



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. 15-16
Exemption
March 9, 2015
Division of Swap Dealer and Intermediary Oversight

RE: "A", a registered commodity pool operator for "B"

Dear :

This letter is in response to your letter dated February 4, 2015, to the Division of Swap Dealer and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"). You request on behalf of "A", a registered commodity trading advisor and the registered commodity pool operator ("CPO") for "B" (the "Pool"), relief from Commission Regulation 4.22(d)(1), which requires that the financial statements contained in Annual Reports filed and distributed by CPOs pursuant to Commission Regulations 4.7(b)(3) or 4.22(c) be audited by an independent public accountant.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. The CPO operates the Pool pursuant to an exemption under Commission Regulation 4.7, and is required by Commission Regulations 4.7(b)(3) and 4.22(d)(1) to file with the National Futures Association ("NFA") and distribute to pool participants an Annual Report that includes audited financial statements, within 90 days of the close of the Pool's fiscal year. You request, on behalf of the CPO and Pool, an exemption from the requirement in Commission Regulation 4.22(d)(1) that such financial statements be audited by an independent public accountant.

You state that the Pool began operations on January 23, 2014, and has two participants: "C", the general partner of the Pool, and "D". Two principals of the CPO serve as the managing members of the Pool's general partner, and one of the principals operates the second participant, "D". The Pool is currently proprietary, as the only capital investments have come from the CPO's two principals, and as of December 31, 2014, the Pool had a value of \$. You further represent that the two principals have intimate knowledge of the CPO's and the Pool's operations and expenses, and that they would not gain any additional information by receiving an Annual Report containing audited financial statements for the Pool. In support of your request, you have also submitted signed waivers from the two principals, waiving their right to receive an audited Annual Report for the 2014 fiscal year.

RE: "A"

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Commission Regulation 4.7(b)(3) provides a CPO an exemption from the specific requirements of Commission Regulation 4.22(c) with respect to a pool it operates; 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)(1) requires, among other things, financial statements in such annual reports 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 your letter, including the Pool's current proprietary nature, 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 for the fiscal year ending December 31, 2014, from the requirement in Commission Regulation 4.22(d)(1) that the financial statements in the Pool's Annual Report be audited by an independent public accountant. This relief is conditioned on the CPO filing with NFA and distributing to the Pool participants an annual report for the Pool's 2014 fiscal year that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d).¹

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, 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

¹ 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.