



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No.14-64  
Exemption  
February 25, 2014  
Division of Swap Dealer and Intermediary Oversight

**Re: "A", a registered commodity pool operator for "B" and "C"**

Dear :

This is in response to your letter dated January 8, 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" and "C", and together with "D", "Pools" and each, a "Pool"), an exemption from: (1) the requirement to distribute an annual report to Pool participants pursuant to Commission regulation 4.7(b)(3); and (2) the requirement to have the financial statements in each Pool's annual report audited by an independent public accountant pursuant to Commission regulation 4.22(d).

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 state that "D" began trading in July 24, 2013 and its net asset value as of January 6, 2014 was approximately \$ million. You state that "C" also began trading in July 24, 2013 and its net asset value as of January 6, 2014 was approximately \$ million. With respect to these two Pools, you request, on behalf of "A", an exemption from: (1) the requirement to distribute an annual report to Pool participants pursuant to Commission regulation 4.7(b)(3); and (2) the requirement to have the financial statements in the Pool's annual report audited by an independent public accountant pursuant to Commission regulation 4.22(d). You request that both of the exemptions apply for each Pool for the fiscal year ending on December 31, 2013 and any additional fiscal years during which a Pool does not have investors other than its "E" (defined below). You state that "A" will still prepare financial statements for each Pool in accordance with generally accepted accounting principles as required by Commission regulation 4.22(d) and will file annual reports for the Pools with the National Futures Association ("NFA") as required by Commission regulation 4.7(b)(3).

You state that this exemptive relief request is based on the absence of any non-proprietary participants in the Pools. You state that the "E" are "A" and "F", which is the general partner of the Pools. You state that "F" has delegated its CPO duties to "A" and you have submitted a delegation no-action relief request to the Division on January 27, 2014 on

“A”

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behalf of “F”. You also state that both “A” and “F” are wholly-owned subsidiaries of “G”. Additionally, you state that, up to the present time, the only participants in each Pool have been and are the “E”, each of which has contributed seed capital to the Pools, and that the Pools do not have any non-proprietary participants. You state that the source of the funds contributed by the “E” to the Pools are from the revenue generated by the “E”, and not from any other sources, such as the employees of the “E”.

You state that, in the future, “A” plans to privately offer interests in the Pools to non-proprietary investors, and when that happens, “A” will distribute annual reports with respect to the applicable Pool participants in compliance with Commission regulation 4.7(b)(3) and audit the financial statements in such annual reports in compliance with Commission regulation 4.22(d).

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), with respect to each Pool, “A” is hereby granted relief from:

1. The requirement to distribute the Pool’s annual report covering the period from July 24, 2013 to December 31, 2013 to Pool participants pursuant to Commission regulation 4.7(b)(3), which is consistent with the relief from the distribution requirement provided in Commission regulation 4.22(c)(8); and
2. The requirement to have the financial statements in the Pool’s annual report covering the period from July 24, 2013 to December 31, 2013 audited by an independent public accountant pursuant to Commission regulation 4.22(d).

This relief is conditioned on the following:

1. The only participants in the Pool are the “E” and no non-proprietary investors are offered or have obtained an interest in the Pool;

2. “A” files with NFA the Pool’s annual report with unaudited financial statements that otherwise complies with Commission regulations 4.7(b)(3) and 4.22(d) that covers the period from July 24, 2013 to December 31, 2013; and
3. Within 90 calendar days after the end of the Pool’s fiscal year in 2014, “A” files with NFA and distributes to Pool participants an annual report that complies with the entirety of Commission regulations 4.7(b)(3) and 4.22(d), including the requirement to have the financial statements be audited by an independent public accountant, that covers the period from July 24, 2013 to December 31, 2014.

The Division notes that while an original, signed waiver statement in support of an exemption request is generally required from each Pool participant, given the proprietary nature of the Pools, with the CPO and the general partner of the Pools being the only two participants, it is not necessary to submit a waiver statement from the Pool participants.

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 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, or Chang Jung, Attorney-Advisor, at 202-418-5202.

Very truly yours,

Gary Barnett  
Director  
Division of Swap Dealer and  
Intermediary Oversight