



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-54
Exemption
March 27, 2014
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from the Audited Financial Statement Requirement of Commission Regulation 4.22(d)

Dear :

This is in response to your letter dated December 23, 2013, 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 (“CPO”) for the “B” (the “Pool”), relief from Commission Regulation 4.22(d)(1), which requires the financial statements contained in the Pool’s Annual Report to be audited by an independent public accountant.

Based upon the representations made in your letter, and in subsequent telephonic and email communications with Division staff (together, the “Communications”), we understand the relevant facts to be as follows. The CPO operates the Pool pursuant to Commission Regulation 4.7, accepting only qualified eligible persons as participants in the Pool. Currently however, the Pool has only one participant, who is also a principal of, and the Chief Operating Officer (“COO”) for, the CPO. Additionally, the Pool has limited contributions from this participant, which total approximately \$ in net asset value. You suggest that due to the limited size of the Pool, and the fact that the single participant in the Pool already has significant knowledge regarding the operations of the Pool through his role as principal and COO, that the audit requirement imposed by Commission Regulation 4.22 would not provide this participant with meaningful additional information with respect to the financial condition of the Pool, particularly in relation to the cost for that audit.

Additionally, you have limited your request for relief. You request that the Division provide relief from the audit requirement of Commission 4.22(d)(1) only with respect to the Pool’s 2013 fiscal year.

Commission regulations 4.7(b)(3) and 4.22(c) require a commodity pool operator 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)(1). 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 Pool to expend its resources auditing the financial statements contained in the Annual Report would cause the Pool to incur substantial costs. These costs may not be in the interests of the participant, in light of your representations regarding his considerable and ongoing familiarity with respect to the financial condition of the Pool. As such, the Division believes that providing relief with respect to auditing the financial statements within the Pool's 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 Commission regulations 140.93 and 4.12(a), the Division grants the CPO exemptive relief from the provisions of Commission Regulation 4.22(d)(1), that the CPO prepare and distribute to its participant, and file with NFA, audited financial statements within the 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 Pool participants, and filing with NFA, a 2013 Annual Report containing unaudited financial statements, and future Annual Reports in full compliance with Commission regulations and 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 Pool 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

