



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. 15-28
Exemption
April 15, 2015
Division of Swap Dealer and Intermediary Oversight

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

Dear :

This letter is in response to your letter dated March 19, 2015, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of the “A”, the commodity pool operator (“CPO”) for the “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 for the 2014 fiscal year.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Pool began operations in June 2013, and you as the managing member of the CPO made an initial capital contribution of \$ with which you commenced trading. Recently, the CPO decided to discontinue operating the Pool, and filed a Form 7-W with NFA in order to withdraw from registration as a CPO. You represent that the Pool will complete the wind-up process and permanently shut down by the end of April 2015.¹ For the duration of its existence, the Pool has been proprietary, with you as the only participant, and did not raise any outside capital. On December 31, 2014, the Pool was valued at \$.

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.

¹ The Division notes that upon the permanent cessation of trading, the CPO must comply with Regulation 4.22(c)(7).

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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. Therefore, you, as the controlling principal and managing member of the CPO and also the sole participant in the Pool, are not required to distribute an Annual Report to yourself. Because there are currently no non-proprietary participants in the Pool, the principal purpose of the reporting required by Commission Regulation 4.22 is not furthered by requiring the CPO to comply with all aspects of that regulation. Requiring the CPO and the Pool to expend their resources preparing a certified Annual Report would cause them to incur substantial costs, which may not be in the interest of the proprietary participant.

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. But, the Division believes it appropriate to require the CPO to file with NFA an Annual Report containing unaudited financial statements and otherwise complying with Regulation 4.22(c). 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 an uncertified Annual Report for the Pool for the 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. Further, the relief granted in this letter is conditioned on the filing with NFA of an uncertified Annual Report for the 2014 fiscal year, in full compliance with Commission Regulations 4.22(c).

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.

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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
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