



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Staff Letter No. 15-20
Exemption
March 18, 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 March 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 registered commodity pool operator (“CPO”) for the “B” (the “Pool”), relief from Commission Regulation 4.7(b)(3), which requires that the CPO distribute to its participants, and file with the National Futures Association (“NFA”), an Annual Report within 90 days of the close of the Pool’s fiscal year. Instead, you propose to file an Annual Report for the Pool that would combine the information for the 2014 fiscal year with that required to be filed after the close of the Pool’s 2015 fiscal year.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You state that the CPO became registered with the Commission on November 3, 2014, and operates the Pool pursuant to an exemption under Commission Regulation 4.7. You request, on behalf of the CPO and Pool, an exemption from the requirement of Commission Regulation 4.7(b)(3) that the CPO distribute and file an Annual Report within 90 days of the close of the Pools’ fiscal year ending December 31, 2014. You further state that though the CPO is soliciting participants for the Pool, the Pool is currently proprietary in nature, since you are its only participant, and are also the managing member of the CPO. You state that the value of the Pool as of December 31, 2014, was \$.

Your request for relief is limited in that you request that the Annual Report requirement not be waived entirely. Rather, you request permission for the CPO to combine information that would be contained in the Pool’s 2014 Annual Report with the Pool’s 2015 Annual Report, creating a 14-month combined Annual Report covering the period from the CPO’s date of registration, November 3, 2014, through December 31, 2015.

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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. The principal purpose of financial reporting required by Commission Regulation 4.7(b)(3) 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 to file an Annual Report for the 14-month period from November 3, 2014 to December 31, 2015 is neither contrary to the purposes of Commission Regulation 4.7 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 relief from the Annual Report requirement of Regulation 4.7(b)(3) , thereby permitting it to file an Annual Report for the Pool for the 14-month period from November 3, 2014, to December 31, 2015. 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 the managing member of the CPO as the Pool’s only participant, such a waiver is 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. The relief issued by this letter is conditioned on the distribution to the Pool’s participants¹ and the filing with NFA of an Annual Report containing combined financial information for the period beginning November 3, 2014, and ending December 31, 2015, in full compliance with Commission Regulation 4.7(b)(3).

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.

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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
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