



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 14-59  
Exemption  
April 1, 2014  
Division of Swap Dealer and Intermediary Oversight

Dear :

This is in response to your letter dated March 5, 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 (“CPO”) for “B” (the “Pool”), relief from Commission Regulation 4.22(d), which requires, among other things, that the Pool’s Annual Report 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. In 2013, the Division granted relief to the CPO with respect to the audit requirement for the Pool’s annual report for fiscal year 2012 due to the Pool’s significant exposure to the ongoing “C” bankruptcy. As a condition of that relief, the Division required that the CPO file audited financial statements for the Pool for fiscal year 2012 as part of its audited annual report for the Pool for fiscal year 2013. You state that the facts that provided the basis for the Division’s prior grant of relief remain in existence and that the Pool continues to have the majority of its assets impacted by the “C” bankruptcy. You state that due to the nature of the “C” bankruptcy proceedings it is unlikely that the recovery and return of customer assets will be completed prior to 2015 or later. You state that the Pool has not engaged in any active trading or solicitation of new participants since the date of the “C” bankruptcy. You further state that the CPO has not charged any management or incentive fees to the Pool since July 2012. You further represent that the CPO will continue to distribute unaudited quarterly and annual report statements to its participants and will file the unaudited annual report statement with the National Futures Association (“NFA”).

Commission Regulation 4.22(c) requires each registered CPO to file an Annual Report with the Commission and distribute copies to pool participants within 90 calendar days after the end of the pool’s fiscal year or the permanent cessation of trading. Commission Regulation 4.22(d) requires that the financial statements in the Annual Report be audited by an independent public accountant. The principal purpose of financial 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. The Division understands, however, based upon the representations made in your letters with respect to fiscal years 2012 and 2013, that requiring the Pool to expend its resources on a certified Annual Report would serve to deplete remaining participant equity. As such, the Division believes that providing relief with respect to the certified financial statements required to be contained in the Pool's 2013 Annual Report consistent with the Division's prior relief is neither contrary to the purpose of Commission Regulation 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated by Commission regulations 140.93 and 4.12(a), "A" is hereby granted relief from the requirement to file and distribute an Annual Report with audited financial statements to participants of the Pool pursuant to Commission Regulation 4.22; provided that, "A" files with the NFA and distributes to participants unaudited financial statements for the fiscal year 2013.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed, or omitted material facts or circumstances might render this letter void.

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

Very truly yours,

Gary Barnett