



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-102
Exemption
June 27, 2014
Division of Swap Dealer and Intermediary Oversight

Re: “A”, registered commodity pool operator for “B”

Dear :

This is in response to your letter, dated May 28, 2014, which follows you emailed submission to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the U.S. Commodity Futures Trading Commission (the “Commission”) on March 31, 2014. You request on behalf “A”, the commodity pool operator (the “CPO”) for “B” (the “Pool”), an exemption from the requirement to have an independent public accountant audit the financial statement of the Pool’s annual report pursuant to Commission regulation 4.22(d) for the fiscal year ending on December 31, 2013.

Based upon the representations made in your letter and other telephone correspondence (the “Correspondence”), we understand the facts to be as follows. You request, on behalf of the CPO, an exemption from the requirement to have an independent public accountant audit the financial statement of the Pool’s annual report pursuant to Commission regulation 4.22(d) for the fiscal year ending on December 31, 2013. You state that the Pool’s net asset value as of December 31, 2013 was \$ and that it had 3 participants, two of whom are the CPO and its principal. You have submitted waivers from the non-proprietary participants evidencing their agreement to accept uncertified financial statements for fiscal year 2013. You further state that you had the entirety of the Pool’s assets in the “C” bankruptcy and that you recently sold your remaining claim to a third party.

Commission Regulation 4.22(c) requires each registered CPO to file an Annual Report with the Commission and distribute copies to pool participants within 90 calendar days after the end of the pool’s fiscal year or the permanent cessation of trading. Commission Regulation 4.22(d) requires that the financial statements in the Annual Report be audited by an independent public accountant. The principal purpose of financial reporting required by Commission Regulation 4.22 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 the Correspondence, the Division believes that granting the request of “A” is neither contrary to the purpose of Commission regulation 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 file and distribute an annual report with audited financial statements to participants of the Pool pursuant to Commission regulation 4.22(d); provided, that “A” files with the National Futures Association and distributes to participants unaudited financial statements for the fiscal year 2013, and files an annual report for fiscal year 2014 in compliance with Commission regulations 4.22(c) and (d).

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.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight