



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-57
Exemption
April 8, 2016
Division of Swap Dealer and Intermediary Oversight

RE: Commission Regulations 4.7(b)(3) and 4.22--Request for Exemption from Audited Annual Financial Statements

Dear :

This is in response to your letter dated March 7, 2016, and amended with additional correspondence as recently as April 6, 2016, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B” (the “Offshore Fund”), and “C”, (the “Master Fund”) (together, the “Pools”), relief from Commission Regulations 4.7(b)(3) and 4.22(d),¹ which require the CPO to distribute to the Pools’ participants, and file with the National Futures Association (“NFA”), Annual Reports, containing audited financial statements concerning the Pools, within 90 days of the close of the Pools’ fiscal year.

Based on the representations made in your letter, the Division understands the relevant facts to be as follows. “A” operates the Pools as part of a “master-feeder” structure pursuant to Commission Regulation 4.7. In this structure, participants in the Offshore Fund gain exposure to the Master Fund.

The Pools have operated continuously from January 1, 2015 through their permanent cessation of trading on February 16, 2016. As of February 16, 2016, the net asset values of the Pools were \$, and \$ for the Offshore Fund, and the Master Fund, respectively.

You request that the audited financial statements that would have been contained in the Pools’ 2015 Annual Reports be combined with the Pools’ period of operation in 2016, creating a 14-month combined audited Annual Report for each of the Pools, covering the period from January 1, 2015, through the cessation of trading on February 16, 2016. All non-principal participants have agreed in writing to waive the right to receive audited financial statements for the Pool for the 2015 fiscal year.

¹ Commission Regulations referred to herein are found at 17 C.F.R. Ch. I (2015).

Commission Regulations 4.7(b)(3) and 4.22(c) require the CPO to distribute to the Pools' participants, and file with NFA, Annual Reports within 90 calendar days after the end of the Pools' fiscal years. These Annual Reports must include, among other things, financial statements for the Pools, which must be audited by an independent public accountant pursuant to Commission Regulation 4.22(d). The principal purpose of the reporting required by Commission Regulations 4.7 and 4.22 is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

The Division understands, however, based upon the representations made in your letter, that requiring the Pools to expend their resources preparing and auditing Annual Reports for the brief period in which the Pools were in operation in 2016 would cause the Pools to incur substantial costs. These costs may not be in the interest of the participants, in light of this brief period of operation, and the waiver of such requirement by all non-principal participants. As such, the Division believes that providing relief with respect to the Pools' 2015 and 2016 audited financial statements is neither contrary to the purpose of Commission Regulations 4.7 and 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated to it by Regulations 140.93 and 4.12(a), the Division grants exemptive relief from the provisions of Commission Regulations 4.7(b)(3) and 4.22(d) that the CPO prepare and distribute to the participants, and file with NFA, audited financial statements for the year ending December 31, 2015, and the cessation of trading on February 16, 2016 with respect to the Pools.

The relief granted in this letter is conditioned on the CPO's distribution to the Pools' participants, and filing with NFA, of Annual Reports containing combined audited financial statements for the period beginning January 1, 2015 and ending February 16, 2016 in full compliance with applicable Commission Regulations.

The exemptive relief provided in this letter is applicable to the CPO solely with respect to the Pools. Moreover, 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 exemptive relief void. The Division also retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Michael Ehrstein, Special Counsel, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

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