



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-6700  
Facsimile: (202) 418-5528  
*tsmith@cftc.gov*

Division of Swap Dealer and  
Intermediary Oversight

Thomas J. Smith  
Acting Director

CFTC Letter No. 15-12  
Exemption  
February 3, 2015  
Division of Swap Dealer and Intermediary Oversight

**RE: “A”, a registered commodity pool operator for the “B”**

Dear :

This letter is in response to your letter dated January 6, 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 registered commodity pool operator (“CPO”) for the “B” (the “Pool”), relief from Commission Regulations 4.7(b)(3) and 4.22(d), which require that the CPO distribute to its participants, and file with the National Futures Association (“NFA”), an Annual Report audited by an independent public accountant within 90 days of the close of the Pool’s fiscal year.

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 Pool, an exemption from the requirements of Commission Regulations 4.7(b)(3) and 4.22(d) that the CPO distribute and file an Annual Report, containing financial statements audited by an independent public accountant, within 90 days of the close of the Pool’s fiscal year ending December 31, 2014. You state that the Pool began trading in July 2009, and though the Pool at one time had a single outside participant, the Pool’s current four participants include only the CPO, and other accounts belonging to the CPO’s managing member. You also state that the Pool is no longer being marketed to outside investors and will remain proprietary in nature. You also state that the closing balance for the Pool for 2014 was \$.

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); 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 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

**RE: "A"**

Page 2

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 your letter, the Division believes that granting the request of the CPO is neither contrary to the purposes of Commission Regulations 4.7 and 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the CPO is hereby granted relief from the requirement to audit the financial statements in the annual report pursuant to Commission Regulations 4.7(b)(3) and 4.22(d) for the fiscal year ending December 31, 2014. This relief is conditioned on the CPO filing with NFA an annual report for the Pool that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d). The Division notes that while an original, signed waiver statement in support of an exemption request is generally required from each pool participant, given the proprietary nature of the Pool, with accounts belonging to the CPO and its managing member as the Pool's only participants, such waivers are not required in order for the CPO to receive the relief provided herein.

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, including, but not limited to, Part 4 of the Commission's regulations. Further, the relief provided by this letter is based upon the representations made by you 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.

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

Very truly yours,

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