



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No.14-66  
Exemption  
March 12, 2014  
Division of Swap Dealer and Intermediary Oversight

**Re: “A”, a registered commodity pool operator for “B”, “C”, and “D”**

Dear :

This is in response to your letter dated February 19, 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 “Offshore Fund”), “C” (the “Intermediate Fund”), and “D” (the “Master Fund”, and together with the Offshore Fund and the Intermediate Fund, “Pools”, and each, a “Pool”), an exemption from the requirement to have an independent public accountant audit the financial statements in each Pool’s annual report for the fiscal year ending on December 31, 2013 pursuant to Commission regulation 4.22(d).

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”, an exemption from the requirement to have an independent public accountant audit the financial statements in each Pool’s annual report for the fiscal year ending on December 31, 2013 pursuant to Commission regulation 4.22(d). You state that the Pools are operated pursuant to a claim of exemption under Commission regulation 4.7(b). You state that the Pools first accepted subscriptions on December 4, 2013 and initiated investment activities on January 8, 2014. You state that, as of February 19, 2014, the net asset value of the Offshore Fund and the Intermediate Fund was \$ and the net asset value of the Master Fund was \$. Furthermore, you state that the only investor in the Master Fund is the Intermediate Fund and the only investor in the Intermediate Fund is the Offshore Fund. You state that the Offshore Fund has two investors, one of which is an affiliate of the CPO. You have provided copies of the signed agreements from both investors that waive their right to receive audited financial statements for the fiscal year ending on December 31, 2013 in respect of the Offshore Fund and grant them the right to receive audited financial statements for fiscal year 2014 that covers the waived period in 2013. Additionally, in support of your request, you state that: (1) “A” will prepare, distribute to all participants, and file with the National Futures Association (“NFA”) within 90 days of the Pools’ 2013 fiscal year end, unaudited financial statements which will comply with all other applicable Commission requirements; and (2) the Pools’ annual reports for the fiscal year ending on December 31, 2014, and every year thereafter will be in full compliance

with Commission regulations, including the audit requirement pursuant to Commission regulation 4.22(d).

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), with respect to each Pool, “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 ending on December 31, 2013.

This relief is conditioned on the following with respect to each Pool:

1. Within 90 calendar days after December 31, 2013, “A” files with NFA and distributes to all Pool participants, as applicable, an annual report for the fiscal year ending on 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 each Pool’s fiscal year in 2014, “A” files with NFA and distributes to all Pool participants, as applicable, 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).

The Division notes that no written waiver is needed from the Offshore Fund with respect to its investment in the Intermediate Fund because the Offshore Fund is not included in the definition of “participant” with respect to the Intermediate Fund pursuant to Commission regulation 4.22(c)(8). For the same reason, no written waiver is needed from the Intermediate Fund with respect to its investment in the Master Fund. As a result, “A” is not required to distribute the Intermediate Fund’s annual report to the Offshore Fund and the Master Fund’s annual report to the Intermediate Fund.

“A”

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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 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 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