



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5495
tsmith@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 15-34
Exemption
March 9, 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 “B”

Dear :

This is in response to your letter dated November 24, 2014 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”). You request on behalf of “A”, the commodity pool operator (the “CPO”) of “B” (the “Pool”), a proprietary trading pool, relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2014 and for all calendar years thereafter in which relief may be available.

Background

Based upon the representations made in your letter and other email correspondence (the “Correspondence”), we understand the facts to be as follows. You state that the Pool is a commodity pool, the general partner and CPO of which is “A”. You state that the Pool was formed as a proprietary trading company and previously operated pursuant to Commission regulation 4.13(a)(4). You state that, following the rescission of Commission regulation 4.13(a)(4), the Pool operated and continues to operate pursuant to Commission regulation 4.7. You state that “A” does not engage in any marketing or solicitation or accept funds from outside sources with respect to the Pool.

You state that the sole beneficial owners of the Pool are three charitable remainder trusts (the “Trusts”) formed by “C”, who is the sole owner and chief executive officer of “A” and a qualified eligible person as defined in Commission regulation 4.7(a). You state that the sole income beneficiary of the Trusts is “C” as well. You state that “C” is the sole source of all funds in the Trusts. You state that the trustee for each Trust is “D”, who is the president of “A” and is acting as a trustee for each Trust without compensation. Also, the Trusts have waived their right to receive audited financial statements from the Pool through their trustee, “D”. Furthermore, you state that the only beneficiaries of the Trusts are charities selected by “C”.

“A”

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Relief Requested

On behalf of “A”, you request relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2014 and for all calendar years thereafter in which relief may be available.

Regulatory Background

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 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.

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 4.7(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 Pool’s annual report for fiscal year 2014 and for all calendar years thereafter in which relief may be available.

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