



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter No. 15-59  
Exemption  
October 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 June 23, 2015 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”), supplemented by additional correspondence on September 11, 2015 to the Division. 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 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 net asset value of the Pool, which is operated pursuant to Commission regulation 4.7, was \$, as of December 31, 2014, which was the end of fiscal year 2014. You also state that, as of the end of fiscal year 2014, the Pool had two participants, which are “A” and a trader for the Pool. During fiscal year 2014, you state that the trader had direct access to all financial information of the Pool and its operations, including the activity and account statements of the Pool. You also state that the trader had real-time continuous access to the Pool’s trading portal. You state that the trader has received unaudited annual account statements for fiscal year 2014. You have also provided a signed statement from the trader that waives the trader’s right to receive an audited annual report for fiscal year 2014 to the Division. Additionally, you state that “A” received an extension from the National Futures Association (“NFA”) to file an annual report for the Pool until June 29, 2015 pursuant to Commission regulation 4.22(f)(1). You have provided a copy of a letter from NFA granting this extension 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 NFA and distributes to each participant an annual report for the exempt pool that

“A”

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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.

Based upon the representations made in the Correspondence, including that the Pool has only one participant who is engaged as a trader for the Pool and that such participant has waived the right to receive audited financial statements for the fiscal year ending on December 31, 2014, 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 distributes to all Pool participants, if applicable, 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.

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,

Eileen T. Flaherty  
Director  
Division of Swap Dealer and  
Intermediary Oversight