



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

CFTC Letter No. 18-07
Exemption
March 7, 2018
Division of Swap Dealer and Intermediary Oversight

RE: “A”, the registered commodity pool operator of the “B”, the “C”, and the “D”

Dear :

This denial of relief is in response to your request submitted to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) on February 26, 2018, (the “Correspondence”), on behalf of “A” (the “CPO”), which operates the “B”, the “C”, and the “D” (the “Pools”).

In the Correspondence, you request exemptive relief from the requirements of Commission Regulations 4.7(b)(3) and 4.22(d).¹ Specifically, you request exemptive relief that would permit the CPO to distribute and file an annual report for the Pools covering the period from January 2017 through February 2018 that would contain only unaudited financial statements. You state that the Pools sustained “almost total losses” at the beginning of February 2018 due to “unprecedented spikes in volatility,” ultimately causing the Pools to cease trading on February 8, 2018. You also state that the Pools’ participants support your request for relief and would waive their rights under Commission regulations to receive audited financial statements, in order to maximize the value of any future final distributions upon the winding up of the Pools’ operations.

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 of the end of the exempt pool’s fiscal year or permanent cessation of trading, whichever is earlier. Commission Regulation 4.22(d)(1) requires financial statements in such annual reports 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)(1) is to ensure that

¹ 17 CFR 4.7(b)(3), 4.22(d). The Commodity Exchange Act, Commission regulations, and any staff letters cited herein may be accessed through the Commission’s website, <http://www.cftc.gov>.

RE: “A”, the registered commodity pool operator of the “B”, the “C”, and the “D”

March 7, 2018

Page 2

pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

The Division believes that disclosure and reporting, including the distribution of annual reports containing audited financial statements, are extremely important tools to educate and inform pool participants, especially during the time period immediately following sudden and massive losses like those experienced by the Pools last month. Pursuant to Commission Regulations 4.12(a) and 140.93, the Division has discretionary delegated authority to exempt any person from any requirement of the Part 4 regulations, if the Division finds that such exemptive relief would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought.² Under these facts and circumstances, the Division declines to exercise its delegated authority because, in the Division’s opinion, granting such an exemption would be contrary to the aforementioned purposes of the Part 4 annual report requirement and could be detrimental to the interests of the Pools’ participants, notwithstanding their desire to maximize any funds returned to them.

Consequently, the CPO must file with the NFA and distribute to the Pools’ participants:

- 1) an annual report covering the Pools’ 2017 fiscal year, with audited financial statements, in compliance with Commission Regulations 4.7(b)(3) and 4.22, and
- 2) a liquidation report covering the period from January 1, 2018, through the Pools’ permanent cessation of trading on February 8, 2018, in compliance with Regulation 4.22(c)(7), which permits the use of unaudited financial statements, if participant waivers are obtained and maintained by the CPO.³

These filings are due on April 2, 2018, and May 9, 2018, respectively.

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. Further, this letter is based upon representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

² 17 CFR 4.12(a). Through Commission Regulation 140.93, the Commission specifically delegates the exemptive authority in Regulation 4.12(a) to the Director of the Division of Swap Dealer and Intermediary Oversight. *See* 17 CFR 140.93.

³ *See* 17 CFR 4.22(c)(7)(iii) for additional instructions related to the waivers required to use, file, and distribute unaudited pool liquidation reports.

RE: “A”, the registered commodity pool operator of the “B”, the “C”, and the “D”

March 7, 2018

Page 3

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

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