



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No.14-65
Exemption
March 25, 2014
Division of Swap Dealer and Intermediary Oversight

Re: “A”, a registered commodity pool operator for “B”

Dear :

This is in response to your letter dated March 13, 2014 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B” (the “Pool”), exemptive relief from the requirement to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ended December 31, 2013 pursuant to Commission regulation 4.22(d)(1).

Based upon the representations made in your letter and other telephone and email correspondence (the “Correspondence”), we understand the facts to be as follows. You request, on behalf of “A”, exemptive relief from the requirement to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ended December 31, 2013 pursuant to Commission regulation 4.22(d)(1). You state that the Pool began operations on April 1, 2011 and had net assets of approximately \$ as of December 31, 2013. You state that the Pool, which operates pursuant to an exemption under Commission regulation 4.7, was established as a vehicle to only manage the assets of the principals and employees of “A” and “C”. You state that “A” is a CPO registered pursuant to the Commodity Exchange Act (the “Act”) and a National Futures Association (“NFA”) member and serves as the general partner and CPO of the Pool. As for “C”, you state that it is a registered CPO, a registered commodity trading advisor, and an NFA member. You state that it is also a control affiliate of “A” and is owned by the same persons who own “A”. You state that “C” is involved in the investment process related to the Pool’s ongoing investment activity.

You state that the Pool is not available for investment by participants that are not principals or employees of “A” or “C” and that, as of March 13, 2014, the Pool has two participants, each of which is an employee of “A” and “C”. You state that each of the two participants in the Pool is employed with the title “Trader” and exercises discretionary investment authority over a portion of the Pool’s portfolio according to a daily trading plan

established by “C’s” Chief Investment Officer at the beginning of each trading day. You also state that one of the participants, “D”, is a part owner of both “A” and “C”. You have provided a written consent from each participant waiving such participant’s right to receive audited financial statements for the Pool’s fiscal year ended December 31, 2013. You state that “A” will distribute to each Pool participant an annual report for the fiscal year ended December 31, 2013, which includes financial statements prepared in accordance with generally accepted accounting principles in the U.S. that are not audited by an independent public accountant.

Commission regulation 4.7(b)(3) provides a CPO an exemption from filing and distributing an annual report in accordance with Commission regulation 4.22(c) with respect to an exempt pool it operates in accordance with Commission regulation 4.7; provided, that the CPO files with NFA and distributes to each participant an annual report for the exempt pool that complies with Commission regulation 4.7(b)(3) within 90 calendar days after the end of the exempt pool’s fiscal year or the permanent cessation of trading, whichever is earlier. Commission regulation 4.22(d) requires, among other things, financial statements in such annual reports to be audited by an independent public accountant. The principal purpose of financial reporting required by Commission regulations 4.7(b)(3) and 4.22(d) is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

Based upon the representations made in the Correspondence, the Division believes that granting relief is neither contrary to the purpose of Commission regulations 4.7(b)(3) and 4.22(d) nor to 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 pursuant to Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ended December 31, 2013.

This relief is conditioned on the following:

1. Within 90 calendar days after December 31, 2013, “A” files with NFA and distributes to all Pool participants an annual report for the fiscal year ended December 31, 2013 that complies with all applicable Commission requirements, except for the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d); and
2. Within 90 calendar days after the end of the Pool’s fiscal year 2014, “A” files with NFA and distributes to all Pool participants an annual report that covers fiscal year 2013 and fiscal year 2014 that complies with all applicable Commission requirements, including the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d).

This letter, and the positions taken herein, represents the view of this Division only, and does 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 Act or in the

“A”
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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 interpretation void.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Attorney-Advisor, at 202-418-5202.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight