



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-35
Exemption
March 25, 2016
Division of Swap Dealer and Intermediary Oversight

RE: Commission Regulations 4.7(b)(3) and 4.22--Request for Exemption from Audited Annual Financial Statements

Dear :

This is in response to your letter dated March 3, 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 (the “CPO”) for “B” (the “Master Fund”), and “C” (the “Pool”), relief from Commission Regulations 4.7(b)(3) and 4.22(d),¹ which require the CPO to distribute to the Pool’s participants, and file with the National Futures Association (“NFA”) an Annual Report, which contains audited financial statements concerning the Pool, within 90 days of the close of the Pool’s fiscal year.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. The CPO operates the Pool as part of a “master-feeder” structure pursuant to Commission Regulation 4.7. In this structure, participants in the Pool gain exposure to the Master Fund. The Pool commenced trading operations on December 1, 2015, and currently has a single participant. You state that as of December 31, 2015, the Pool had a net asset value of \$.

You request that the audited financial statements that would have been contained in the Pool’s 2015 Annual Report be combined with the Pool’s 2016 Annual Report, creating a 13 month combined audited Annual Report covering the period from the Pool’s inception, December 1, 2015, through December 31, 2016. You have provided a waiver from the participant acknowledging that they waive their right to receive audited financial statements for 2015.

Commission Regulation 4.7(b)(3) requires the CPO to distribute to the Pool’s participant, and file with NFA, an Annual Report within 90 calendar days after the end of the Pool’s fiscal year. This Annual Report must include, among other things, financial statements for the Pool, which must be audited by an independent public accountant pursuant to Commission Regulation

¹ Commission Regulations referred to herein are found at 17 C.F.R. Ch. I (2015).

4.22(d). The principal purpose of the reporting required by Commission Regulations 4.7 and 4.22 is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

The Division understands, however, based upon the representations made in your letter, that requiring the Pool to expend its resources auditing an Annual Report for the brief period in which the Pool was in operation in 2015 would cause the Pool to incur substantial costs. These costs may not be in the interests of the participant, in light of that brief period of operation. As such, the Division believes that providing relief with respect to the Pool's 2015 audited financial statements is neither contrary to the purpose of Commission Regulation 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated to it by Regulations 140.93 and 4.12(a) the Division grants exemptive relief from the provisions of Commission Regulations 4.7(b)(3) and 4.22(d) that the CPO to prepare and distribute to its participants, and file with NFA, audited financial statements for the year ending December 31, 2015 with respect to the Pool.

The relief granted in this letter is conditioned on the CPO's distribution to the Pool participant, and filing with NFA, an Annual Report containing combined audited financial statements for the period beginning December 1, 2015 and ending December 31, 2016 in full compliance with applicable Commission Regulations. Further, the CPO will provide the participant and NFA an annual report containing unaudited financial statements for the period beginning December 1, 2015, and ending December 31, 2015.

The exemptive relief provided in this letter is applicable to the CPO solely with respect to the Pool. Moreover, 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 exemptive relief void. The Division also retains the authority to condition 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 Michael Ehrstein, Special Counsel, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

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