



## 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. 15-17  
Exemption  
March 9, 2015  
Division of Swap Dealer and Intermediary Oversight

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

Dear :

This letter is in response to your letter dated February 12, 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") for "B" (the "Pool"), relief from Commission Regulations 4.22(c) and (d), which require that the CPO distribute to its participants, and file with the National Futures Association ("NFA"), a certified Annual Report within 90 days of the close of the Pool's fiscal year.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool recently began operations in June 2014, and as of December 31, 2014, the Pool was valued at \$. The Pool currently has two proprietary participants, a principal of the CPO and his brother, who is an associated person of the CPO, as well as three outside investors. In support of your request for relief, you have attached waivers from all of the participants in the Pool, evidencing their consent to receive an unaudited Annual Report for the 2014 fiscal year.

You request relief from Commission Regulations 4.22(c) and (d). Commission Regulation 4.22(c) requires the CPO to distribute to pool participants and file with NFA an Annual Report within 90 calendar days after the end of the pool's fiscal year, which must include, among other things, financial statements that must be audited by an independent public accountant pursuant to Commission Regulation 4.22(d). The principal purpose of the reporting required by Commission Regulation 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.

Based upon the representations made in your letter, the Division believes that granting your request for relief from the Annual Report certification requirement is neither contrary to the purposes of Commission Regulations 4.22(c) and (d) nor to the public interest, provided the CPO meets the following conditions. The Division believes it appropriate to require the CPO to distribute to its Pool

**RE: "A"**

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participants and to file with NFA an Annual Report containing unaudited financial statements and otherwise complying with Regulation 4.22(c).<sup>1</sup> Additionally, because the Pool currently has three non-proprietary participants, the Division believes it is important for these investors to receive audited financial statements for the six-month 2014 fiscal year in the future. Therefore, the Division is conditioning the relief provided herein on the future distribution to participants and filing with NFA of an Annual Report complying with Regulations 4.22(c) and (d) for the period from the Pool's inception of trading in June 2014 to the end of the Pool's 2015 fiscal year.

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 Regulation 4.22(d) that the Annual Report be certified by an independent public accountant, thereby permitting it to file and distribute an uncertified Annual Report for the Pool's 2014 fiscal year.

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. 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.

Further, the relief granted in this letter is conditioned on the distribution and filing with NFA of an uncertified Annual Report for the 2014 fiscal year, and the future distribution and filing of a certified Annual Report for the 2014 and 2015 fiscal years, in full compliance with Regulation 4.22.

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

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<sup>1</sup> Division staff has historically interpreted Commission Regulation 4.22(c)(8) to exclude controlling principals from the participants required to receive an Annual Report from the CPO.