



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 17-29
Exemption
May 18, 2017
Division of Swap Dealer and Intermediary Oversight

Re: Relief from the annual report requirement of Commission regulation 4.7(b) for “A” with respect to certain commodity pools

Dear :

This is in response to your letter dated April 25, 2017 to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the commodity pool operator (“CPO”) of certain commodity pools, relief from the requirement in Commission regulation 4.7(b)(3) to file with the National Futures Association (“NFA”) and distribute to participants an annual report for fiscal year 2016 within 90 calendar days after the end of the 2016 fiscal year and an annual report for fiscal year 2017 within 90 calendar days after the permanent cessation of trading. Instead, you propose to file with NFA and distribute to participants reports for the applicable commodity pools that cover the period of time from January 1, 2016 to February 28, 2017 that otherwise satisfies the requirements of Commission regulation 4.7(b)(3).

Based upon the representations made in your letter and other telephone and email correspondence (“Correspondence”), we understand the facts to be as follows. You state that “A”, which is a wholly-owned subsidiary of “B” (together with all entities in which it has a controlling financial interest, “C”), is the CPO for “D” (“Master Fund”) and “E” (“Feeder Fund”, and, together with the Master Fund, “Pools”), both of which were operated pursuant to Commission regulation 4.7. As of February 28, 2017, you state that the net asset value of the Master Fund was \$ and the net asset value of the Feeder Fund was \$. You state that the Pools permanently ceased trading on February 28, 2017. You further state that, between the end of fiscal year 2016 and the permanent cessation of trading, there was one outside participant in the Feeder Fund and the Master Fund was only owned by the Feeder Fund and entities in the “C”. You have provided to the Division a copy of written waivers from all Pool participants permitting an annual report that covers the period from January 1, 2016 to February 28, 2017 in lieu of two separate annual reports for fiscal years 2016 and 2017. Additionally, you state that you have received an extension of time to file and distribute the annual reports for fiscal year 2016 for the Pools by June 29, 2017 from NFA.

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. The principal purpose of financial reporting required by Commission regulation 4.7(b)(3) 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 regulation 4.7(b)(3) nor to public interest. Accordingly, pursuant to the authority delegated by Commission regulations 140.93 and 4.12(a), “A” hereby granted relief from the requirement in Commission regulation 4.7(b)(3) to file with NFA and distribute to participants an annual report for fiscal year 2016 within 90 calendar days after the end of the Pools’ 2016 fiscal year and an annual report for fiscal year 2017 within 90 calendar days after the Pools’ permanent cessation of trading; provided, that “A” files with NFA and distributes to participants a report pursuant to Commission regulation 4.7(b)(3) that covers the period of time from January 1, 2016 to February 28, 2017 that otherwise satisfies the requirements of Commission regulations within 90 calendar days after the Pools’ permanent cessation of trading.¹

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 letter void. Finally, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion.

¹ The Division notes that “A” does not need to distribute the Master Fund’s report to the Feeder Fund pursuant to Commission regulation 4.22(c)(8). Furthermore, the Division notes that, because “A” and the owners of the Master Fund are part of the “C” and are therefore under common control, “A” does not need to distribute the Master Fund’s report to them, which is consistent with the Division’s historical interpretation of Commission regulation 4.22(c)(8). However, “A” is required to distribute the Feeder Fund’s report to its outside participant, which may append the Master Fund’s report as part of its report.

“A”

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

Very truly yours,

Eileen T. Flaherty
Director
Division of Swap Dealer and
Intermediary Oversight