



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-38
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 7, 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 “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”), Annual Reports, which contains audited financial statements concerning the Pools, within 90 days of the close of the Pool’s fiscal year.

Based on the representations made in your letter, the Division understands the relevant facts to be as follows. The Pool has a single participant and operates pursuant to an exemption under Commission Regulation 4.7. The Pool has operated continuously from January 1, 2015, through its permanent cessation of trading on February 4, 2016. As of February 4, 2016, the net asset value of the Pool was \$.

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 period of operation in 2016, creating 14 month combined audited Annual Report for the Pool, covering the period from January 1, 2015, through the date of the Pool’s cessation of trading, February 4, 2016. The participant has agreed in writing to waive the right to receive separate audited financial statements for the Pool for the 2015 fiscal year and the 2016 stub period.

Commission Regulations 4.7(b)(3) and 4.22(c) require the CPO to distribute to the Pool’s 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

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

for the Pool, which must be audited by an independent public accountant pursuant to Commission Regulation 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 preparing and auditing the Annual Report for the brief period in which the Pool was in operation in 2016 would cause the Pool to incur substantial costs. These costs may not be in the interests of the participant, in light of this brief period of operation. As such, the Division believes that providing relief with respect to the Pool's 2015 and 2016 audited financial statements 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 exemptive relief from the provisions of Commission Regulations 4.7(b)(3) and 4.22(d) that the CPO prepare and distribute to the participant, and file with NFA, audited financial statements for the year ending December 31, 2015, and the wind-up period ending February 4, 2016 with respect to the Pool.

The relief granted in this letter is conditioned on the CPO's distribution to the Pool's participants, and filing with NFA, of an Annual Report containing combined audited financial statements for the period beginning January 1, 2015 and ending February 4, 2016 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