



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-97
Exemption
May 2, 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 April 24, 2014, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the U.S. Commodity Futures Trading Commission (the “Commission”). 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 regulations 4.7(b)(3)(i) and 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 regulations 4.7(b)(3)(i) and 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 the Pool has four participants. You have submitted waivers from both participants evidencing their agreement to accept uncertified financial statements for fiscal year 2013. In support of your request that the Division consider your request for relief despite the fact that you did not submit it until after the filing deadline for the Pool’s financial statements, you state that you consulted with Commission staff prior to the filing deadline who provided erroneous advice to the CPO regarding its ability to file unaudited financial statements without relief from the Division.

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 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

“A”

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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 the request of “A” 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 to file and distribute an annual report with audited financial statements to participants of the Pool pursuant to Commission regulations 4.7(b)(3) and 4.22(d); provided, that “A” files with the National Futures Association and distributes to participants unaudited financial statements for the fiscal year 2013.

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