



## 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. 15-06  
Exemption  
January 30, 2015  
Division of Swap Dealer and Intermediary Oversight

**RE: “A”, a registered commodity pool operator and commodity trading advisor for “B”**

Dear :

This letter is in response to your letter dated January 20, 2015, 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 (“CPO”) and commodity trading advisor (“CTA”) for “B” (the “Pool”), an exemption from the requirement of Commission Regulations 4.7(b)(3) and 4.22(d)(1), to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ending on December 31, 2014. You request this exemption from the certification requirement on the basis that the Pool had four participants at the end of the 2014 fiscal year, only one of whom is an outside investor.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You request, on behalf of the CPO and the Pool, an exemption from the certification requirement in Commission Regulations 4.7(b)(3) and 4.22(d)(1). You represent that the Pool was first organized in 2009, and until January 1, 2014, was treated as a test account and not offered to investors. On December 31, 2014, the Pool, which is an exempt pool operated pursuant to Commission Regulation 4.7, was valued at \$.

In support of your request, you state that the Pool has four participants: 1) “C”, who is also a controlling principal of the CPO and its holding company, and oversees the daily operations of both the CPO and the Pool; 2) “D”, of which “C” is the managing member and whose beneficial owners are “C” and irrevocable trusts benefiting “C’s” three children; 3) “E”, of which “C” is the managing member of and whose beneficial owners are “C”, “D”, and irrevocable trusts benefiting “C’s” stepchildren; and 4) “F”, a publicly traded mutual fund that began participating in the Pool on November 11, 2014.

“C” is a futures industry professional and principal of the CPO. You state that “C” has regular operating responsibilities for the Pool and for the CPO, as well as for “D” and “E”, and is

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closely familiar with their circumstances on a daily basis. You have also submitted with your request waivers signed by "C", both on his own behalf and in his capacity as managing member of "D" and "E", and by "F", relinquishing any right the participants have to receive a certified annual report for the Pool's 2014 fiscal year.

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 of the end of the exempt pool's fiscal year or permanent cessation of trading, whichever is earlier. Commission Regulation 4.22(d)(1) requires 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)(1) 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 your letter, the Division believes that granting the request of the CPO is neither contrary to the purpose of Commission Regulations 4.7(b)(3) and 4.22(d)(1) nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the Division will grant the CPO's request for exemptive relief from the requirement in Commission Regulations 4.7(b)(3) and 4.22(d)(1) to audit the financial statements in the annual report for the fiscal year ending on December 31, 2014. Further, the relief granted in this letter is conditioned on the CPO's filing for the Pool an unaudited 2014 Annual Report that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d) with NFA. Division staff has historically interpreted Commission Regulation 4.22(c)(8) to exclude controlling principals from the "participants" required to receive an annual report each year. Because three of the four participants in the Pool are proprietary,<sup>1</sup> being owned and managed by a principal of the CPO, the Division will require, as a condition of relief, that the CPO distribute an unaudited 2014 Annual Report to the non-proprietary participant, "F".

This relief is based upon the representations that you have made to the Division. Any different or omitted facts may result in a different determination and may render any relief set forth in this letter void. Therefore, you must notify the Division immediately in the event that the operations or activities of the CPO or the Pool change in any material way from those represented to the Division.

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<sup>1</sup> You have indicated in your requesting letter that the CPO plans to continue to solicit and accept funds from other participants for investment in the Pool during the 2015 fiscal year and intends to, for the 2015 and future fiscal years, distribute to participants and file with NFA annual reports in full compliance with Commission Regulations 4.7(b)(3) and 4.22(d).

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This relief shall not excuse the CPO from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder, including, but not limited to, Part 4 of the Commission's regulations. Moreover, this letter represents the views of the Division, and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

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