



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-47
Exemption
March 29, 2016
Division of Swap Dealer and Intermediary Oversight

Re: Relief from the annual report audit requirement of Commission regulation 4.22(d) and the reporting requirement of Commission regulation 4.27(c) for “A” with respect to “B”

Dear :

This is in response to your letter dated August 11, 2015 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 “C” (the “Feeder Fund”) and “B” (the “Intermediate Fund,” together with the Feeder Fund, the “Funds”), relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the annual report for the Intermediate Fund, as well as the requirement in Commission regulation 4.27(c) to prepare and file with the National Futures Association (“NFA”) a report with respect to the directed assets of the Intermediate Fund under the advisement of “A” consistent with Appendix A of Part 4 (*i.e.*, Form CPO-PQR).

Background Facts

Based upon the representations made in your letter and other telephone and email correspondence (the “Correspondence”), we understand the facts to be as follows. “A” is the operator for a three-level master-feeder fund complex. The investors in “D” (the “Master Fund”) are “E” (the “Onshore Feeder Fund”) and the Intermediate Fund. The investors in the Intermediate Fund are the Offshore Feeder Fund, “F” (the “GP”), which is the general partner of the Intermediate Fund, and current and former principals and senior employees¹ of “A” and entities formed by such persons for the purpose of facilitating their investments (the “Natural Person Participants”). The Feeder Fund is offered to outside investors as well as by certain qualified employees and partners of “A”. The investors in the Feeder Fund and the Intermediate Fund share pro rata in the investments of their respective Funds. All of the funds in this fund

¹ You state that these are all “knowledgeable employees” as defined in Rule 3c-5 promulgated by the Securities and Exchange Commission under the Investment Company Act of 1940, as amended. 17 CFR 270.3c-5.

“A”

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complex, *i.e.*, the Master Fund, the Onshore Feeder Fund, the Feeder Fund, and the Intermediate Fund, are operated pursuant to Commission regulation 4.7.

The Feeder Fund invests substantially all of its assets into the Intermediate Fund.² As of the date of your relief request, the Feeder Fund held 93.XX% of the Intermediate Fund’s interests. The GP and the Natural Person Participants held 2.XX% and 3.XX% of the Intermediate Fund’s interests, respectively. The Intermediate Fund, in turn, invests substantially all of its assets into the Master Fund, but is authorized to make direct investments in the future.

Relief Requested

Because the Funds are commodity pools that are operated by “A” pursuant to Commission regulation 4.7, “A” must, among other things, distribute to the participants and file with NFA an annual report with audited financial statements pursuant to Commission regulations 4.7(b)(3) and 4.22(d), and file Form CPO-PQR information with NFA pursuant to Commission regulation 4.27(c) for each Fund. Although the Division has permitted consolidation of the annual report and Form CPO-PQR information between a parent fund and its wholly-owned trading subsidiaries in CFTC Staff Letter No. 14-112,³ “A” is unable to consolidate the Intermediate Fund into the Feeder Fund, because the Feeder Fund does not wholly-own the Intermediate Fund.

You request, on behalf of “A”, relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the annual report for the Intermediate Fund and from the requirement in Commission regulation 4.27(c) to prepare and file with NFA a Form CPO-PQR report. In support of your request, you note the following.

First, with respect to the audit relief request, you state that “A” has obtained waivers from all Natural Person Participants from their right to receive annual reports with audited financial statements, copies of which you have provided to the Division.⁴ Also, you state that “A” will provide to the Natural Person Participants an annual report with audited financial statements for the Feeder Fund that consolidates the financial information for the Intermediate Fund and appends the audited annual report for the Master Fund. You state that, although the Feeder Fund does not hold 100% of the Intermediate Fund’s interests, the Feeder Fund’s annual report consolidates all of the Intermediate Fund’s financial information, with the amounts not held by the Feeder Fund being separately designated within the annual report.⁵ You further state that the

² You state that the Feeder Fund may hold cash balances from time to time to cover operational expenses (*e.g.*, fees payable to “A”, along with audit and tax expenses).

³ See CFTC Staff Letter No. 14-112 (Sept. 8, 2014). This and all other Commission staff letters cited herein are available on the Commission’s website, www.cftc.gov.

⁴ Consistent with Commission regulation 4.22(c)(8) and prior Division precedent (see *e.g.*, CFTC Staff Letter Nos. 14-44 and 15-28), “A” does not need to provide the GP and the Feeder Fund with an annual report with audited financial statements.

⁵ You state that this is permitted under U.S. generally accepted accounting principles.

“A”

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consolidated annual report for the Feeder Fund provides all of the information that would be provided in an audited annual report for the Intermediate Fund, and, as a result, the Natural Person Participants will be receiving all of the information that they would receive if they received an audited annual report for the Intermediate Fund.

Second, with respect to the Form CPO-PQR consolidation request, you state that the Commission will receive all of the relevant information it would receive if the Feeder Fund and the Intermediate Fund each provided Form CPO-PQR information. As with the consolidation of the annual report, you state that the Form CPO-PQR information for the Feeder Fund will consolidate 100% of the Form CPO-PQR information for the Intermediate Fund, even though the Feeder Fund is not the sole owner of the Intermediate Fund.

Relief Granted

Commission regulations 4.7(b) and 4.22(d) require a registered CPO to, among other things, distribute an audited annual report to each participant in each pool operating pursuant to Commission regulation 4.7(b) that it operates and electronically submit a copy of the annual report and key financial balances from the annual report to the NFA. The principal purpose of the financial reporting required by Commission regulation 4.7(b) is to ensure that pool participants receive accurate, fair, and timely information on the overall trading performance and financial condition of the pool.

Commission regulation 4.27(c) requires a registered CPO to prepare and file with NFA a report with respect to the directed assets of each pool under the advisement of the CPO consistent with Appendix A of Part 4 (*i.e.*, Form CPO-PQR). The purpose of this requirement is so that the Commission can assess risk posed by investment vehicles to derivative markets and, as a member of the Financial Stability Oversight Counsel, contribute to the assessment of risk to the broader financial system.⁶

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), 4.22(d), and 4.27(c), 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 the annual report for the Intermediate Fund and from the requirement in Commission regulation 4.27(c) to prepare and file with NFA a report with respect to the directed assets of the Intermediate Fund under the advisement of “A” consistent with Appendix A of Part 4 (*i.e.*, Form CPO-PQR).

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

⁶ 77 FR 11252, 11266 (Feb. 24, 2012).

“A”

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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,

Eileen T. Flaherty
Director
Division of Swap Dealer and
Intermediary Oversight