



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5977
Facsimile: (202) 418-5407
gbarnett@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-115
Exemption
September 8, 2014
Division of Swap Dealer and Intermediary Oversight

Carol A. Wooding
Associate General Counsel
National Futures Association
300 S. Riverside Plaza
Suite 1800
Chicago, IL 60606

**Re: Exemptive Relief from CFTC Regulation 4.27(c) with Respect to Certain Registered
Commodity Pool Operators**

Dear Ms. Wooding:

This letter is in response to your request dated May 22, 2013, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), requesting clarification regarding the application of Commission Regulations 4.27(b) and (c)¹ to certain commodity pool operators (“CPOs”).

Specifically, you ask for clarification regarding the scope of Commission Regulation 4.27(b)(1), which specifies the persons who must file with the National Futures Association (“NFA”), a report consistent with Appendix A to Part 4 of the Commission’s regulations (“Form CPO-PQR”). You request guidance from the Division as to which CPOs should be included within that definition.

As a result of conversations with NFA staff, the Division is aware that there are a substantial number of CPOs that are registered with the Commission, but which otherwise have no reporting obligations under part 4 of the Commission’s regulations. These CPOs are registered and operate only pools for which they do not have a reporting requirement, for

¹ 17 CFR 4.27.

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example, CPOs of pools that operate pursuant to an exemption under Commission Regulation 4.13(a)(3).²

On February 24, 2012, the Commission adopted Commission Regulation 4.27 in the release “Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations.”³ Commission Regulation 4.27(b)(1) defines those who must file Form CPO-PQR (“Reporting Person”) as:

“Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.”⁴

Commission Regulation 4.27(c) requires each Reporting Person to file Form CPO-PQR with NFA regarding their operations as a CPO and the commodity pools that they operate.⁵

A plain reading of Commission Regulation 4.27(b)(1) indicates that any CPO that is registered or required to be registered must file a Form CPO-PQR with NFA, irrespective of whether the CPO claims an exemption or exclusion with respect to its operated pools or if the CPO has registered despite not operating any commodity pools.⁶

The Division understands that requiring CPOs that only operate pools pursuant to Commission regulations 4.5 or 4.13(a)(3) to report on Form CPO-PQR would provide limited additional information regarding that CPO beyond that already available to the Commission as part of the registration process and the CPO’s ongoing obligations as a registrant.

Therefore, under these circumstances, the Division does not believe that requiring these CPOs to file a Form CPO-PQR furthers the purposes of the Commission’s regulations. As such, pursuant to the Commission’s exemptive authority under 4.12(a), as delegated to the Division by Regulations 140.93, the Division finds that it is not contrary to the purposes of Commission Regulation 4.27 and the public interest to provide exemptive relief from Commission Regulation 4.27(c) for a CPO such that it is not required file a Form CPO-PQR where the CPO is registered, but only operates pools pursuant to a claim of exemption from registration, or for which they maintain an exclusion from the definition of commodity pool operator.⁷

² Commission Regulation 4.13(a)(3) provides an exemption from CPO registration where the pool operated by the CPO meet certain requirements, including trading limits and investor qualifications. The Division notes that NFA additionally requested clarification regarding whether a CPO that is registered, but operates no pools, would also be required to file a Form CPO-PQR. However, the terms of that form only require completion if the CPO also operates at least one pool. Therefore, the Division need not address this class of CPOs in this letter.

³ 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

⁴ 17 CFR 4.27(b)(1).

⁵ 17 CFR 4.27(c).

⁶ The Division notes that to the extent that a CPO is not registered as a result of an exemption from registration, such CPO would not be a Reporting Person

⁷ The Division notes that this exemptive relief is available to CPOs that operate a combination of pools for which they claim an exemption from registration or maintain an exclusion from the definition of a CPO. That is, so long as a CPO is excluded from the CPO definition or is eligible for a registration exemption for all pools it operates, the

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The relief provided herein is based on the representations made to, and the facts and circumstances as understood by, the Division. Any additional, changed, or omitted facts or circumstances could affect the Division’s views and render the relief void. The exemptive relief provided by this letter does not excuse compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov or Michael Ehrstein, Attorney Advisor, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

Gary Barnett
Director, Division of Swap Dealer
and Intermediary Oversight

cc: Regina Thoele, NFA, Compliance