



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-6700
Facsimile: (202) 418-5528
gbarnett@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-61
Exemption
March 31, 2014
Division of Swap Dealer and Intermediary Oversight

RE: Request for relief on behalf of “A” and its commodity pool operator, “B”

Dear :

This letter is in response to your letter dated February 27, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request relief on behalf of “A”, the parent of “C” and “D”, “A’s” Board of Directors (the “Directors”), and “B”, the registered commodity pool operator (“CPO”) to whom “A” has delegated its CPO compliance responsibilities. Specifically, you request no-action relief from the Annual Report filing and certification requirements in Commission Regulations 4.22(c) and (d), and alternatively, you request that the CPO be permitted to file and distribute in 2015 a single Annual Report covering the period from April 25, 2013, through December 31, 2014. For the reasons outlined below, the Division is not inclined to grant either of these requests, but will grant the CPO exemptive relief from the Annual Report certification requirement in Commission Regulation 4.22(d)(1).

Based upon the representations made in your correspondence, we understand the facts to be as follows. “A” was incorporated on April 25, 2013, and it currently has six investors. “A” owns 100% of “D”, which is incorporated in Luxembourg, and “C”, which is incorporated in the Cayman Islands. “D” was established to facilitate a securitization of certain Dutch residential mortgage receivables. Specifically, “D” acquired equity interests in certain Dutch entities holding the mortgage receivables; received the mortgage receivables as distributions from those Dutch entities; and sold the mortgage receivables to a third party securitization vehicle (the “Vehicle”) in exchange for cash and a subordinated note issued by the Vehicle. The Vehicle funded the cash component of its purchase of the mortgage receivables by issuing floating rate senior notes. Because a significant portion of the mortgage receivables held by the Vehicle pay interest at a fixed rate, and the senior notes issued by the Vehicle pay interest at a floating rate, “D”, as holder of the subordinated note from the Vehicle, became exposed to interest rate risk. In order to reduce the interest rate risk of “D’s” subordinated note, “C” was formed to enter into hedging transactions, which transactions were entered into on December 13, 2013. As a

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summary of the facts outlined above, you state that "A", indirectly through the subordinated note held by its subsidiary "D", has become exposed to the basis risk between the fixed rate performance of assets held by the Vehicle and the floating rate payments due under the senior notes issued by the Vehicle, and indirectly, through the hedging transactions entered into by another of its subsidiaries, "C", is mitigating that basis risk.

You further state that the Directors have determined that "A" may be characterized as a commodity pool, based on the swap activity of "C". As a result, the Directors may be considered "A's" CPO and bear the attendant compliance obligations of that status contained in Part 4 of the Commission's Regulations, including the requirement to file a certified Annual Report after each fiscal year. You state that the Directors have delegated their responsibilities as a CPO to "B", which is the CPO registered in connection with the operation of "A". You have a no-action request in connection with the Directors' delegation pending before the Division. As a justification of your request, you explain that the Annual Report compliance obligation contained in Regulation 4.22 "arise[s] incidentally to a bona fide securitization transaction," and have represented to us that the Directors and "A" plan to request a determination that "A" is not a commodity pool, consistent with CFTC Staff Letter 12-14, on the basis that the facts as presented herein are similar to those discussed in Staff Letter 12-14 and warrant such relief.

Commission Regulations 4.22(c) and (d) require each registered CPO to file a certified Annual Report with the National Futures Association ("NFA") and distribute copies to the pool participants within 90 calendar days of the end of the pool's fiscal year. Commission Regulation 4.22(d) requires, among other things, financial statements in such annual reports 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 rarely, if ever, grants wholesale relief from the Annual Report filing and certification requirements in Regulations 4.22(c) and (d), but frequently grants the exemptive relief you alternatively request, allowing the combination of information from more than one fiscal year in a single Annual Report ("Stub Relief"). Stub Relief is typically conditioned on the future filing of the certified, combined Annual Report. Because you plan to seek relief from the Division determining "A" not to be a commodity pool, which would relieve the CPO of the CPO compliance obligations under Part 4 of the Commission's regulations, granting Stub Relief conditioned on the future fulfillment of just such a CPO compliance obligation is inappropriate. Therefore, the Division has determined to grant exemptive relief from the certification requirement in Regulation 4.22(d)(1), while still requiring the distribution and filing with NFA of an Annual Report for the 2013 fiscal year, containing unaudited financial statements and otherwise compliant with Regulation 4.22(c).

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Based upon the representations made in your letter, the Division believes that granting relief from the certification requirement in Regulation 4.22(d)(1) is neither contrary to the purposes 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), the Division will grant exemptive relief from Regulation 4.22(d)(1). 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 described herein change in any material way from those represented to the Division. Further, the relief granted in this letter is conditioned on the distribution to "A's" investors and the filing with NFA of an uncertified Annual Report for the 2013 fiscal year, in full compliance with Commission Regulation 4.22(c), by May 31, 2014.

This relief shall not excuse "A's" 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.

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