



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 15-39
Exemption
March 17, 2015
Division of Swap Dealer and Intermediary Oversight

Re: Relief from the audit requirement of Commission regulation 4.22(d) for “A” with respect to certain commodity pools

Dear :

This is in response to your letter dated January 9, 2015 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B” (the “Master Fund”), “C” (the “Onshore Feeder”), “D” (the “Offshore Feeder”), and “E” (the “Intermediate Offshore Feeder”, together with the Master Fund, the Onshore Feeder, and the Offshore Feeder, the “Pools”) relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in each Pool’s annual report for fiscal year 2014.

Based upon the representations made in your letter and other 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 each Pool’s annual report for fiscal year 2014. Instead, you state that “A” will provide audited financial statements in each Pool’s annual report for fiscal year 2015 that covers the period from November 1, 2014 (the date the Pools commenced trading) to December 31, 2015.

You state that each of the Pools is operated pursuant to Commission regulation 4.7. You state that the Pools are organized in a master-feeder structure. You state that the Onshore Feeder invests substantially all of its assets directly into the Master Fund; and the Offshore Feeder invests substantially all of its assets directly into the Intermediate Offshore Feeder, which in turn invests substantially all of its assets directly into the Master Fund.¹ You state that the only

¹ You state that “substantially all” means that the only direct investments that the feeder funds hold are the Master Fund or the Intermediate Offshore Feeder, as applicable. You state that the feeder funds hold minimal cash balances to cover operational expenses (*e.g.*, audit and tax, directors, legal fees, and organizational costs). As of December 31, 2014, you state that the percentage of invested gross assets for the feeder funds into the Master Fund are as follows:

- Intermediate Offshore Feeder – %

“A”

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participants in the Master Fund are the Intermediate Offshore Feeder and the Onshore Feeder. You state that the CPO of each Pool is “A”. As of December 31, 2014, you state that the net asset value for each of the Pools is as follows:

- Master Fund – \$
- Intermediate Offshore Feeder – \$
- Offshore Feeder – \$
- Onshore Feeder – \$

You state that the only participants in the Onshore Feeder are “F”, which is a commodity pool, the CPO of which is “A”, and “G”, who is a portfolio manager of the Master Fund. You also state that “H”, which is the Onshore Feeder’s general partner, has capital invested in the Onshore Feeder. With respect to the Offshore Feeder, you state that its only participant is “F”.

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 report 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 in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in each Pool’s annual report for fiscal year 2014.

This relief is conditioned on the following:

1. Within 90 calendar days after the end of the Pools’ fiscal year 2014, “A” files with NFA and distributes to all Pool participants, as applicable, an annual report for fiscal year 2014 that complies with all applicable Commission requirements, except for the

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- Offshore Feeder – %
 - Onshore Feeder – %

requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d);² and

2. Within 90 calendar days after the end of the Pools’ fiscal year 2015, “A” files with NFA and distributes to all Pool participants, as applicable, an annual report that covers the period from November 1, 2014 to December 31, 2015 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).

The Division also notes that while waivers from all Pool participants are typically required, waivers are not necessary in this case, because the participants in the Onshore Feeder and Offshore Feeder are the portfolio manager to the Master Fund and a commodity pool operated by “A”.

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. Finally, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

Thomas J. Smith
Acting Director
Division of Swap Dealer and
Intermediary Oversight

² Pursuant to Commission regulation 4.22(c)(8), an annual report for a commodity pool that is operated pursuant to Commission regulation 4.7(b) is not required to be distributed to an investor commodity pool that is operated by the same CPO. Therefore, with respect to the Pools, an unaudited annual report for fiscal year 2014 for the Onshore Feeder needs to be only distributed to “G”.