



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

CFTC Letter No. 18-29
Exemption
October 9, 2018
Division of Swap Dealer and Intermediary Oversight

RE: Exemptive Relief Request Concerning Quarterly Account Statements Required by
Commission Regulation 4.7(b)(2)

Dear :

This is in response to your letter, dated September 20, 2018, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”). You request that “A”, the commodity pool operator (the “CPO”) of “B” (the “Pool”), receive relief from the requirement in Commission regulation 4.7(b)(2)¹ to distribute quarterly account statements to their participants within 30 days after the end of each quarter. Instead, you propose to provide the information required to be contained in a quarterly account statement under Commission regulation 4.7(b)(2) on a monthly basis, and within 45 days after the end of each month.

Based on your letter, the Division understands the relevant facts to be as follows. You state that “A” operates the Pool pursuant to Commission regulation 4.7. You state that the Pool is a “fund of funds,” in that it invests either directly or indirectly in other unaffiliated collective investment vehicles. You state that in order to provide accurate periodic account statements, “A” and its administrator must first receive financial information from the underlying collective investment vehicles. You state that, historically, and despite its best efforts, “A” and its administrator have not received this financial information in sufficient time to prepare the Pool’s periodic reports within 30 days after the end each reporting period. You state that as such, it has been very difficult to distribute quarterly account statements to participants within 30 days after the end of each quarter as required by Commission regulation 4.7(b)(2).

Accordingly, you request that the Division provide “A” relief from the requirement in Commission regulation 4.7(b)(2) that a CPO prepare and distribute to Pool participants quarterly account statements within 30 days of the end of each quarter with respect to the Pool. Instead, you propose that “A” will: (1) distribute to all Pool participants within 45 calendar days after the end of each month an account statement that includes all of the information required to be

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2018).

“A”

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included in a Commission regulation 4.7(b)(2) quarterly account statement, and that is signed and affirmed in accordance with Commission regulation 4.22(h); and (2) inform current and prospective Pool participants that such account statements will be provided within 45 days after the end of the covered month. In support of your request, you also reference a number of CFTC Staff Letters that have provided similar relief.²

In consideration of the foregoing, the Division concludes that your request is neither contrary to the purposes of Commission regulation 4.7(b)(2) nor the public interest. Therefore, pursuant to the authority under Commission regulation 4.12(a), as delegated to the Division under Commission regulation 140.93, the Division hereby grants the requested relief to “A” with respect to the operation of the Pool. This exemptive relief is conditioned upon the following:

1. “A” must distribute to all Pool participants within 45 calendar days after the end of each month an account statement that includes all of the information required to be included in a Commission regulation 4.7(b)(2) quarterly account statement and that is signed and affirmed in accordance with Commission regulation 4.22(h); and
2. “A” must inform current and prospective Pool participants that such account statements will be provided within 45 calendar days after the end of the covered month.

The exemptive relief provided in this letter is applicable to “A” solely with respect to the Pool. Moreover, 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. The Division also retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283, or aolear@cftc.gov, or Michael Ehrstein, Special Counsel, at 202-418-5957, or mehrstein@cftc.gov.

Very truly yours,

Matthew B. Kulkin
Director
Division of Swap Dealer and Intermediary
Oversight

² See, e.g., CFTC Staff Letters 16-67, 18-05, and 18-17.