



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-51
Exemption
March 27, 2014
Division of Swap Dealer and Intermediary Oversight

Dear :

This is in response to your letter dated February 13, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B” (the “Feeder Fund”) and “C” (the “Master Fund”), (together, the “Pools”), relief from Commission regulations 4.7(b)(3) and 4.22(c),¹ which require a CPO to distribute to its participants, and file with the National Futures Association (“NFA”) an Annual Report, which contains audited financial statements concerning the pool, within 90 days of the close of the Pools’ fiscal year.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You state that as of December 31, 2013, the Pools have only two participants, and combined capital contributions of \$.² You further state that the Pools were not capitalized until October 2013. You have attached to the request signed waivers from both participants, which consent to not receiving an Annual Report as required by Commission regulations 4.7(b)(3) and 4.22(c) or the audited financial statements required to be contained therein by Commission Regulation 4.22(d), for the period ending December 31, 2013.

Additionally, your request for relief is limited. You request that the Annual Report requirement not be waived entirely, but rather, that the information that would have been contained in the Pool’s 2013 Annual Report be combined with the Pool’s 2014 Annual Report, creating a 15-month combined Annual Report covering the period from the Pool’s inception, October 1, 2013, through December 31, 2014.

¹ Commission Regulations referred to herein are found at 17 C.F.R. Ch. I (2013).

² You state that the Feeder Fund has two participants, and capital contributions of \$ of which \$ was invested in the Master Fund, which the Feeder Fund wholly owns.

Commission regulations 4.7(b)(3) and 4.22(c) require 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. This Annual Report must include, among other things, financial statements for the pool, which must be audited by an independent public accountant pursuant to Commission Regulation 4.22(d). The principal purpose of the reporting required by Commission regulations 4.7 and 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. The Division understands, however, based upon the representations made in your letter, that requiring the Pools to expend their resources auditing the financial statements contained in the Annual Report for the brief period in which the Pools were in operation in 2013 would cause the Pools to incur substantial costs. These costs may not be in the interests of the participants, in light of that brief period of operation. As such, the Division believes that providing relief with respect to the Pools' 2013 Annual Report is neither contrary to the purpose of Commission regulations 4.7 and 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated to it by regulations 140.93 and 4.12(a), the Division grants exemptive relief from the provisions of Commission regulations 4.7(b)(3) and 4.22(c) that the CPO prepare and distribute to its participants, and file with NFA, an Annual Report for the year ending December 31, 2013.

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. Further, the relief granted in this letter is conditioned on the CPO's distribution to the Pools' participants, and filing with NFA, of an Annual Report containing combined audited financial statements for the period beginning October 1, 2013 and ending December 31, 2014 in full compliance with Commission regulations 4.22(c) and (d), to the extent that the report is not exempted from such provisions by Commission Regulation 4.7(b)(3).

This relief shall not excuse the CPO from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder, including, but not limited to, Part 4 of the Commission's regulations. You must notify the Division immediately in the event that the operations or activities of the CPO or the Pools change in any material way from those represented to the Division. 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.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Michael Ehrstein, Attorney-Advisor, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

Gary Barnett
Director

