE: “A”, a commodity pool operator for the “B”

Dear :

This letter is in response to your letter dated March 19, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of the “A”, the commodity pool operator (“CPO”) for the “B” (the “Pool”), relief from Commission Regulations 4.22(c) and (d), which require that the CPO distribute to its participants, and file with the National Futures Association (“NFA”), a certified Annual Report within 90 days of the close of the Pool’s fiscal year.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool recently began operations in June 2013, and you as the managing member of the CPO have made an initial capital contribution of \$ with which you have commenced trading. The Pool is currently proprietary, with you as the only participant, and though the Pool has not yet raised outside capital, you have represented that you are soliciting potential participants for investment in the Pool. On December 31, 2013, the Pool was valued at \$.

You request relief from Commission Regulations 4.22(c) and (d). Commission Regulation 4.22(c) requires the CPO to distribute to pool participants and file with NFA an Annual Report within 90 calendar days after the end of the pool’s fiscal year, which must include, among other things, financial statements that must be audited by an independent public accountant pursuant to Commission Regulation 4.22(d). The principal purpose of the reporting required by Commission 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.

Division staff has historically interpreted Commission Regulation 4.22(c)(8) to exclude controlling principals from the participants required to receive an Annual Report from the CPO. Therefore, you, as the controlling principal and managing member of the CPO and also the sole

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participant in the Pool, are not required to distribute an Annual Report to yourself. Because there are currently no non-proprietary participants in the Pool, the principal purpose of the reporting required by Commission Regulation 4.22 is not furthered by requiring the CPO to comply with all aspects of that regulation. Requiring the CPO and the Pool to expend their resources preparing a certified Annual Report would cause them to incur substantial costs, which may not be in the interest of the proprietary participant and the continued expansion of the Pool.

Based upon the representations made in your letter, the Division believes that granting your request for relief from the Annual Report certification requirement is neither contrary to the purposes of Commission Regulations 4.22(c) and (d) nor to the public interest. But, because the CPO is currently soliciting outside capital contributions for investment in the Pool, the Division believes it appropriate to require the CPO to file with NFA an Annual Report containing unaudited financial statements and otherwise complying with Regulation 4.22(c). Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the Division will grant the CPO's request for exemptive relief from the requirement in Commission Regulation 4.22(d) that the Annual Report be certified by an independent public accountant, thereby permitting it to file an uncertified Annual Report for the Pool for the 2013 fiscal year.

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 and may render any relief set forth in this letter void. Therefore, you must notify the Division immediately in the event that the operations or activities of the CPO or the Pool change in any material way from those represented to the Division. Further, the relief granted in this letter is conditioned on the filing with NFA of an uncertified Annual Report for the 2013 fiscal year, in full compliance with Commission Regulations 4.22(c).

This relief shall not excuse the CPO 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 Commission's regulations. Moreover, this letter represents the views of the Division, and does not necessarily represent the views of the Commission or any other division or office of the Commission.

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If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight