



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-55
Exemption
April 8, 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 16, 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 Regulation 4.22(d), which requires that the Annual Report a CPO distributes to its participants, and files with the National Futures Association (“NFA”), in accordance with Commission Regulation 4.22(c), be certified by an independent public accountant.

Based upon the representations made in your correspondence, we understand the facts to be as follows. The CPO had been exempt from registration with respect to its operation of the Pool under Commission Regulation 4.13(a)(2)¹ beginning in December 2011. The CPO withdrew its claim for that exemption, in order to register with the Commission as a CPO, in July 2014 with the goal of soliciting outside participants and raising more capital contributions for the Pool. The CPO became registered on August 19, 2014, and as part of the registration process, the CPO distributed to its participants and filed with NFA an unaudited Annual Report for the Pool’s 2013 fiscal year. The CPO requested and received from the Division in March 2015 exemptive relief from the audit requirement for the 2014 fiscal year, provided that the CPO filed and distributed for the Pool an unaudited Annual Report for 2014, and subsequently, an Annual Report containing audited financial statements for the 2014 and 2015 fiscal years.

¹ 17 CFR 4.13(a)(2). To qualify for this exemption, a CPO must be operating a pool with no more than 15 participants, and no more than \$ in gross capital contributions, except that certain persons listed in paragraph (iii) of this exemption, as well as their contributions to the pool, may be excluded for the purpose of determining the CPO’s eligibility for this registration exemption. 17 CFR 4.13(a)(2)(i)-(iii). Such persons, generally speaking, are very much involved in the operations of a CPO and its pool (*e.g.*, the CPO, the commodity trading advisor, and the principals thereof), or are close relatives of such persons.

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As of December 31, 2015, the Pool had a net asset value of \$, and five participants, two of whom were the principal of the CPO and his father and owned approximately % of the Pool. The CPO determined to liquidate the Pool at the end of the 2015 fiscal year, and all funds were returned to investors in January 2016. You state that the cost of performing a two-year audit for the Pool, which has since wound up and returned all investments, would be very costly and burdensome to the CPO. In support of your request for relief, you have attached waivers from all of the participants in the Pool, evidencing their consent to receive an unaudited Annual Report for the 2015 fiscal year. You represent that the CPO will distribute to Pool participants and file with NFA an unaudited annual report for the 2015 fiscal year, in accordance with Commission Regulation 4.22(c).

You request relief from Commission Regulation 4.22(d). Commission Regulation 4.22(c) requires the CPO 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, which must include, among other things, financial statements that must be audited by an independent public accountant pursuant to Commission Regulation 4.22(d). The principal purpose of the reporting required by Commission Regulation 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.

Based upon the representations made in your letter, the Division believes that granting your request for relief from the Annual Report certification requirement is neither contrary to the purposes of Commission Regulations 4.22(c) and (d) nor to the public interest. Accordingly, pursuant to the authority delegated by Commission Regulations 140.93 and 4.12(a), the Division will grant the CPO's request for exemptive relief from the requirement in Commission Regulation 4.22(d) that the Annual Report be certified by an independent public accountant, thereby permitting the CPO to file and distribute an uncertified Annual Report for the Pool's 2015 fiscal year.

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.

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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