



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No.16-16
Exemption
February 5, 2016
Division of Swap Dealer and Intermediary Oversight

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

Dear :

This letter is in response to your letter dated January 13, 2016, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of “A”, the commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) for “B” (the “Pool”), an exemption from the requirement of Commission Regulation 4.22(d)(1), to have an independent public accountant audit the financial statements in the Pool’s annual report for the fiscal year ending on December 31, 2015. You request this exemption from the certification requirement on the basis that the Pool had just two participants at the end of the 2015 fiscal year, who are the controlling member and principal of the CPO, and an entity owned and managed by that principal.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You request, on behalf of the CPO and the Pool, relief from the requirement that an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2015. On December 31, 2015, the Pool, which is an exempt pool operated pursuant to Commission Regulation 4.7, was valued at \$.

In support of your request, you state that the Pool has two participants: 1) “C”, who is also a controlling principal of the CPO and its holding company, and oversees the daily operations of both the CPO and the Pool, and 2) “D”, of which “C” is the managing member and whose beneficial owners are “C” and irrevocable trusts benefiting “C’s” three children. “C” is a futures industry professional and principal of the CPO. You state that “C” has regular operating responsibilities for the Pool and for the CPO, as well as for “D”, and is closely familiar with their circumstances on a daily basis. Further, you emphasize that because “C” and “D” (which is controlled and managed by “C”, and owned by him and his immediate family) are the only two participants, “C” and his family would entirely bear the costs of hiring an independent

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accountant to audit and certify the Pool's 2015 financial statements. You have also submitted with your request a waiver signed by "C", both on his own behalf and in his capacity as managing member of "D", relinquishing any right he and "D" have to receive a certified annual report for the Pool's 2015 fiscal year.

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 complies with Commission Regulation 4.7(b)(3) within 90 calendar days of the end of the exempt pool's fiscal year or permanent cessation of trading, whichever is earlier. Commission Regulation 4.22(d)(1) requires financial statements in such annual reports 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)(1) 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 each year.

Based upon the representations made in your letter, the Division believes that granting the request of the CPO is neither contrary to the purpose of Commission Regulations 4.7(b)(3) and 4.22(d)(1) nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the CPO is hereby granted relief from the requirement in Commission Regulations 4.22(d)(1) to have an independent public accountant audit the financial statements in the Pool's annual report for the 2015 fiscal year; provided that, the CPO files for the Pool an unaudited 2015 Annual Report that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d) with NFA. Due to the current proprietary nature of the Pool,¹ as well as "C's" signed waiver and his access to the information that would be provided to him and "D" in an annual report, the Division will not require the CPO to distribute the 2015 Annual Report to its two participants.

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

¹ You have indicated in your requesting letter that the CPO plans to solicit and accept funds from other participants for investment in the Pool during the 2016 fiscal year and intends to, for the 2016 and future fiscal years, distribute to participants and file with NFA annual reports in full compliance with Commission Regulations 4.7(b)(3) and 4.22(d). You represent that the Pool did not gain any new outside participants as a result of the CPO's solicitation efforts during the 2015 fiscal year.

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further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

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,

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