



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-37
Exemption
April 5, 2016
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from the Audited Financial Statement Requirement of Commission Regulation 4.22(d)

Dear :

This is in response to your letter dated March 17, 2016, and amended with correspondence as recently as April 1, 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”) for “B” (the “Pool”), relief from Commission Regulations 4.7(b)(3) and 4.22(d)(1), which require the financial statements contained in the Pool’s Annual Report to be audited by an independent public accountant.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. The CPO operates the Pool pursuant to Commission Regulation 4.7. The Pool has a lone outside investor, who accounts for % of the ownership interest in the Pool. The remainder of the Pool is owned by either a principal of the CPO, or a spouse of a principal of the CPO. The non-principal participants have agreed in writing to waive the right to receive audited financial statements for the Pool for the 2015 fiscal year. As of December 31, 2015, the Pool had a net asset value of \$.

Commission Regulations 4.7(b)(3) and 4.22(c) require a commodity pool operator to distribute to pool participants, 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 4.22(d)(1). 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 the financial statements contained in the Annual Report would cause the Pool to incur substantial costs. These costs may not be in the interests of the participants, in light of their considerable and ongoing familiarity with respect to the financial condition of the Pool, or their consent to waive such requirements. As such, the Division believes that providing relief with respect to auditing the financial statements within the Pool's 2015 Annual Report is neither contrary to the purpose of Commission Regulations 4.7 and 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 the CPO exemptive relief from the provisions of Commission Regulations 4.7(b)(3) and 4.22(d)(1), that the CPO prepare and distribute to its participants, and file with NFA, audited financial statements within the Annual Report for the year ending December 31, 2015.¹

The relief granted in this letter is conditioned on the CPO's distribution to Pool participants, and filing with NFA, an Annual Report for the fiscal year ending December 31, 2015, containing unaudited financial statements, and future Annual Reports in full compliance with applicable Commission Regulations.

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

¹ The Division notes that this is the third consecutive year in which the CPO has been granted relief with respect to auditing the Pool's Annual Report. Consistent with historical Division policy, which limits such relief to three years over the life of the Pool, the Division is unable to grant audit relief with respect to the Pool in future years.