



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-40
Exemption
February 22, 2016
Division of Swap Dealer and Intermediary Oversight

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

Dear :

This letter is in response to your letter dated January 19, 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”), 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.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. You state that the Pool began trading in July 2009, and though the Pool at one time had a single outside participant, the Pool’s current four participants include only the CPO, and other accounts belonging to the CPO’s managing member. You also state that the Pool is no longer being marketed to outside investors and will remain proprietary in nature. You also state that the closing balance for the Pool for 2015 was \$.

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.

RE: "A"

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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 Regulation 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 with NFA an unaudited 2015 Annual Report for the Pool that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d). The Division notes that while an original, signed waiver statement in support of an exemption request is generally required from each pool participant, given the proprietary nature of the Pool, with accounts belonging to the CPO and its managing member as the Pool's only participants, such waivers are not required in order for the CPO to receive the relief provided herein.

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.

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