



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. 15-33
Exemption
February 19, 2015
Division of Swap Dealer and Intermediary Oversight

Re: Extension of the relief from the disclosure document requirements of Commission regulations 4.21, 4.22, and 4.25 in CFTC Staff Letters 14-35 and 14-36 to a successor commodity pool operator

Dear :

This letter is in response to your letter (the “Letter”), dated February 2, 2015, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”).¹ You request on behalf of “A”, which is the successor commodity pool operator (the “CPO”) of the “B” Trust and the “C” Trust, and collectively with the “C” Trust, the “Trusts”) and their respective series, that the Division extend the relief from the disclosure document requirements of Commission regulations 4.21, 4.22, and 4.25 that was granted to “D” (“D”, which is the current CPO of the Trusts and their respective series) in CFTC Staff Letter No. 14-35 with respect to the “B” Trust and its series and CFTC Staff Letter No. 14-36 with respect to the “C” Trust and its series to “A”.²

Background

Based upon the representations made in the Letter and other correspondence (the “Correspondence”), we understand the facts to be as follows. “D” is the current CPO of the “B” Trust, which is a Delaware statutory trust organized in seven series in accordance with Section 3804(a) of the Delaware Statutory Trust Act (the “Delaware Act”),³ and each separate series of the “B” Trust (collectively, the “B Series”). “D” is also the current CPO of the “C” Trust, which is a Delaware statutory trust organized in two series in accordance with Section 3804(a) of the Delaware Act, and each separate series of the “C” Trust (collectively, the “C Series”, and,

¹ On December 2, 2014, a relief request letter was submitted by “E” on behalf of “D”, which is the current CPO of the “B” Trust and “C” Trust and their respective series (the “D Letter”). The “D” Letter requested the same relief for “A” that is requested in the Letter and provided representations supporting its request that the Letter incorporates by reference.

² See CFTC Staff Letter 14-35 (Feb. 21, 2014) and CFTC Staff Letter 14-36 (Feb. 21, 2014). These Commission staff letters cited herein are available on the Commission’s website, *www.cftc.gov*.

³ 12 Del. C. §3801 *et seq.*

“A”

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collectively with the “B” Series, the “Series”). Previously, on February 21, 2014, the Division granted exemptive relief to “D” from the requirements of Commission regulations 4.21, 4.24, and 4.25 with respect to the disclosure documents of the “B” Trust and Series in CFTC Staff Letter 14-35 and with respect to the disclosure documents of the “C” Trust and Series in CFTC Staff Letter 14-36.

You state that “D” has entered into an asset purchase agreement with “A”, pursuant to which “D” has agreed to sell and transfer to “A” all of the issued and outstanding general units of the Trusts held by “D” and certain assets pertaining to the management of the Trusts (the “Transaction”). Following the consummation of the Transaction, the Trusts and the Series will be managed by “A” and “A” will be the CPO of the Trusts and the Series. You state that the anticipated closing date of the Transaction will be “F”.

Relief Requested

You request on behalf “A” that the Division extend the relief provided to “D” with respect to the “B” Trust and Series in CFTC Staff Letter 14-35 and with respect to the “C” Trust and Series in CFTC Staff Letter 14-36 to “A”.

You state that the Transaction will not affect the material business terms of the Trusts or the Series. To illustrate, you state that the investment objective and strategies of each Series and the material investment policies that affect the shareholders (*e.g.*, fees, liquidity, index tracking, cash management activities, rolling methodologies, *etc.*) for each Series will remain unchanged. In addition, you state that the Transaction will not affect the investment experience of the shareholders of each Series. You further state that the Series will continue to be offered and sold as before, and will continue to be listed for trading on NYSE Arca.

You state that each Series has prepared and distributed to its shareholders a proxy statement and consent solicitation that notifies them of the Transaction in accordance with Regulation 14A under the Securities Exchange Act of 1934, as amended, and the applicable organizational documents.⁴ You also state that the disclosure document of each Series will be amended to reflect the change in CPO and will be approved for use by the National Futures Association, effective upon the closing of the Transaction.

⁴ 17 CFR §240.14a *et seq.* and 15 USC 78a *et seq.*

Relief Granted

Based upon the representations made in the Correspondence, the Division believes that granting relief is neither contrary to the purpose of Commission regulations 4.21, 4.24, and 4.25 nor to public interest. Accordingly, pursuant to the authority delegated by Commission regulations 140.93 and 4.12(a), upon closing of the Transaction, “A” is hereby granted relief that was provided to “D” with respect to the “B” Trust and Series in CFTC Staff Letter 14-35 and with respect to the “C” Trust and Series in CFTC Staff Letter 14-36. This relief is dependent on the following conditions:

1. The relief issued by this letter is only effective upon the closing of the Transaction, which is anticipated to be on “F”.
2. The material business terms of the Trusts or the Series do not change.
3. The investment experience of the shareholders of each Series of the Trusts does not change.
4. The only material change resulting from the Transaction is the substitution of “A” for “D” as CPO of the Trusts and the Series.
5. The representations made by “D” in CFTC Letters 14-35 and 14-36 remain applicable to the relevant Trusts and Series.
6. “A” complies with the terms and conditions for relief set forth for “D” in CFTC Letters 14-35 and 14-36 with respect to the relevant Trusts and Series.

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.

“A”

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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