



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. 15-35
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 January 26, 2015 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”) for “B” (the “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.

Based upon the representations made in your letter and other email correspondence (the “Correspondence”), we understand the facts to be as follows. You request, on behalf of “A”, relief from the requirement to have an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2014. You state that the Pool is operated pursuant to Commission regulation 4.7 and has one beneficial owner, who is the chief operating officer and a principal and owner of “A”. You state that the sole beneficial owner has invested in the Pool directly and through his self-directed individual retirement account, of which he is the sole beneficiary. You state that, as of December 31, 2014, the Pool has a net asset value of \$ and the only investment made by the Pool is in “C” (the “Master Fund”), which is a commodity pool operated by “A” that is operating pursuant to Commission regulation 4.7. You state that the sole beneficial owner, due to his role in “A”, receives and reviews audited financial statements of the Master Fund and has waived his right to receive audited financial statements from the Pool for fiscal year 2014. You have provided a copy of this waiver to the Division.

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,

“A”

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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 Pool’s annual report 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 all Pool participants 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 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).

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