



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. 15-45
Exemption
April 27, 2015
Division of Swap Dealer and Intermediary Oversight

RE: “A”, a registered commodity pool operator for “B”, and “C”

Dear :

This letter is in response to your letter dated March 30, 2015, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the registered commodity pool operator (“CPO”) for “B”, and “C” (collectively, the “Pools”), relief from Commission Regulation 4.7(b)(3), which requires that the CPO distribute to its participants, and file with the National Futures Association (“NFA”), a certified Annual Report within 90 days of the close of the Pools’ fiscal year. Instead, you propose to file a 15-month Annual Report for the Pools, for the period from October 2, 2014, the date upon which the Pools began trading, through December 31, 2015, the close of the Pools’ 2015 fiscal year.

Based upon the representations made in your correspondence, we understand the facts to be as follows. You request, on behalf of the CPO and Pools, an exemption from the requirements of Commission Regulation 4.7(b)(3) that the CPO distribute and file an Annual Report within 90 days of the close of the Pools’ fiscal year. Each of the Pools are operated pursuant to an exemption under Regulation 4.7 and commenced trading on October 2, 2014. At the end of their 2014 fiscal year, the values of the Pools were as follows: “B” – \$, and “C” – \$. Also, as of December 31, 2014, the Pools had five and three investors, respectively. Of the five investors in “B”, just one investor is a third-party participant not affiliated with the CPO or Pools. The remaining four consist of a partner of the Pool’s investment manager that is also the parent of the CPO; two directors of the CPO; and a joint account owned by a director of the CPO and his spouse. Of the three investors in “C”, two participants are third parties with no affiliation with the Pools or CPO; the third participant is a partner of the Pool’s investment manager that is also the parent of the CPO.

In support of your request, you have provided correspondence from the third-party, unaffiliated participants, indicating their intent to waive their rights to an audited Annual Report for the 2014 fiscal year, and their consent to instead receive a 15-month Annual Report

RE: "A"

Page 2

combining the information for the period from the Pools' inception of trading, October 2, 2014, through December 31, 2015, the end of the 2015 fiscal year.

Commission Regulation 4.7(b)(3) requires each registered CPO to file an Annual Report with NFA and distribute copies to the pool participants within 90 calendar days of the end of the pool's fiscal year or the permanent cessation of trading. The principal purpose of financial reporting required by Commission Regulation 4.7 is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool. Further, Division staff has historically interpreted Commission Regulation 4.22(c)(8) to exclude controlling principals from the participants required to receive an Annual Report from the CPO. The Division notes that while an original, signed waiver statement in support of an exemption request is generally required from each pool participant, the Division believes that under the facts presented, the submission of waivers from only the non-proprietary participants in the Pools is sufficient for the CPO to receive the relief provided herein.

Based upon the representations made in your letter, the Division believes that granting the request of the CPO to file an Annual Report for the Pools for the 16-month period from October 2, 2014 to December 31, 2015 is neither contrary to the purposes of Commission Regulation 4.7 nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the Division will grant the CPO's request for relief from the Annual Report requirement of Regulation 4.7(b)(3), thereby permitting it to file and distribute an Annual Report for the Pools for the 15-month period from October 2, 2014 to December 31, 2015.

This relief is based upon the representations that you have made to the Division. Any different or omitted facts may result in a different determination and may render any relief set forth in this letter void. Therefore, you must notify the Division immediately in the event that the operations or activities of the CPO or the Pools change in any material way from those represented to the Division. Further, the relief granted in this letter is conditioned on the filing with NFA, and distribution to the Pools' participants, of an Annual Report containing combined financial information for the period beginning October 2, 2014 and ending December 31, 2015, in full compliance with Commission Regulations 4.7(b)(3).

This relief shall not excuse the CPO from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder, including, but not limited to, Part 4 of the Commission's regulations.

RE: "A"
Page 3

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

Thomas J. Smith
Acting Director
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