



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No.14-63  
Exemption  
March 25, 2014  
Division of Swap Dealer and Intermediary Oversight

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

Dear :

This is in response to your letter dated March 12, 2014 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B” (the “Pool”) relief from the requirement to have an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2013.

Based upon the representations made in your letter and other telephone and email correspondence (the “Correspondence”), we understand the facts to be as follows. You request, on behalf of “A”, relief from the requirement to have an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2013. You state that the Pool began operations in December 2011 and initially operated pursuant to an exemption pursuant to Commission regulation 4.13(a)(3). You state that “A” filed the necessary paperwork to be registered as a CPO before the end of December 2012 and became registered as of July 3, 2013. You state that on January 2013, “A” decided to undertake a significant change in the Pool’s underlying strategy. You state that “A” informed the Pool’s investors of the decision to change the Pool’s underlying strategy, gave them the opportunity to liquidate, and suspended all fees beyond operational expenses. You state that after “A” became registered, it filed for an exemption pursuant to Commission regulation 4.7 for the Pool. You state that the Pool traded with the new models at a minimal scale for several months during the latter half of 2013 and launched the core of the Pool’s new program in December 2013. You state that you do not expect the new program to be fully implemented for several months thereafter. You state that the program consists entirely of short-term, quantitatively-derived models. You state that the Pool holds no overnight risk and its asset base is 100% in cash at the end of every trading session by design. You state that the Pool currently has \$ million of assets under management and has seven individual investors, each of whom has waived the right to receive audited financial statements from the Pool for fiscal year 2013. You have provided a copy of such waiver from all seven individual investors.

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. Commission regulation 4.22(d) requires, among other things, financial statements in such annual reports to 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) 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 regulations 4.7(b)(3) and 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 pursuant to Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the Pool's annual report for fiscal year 2013.

This relief is conditioned on the following:

1. Within 90 calendar days after the end of the Pool's fiscal year 2013, “A” files with NFA and distributes to all Pool participants an annual report for fiscal year 2013 that complies with all applicable Commission requirements, except for the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d); and
2. Within 90 calendar days after the end of the Pool's fiscal year 2014, “A” files with NFA and distributes to all Pool participants an annual report that covers fiscal year 2013 and fiscal year 2014 that complies with all applicable Commission requirements, including the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d).

This letter, and the positions taken herein, represents the view of this Division only, and does 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.

“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, Attorney-Advisor, at 202-418-5202.

Very truly yours,

Gary Barnett  
Director  
Division of Swap Dealer and  
Intermediary Oversight