



## 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. 15-32  
Exemption  
February 18, 2015  
Division of Swap Dealer and Intermediary Oversight

**Re: Relief from the audit requirement of Commission regulation 4.22(d) for “A” with respect to certain segregated series of “B”**

Dear:

This is in response to your letter dated January 13, 2015 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). You request on behalf of “A”, the commodity pool operator (the “CPO”) of “B” (“B” or the “Pool”) and each series of “B” relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the annual report of certain series of “B” for fiscal year 2014.

Based upon the representations made in your letter and other telephone and email correspondence (the “Correspondence”), we understand the facts to be as follows. You state that “B” is a series limited liability company organized in the state of Delaware. “B” is an umbrella commodity pool with segregated series, each of which is offered and operated as a separate pooled investment vehicle with limitations on liability amongst the series. You request, on behalf of “A”, relief from the requirement to have an independent public accountant audit the financial statements in the annual reports for fiscal year 2014 with respect to certain series of “B”. The series with respect to which you request relief are the following:

- (1) “C” Series
- (2) “D” Series
- (3) “E” Series
- (4) “F” Series
- (5) “G” (the “G” Series, and together with the “C” Series, the “D” Series, the “E” Series, and the “F” Series, the “Series”)

You state that each of the Series commenced operations on July 1, 2014. You also state that “A” has overall authority over and responsibility for the management, operations, and administrative affairs of each of the Series and that “A” operates each of the Series in accordance with Commission regulation 4.7.

You state that each Series has one investor as of December 31, 2014. You have provided the Division with copies of signed waivers from all Series investors waiving their right to receive audited financial statements in the fiscal year 2014 annual report for the applicable Series. The waiver states that they will instead receive an annual report with unaudited financial statements. You also state that the Series have the following net asset values as of December 31, 2014:

- (1) “C” Series – \$
- (2) “D” Series – \$
- (3) “E” Series – \$
- (4) “F” Series – \$
- (5) “G” Series – \$

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) with respect to an exempt pool it operates in accordance with Commission regulation 4.7; provided, that the CPO files with the National Futures Association (“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 report to 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 the Correspondence, the Division believes that granting relief is neither contrary to the purpose of Commission regulations 4.7(b)(3) and 4.22(d) nor to public interest. Accordingly, pursuant to the authority delegated by Commission regulations 140.93 and 4.12(a), “A” is hereby granted relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the annual report for each of the Series for fiscal year 2014.

This relief is conditioned on the following:

1. Within 90 calendar days after the end of the Pool’s fiscal year 2014, “A” files with NFA and distributes to the sole Pool participant in each of the Series an annual report for fiscal year 2014 that complies with all applicable Commission requirements, except for the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d); and
2. Within 90 calendar days after the end of the Pool’s fiscal year 2015, “A” files with NFA and distributes to all Pool participants in each of the Series an annual report that covers fiscal year 2015 that complies with all applicable Commission requirements, including the requirement to have the financial statements audited by an independent public accountant pursuant to Commission regulation 4.22(d).

“A”

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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. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void. Finally, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

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