



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-09
Exemption
January 31, 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 January 2, 2014, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the U.S. Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the commodity pool operator (“CPO”) for “B” (the “Pool”), an exemption from the requirement of Commission regulations 4.7(b)(3) and 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.

Based upon the representations made in your letter and other telephone correspondence, we understand the facts to be as follows. You request, on behalf of “A” and the Pool, an exemption from the requirement of Commission regulations 4.7(b)(3) and 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. You state that “A” operates the Pool in accordance with Commission regulation 4.7. You also state that, since the Pool’s inception, the Pool has only been funded by you and “C”, who are the only two partners of “A”. You further state that the closing balance of the fund for 2013 was \$.

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 the National Futures Association (“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.

“A”

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Based upon the representations made in your letter, the Division believes that granting the request of “A” 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 to audit the financial statements in the annual report pursuant to Commission regulations 4.7(b)(3) and 4.22(d) for the fiscal year ending on December 31, 2013; provided, that “A” files with NFA and distributes to the Pool participants an annual report for the Pool that otherwise complies with Commission regulations 4.7(b)(3) and 4.22(d). The Division notes that while an original, signed waiver statement in support of an exemption request is generally required from each participant in the pool, given the proprietary nature of the Pool, with the two partners of the commodity pool operator of the Pool as the only participants, it is not necessary to submit a waiver statement from the Pool participants.

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 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