



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. 15-42
Exemption
April 15, 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”, doing business as “C”

Dear :

This is in response to your letter dated March 24, 2015 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), supplemented by your letter dated April 10, 2015 to the Division. You request on behalf of “A”, the commodity pool operator (the “CPO”) for “B”, doing business as “C” (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 letters and other email and telephone 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, which is operated pursuant to Commission regulation 4.7, has three participants, which are “A”, you, and an outside investor. You state that the net asset value of the Pool as of December 31, 2014 was \$. You have provided a waiver from the outside investor 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, 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.

“A”

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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; provided, that “A” files with NFA and distribute to all Pool participants an annual report for fiscal year 2014 with unaudited financial statements.

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