



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter 16-45  
Exemption  
February 22, 2016  
Division of Swap Dealer and Intermediary Oversight

**RE: "A", the registered commodity pool operator for "B"**

Dear :

This letter is in response to your letter dated January 6, 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. You request this exemption on the basis that the Pool had just three participants at the end of the 2015 fiscal year, all of whom are principals and managing members of the CPO.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. On December 31, 2015, the Pool was valued at \$, and it is operated pursuant to an exemption under Commission Regulation 4.7. In support of your request, you state that the Pool has three participants, all of whom are principals and managing members of the CPO with access to the Pool's books and records. You have also submitted with your request signed waivers from the participants, acknowledging that they waive their right to receive a certified Annual Report and certifying that they have had access to the Pool's books and records for the 2015 fiscal year. You also state that the CPO will engage an independent public accountant to conduct an audit of the Pool for the 2016 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 the National Futures Association ("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

**RE: "A"**

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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.

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 with NFA and distributes to the participants an unaudited 2015 Annual Report for the Pool that otherwise complies with Commission Regulations 4.7(b)(3) and 4.22(d).

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