



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter No. 17-23  
Exemption  
March 21, 2017  
Division of Swap Dealer and Intermediary Oversight

### **Re: Relief from the annual report requirement of 4.7(b)(3)**

Dear :

This is in response to your letter dated March 25, 2016 to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or the “CFTC”), as well as numerous other emails and other correspondence (the “Correspondence”). You request on behalf of “A”, the commodity pool operator (the “CPO”) for certain commodity pools operated pursuant to Commission regulation 4.7, relief from the requirement in Commission regulation 4.7(b)(3) to file with the National Futures Association (“NFA”) and distribute an annual report to their participants with respect to such commodity pools.

#### Background

“A” is a registered CPO for certain commodity pools operated pursuant to Commission regulation 4.7. “A” is owned by current and former high-level employees of “A” or its affiliates (“B”<sup>1</sup>) who are U.S. persons.<sup>2</sup> The commodity pools at issue are considered to be proprietary funds for “A” or its affiliates (the “C”). The “C” consist of the following:

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<sup>1</sup> All “B” are also managing directors (or former managing directors) of “D”. “B” are chosen by “A’s” management committee based on a variety of factors, which may include seniority of the position, length of service, performance of the individual, profitability, capital managed, teamwork, *etc.* You state that “B” who are no longer employees of “A” or its affiliates may remain a “B” for up to four years after the date of their departure. You state that, during this period, such “B” may maintain its existing investment in what is considered by “A” to be a proprietary pool for “A” or its affiliates, but is not permitted to make any additional investments therein.

<sup>2</sup> For purposes of this relief request, you state that non-U.S. person has the same meaning as a “Non-United States person” as defined Commission regulation 4.7(a)(1)(iv) and that a U.S. person is any person who is not a “Non-United States person” as defined in that same regulation.

1. “D”, which is the top-level commodity pool in the entire commodity pool structure. “D” is 100% owned by “B”.<sup>3</sup> “A’s” ownership and “D’s” ownership overlap by approximately %.<sup>4</sup>
2. “E”, which is 100% owned by “D”.<sup>5</sup>
3. “F”, which is % indirectly owned by “D” and % indirectly owned by “A”.<sup>6</sup>
4. “G”, which is nearly % indirectly owned by “D” and less than % owned by “A”. “H” serves as a director, but does not hold any economic interest.<sup>7</sup> “H” is owned % by “D” and % by “A”.
5. “I”, which is nearly % indirectly owned by “A” and less than % indirectly owned by “D”.<sup>8</sup> “H” serves as an administrative general partner, but does not hold any economic interest.
6. “J”, which is nearly % indirectly owned by “D” and less than % owned by “A”.<sup>9</sup>

### Relief Requested

You request, on behalf of “A”, relief from the requirement in Commission regulation 4.7(b)(3) to file with NFA and distribute to participants an audited annual report with respect to all “C”, with the exception of “D”. Instead, you request that “A” be permitted to file with NFA and distribute to all “B” a consolidated audited annual report for “D” and file with NFA an unaudited annual report for “I”. In support of your request, you note the following.

You state that the consolidated audited annual report for “D” will contain all financial information, including detailed holdings, gains and losses, and other financial statement amounts attributable to all “C” that are held by “D”. You state that consolidation for all “C” under “D”, except for “I”, is permitted under U.S. GAAP. However, you state that “D’s” audited annual report will reflect the interests that it has in “I”. You state that all of the consolidated interests

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<sup>3</sup> These include non-U.S. persons, which is in contrast to the “B” who own “A”. Also, you state that “D” incorporates a true-up mechanism so that the non-U.S. person “B” (who are not owners of “A”) would have the same exposure to all funds that are jointly owned by “A” and “D”, including “F”, “G” (defined below), and “I” (defined below) as if they owned “A”. The purpose of this was to put non-U.S. person “B” in the same economic position as U.S. person “B”.

<sup>4</sup> You state that this is based on economic interests.

<sup>5</sup> The Division notes that, absent relief provided in this letter, “A” may be nevertheless permitted to consolidate “E’s” financial information into “D’s” annual report pursuant to CFTC Staff Letter No. 14-112.

<sup>6</sup> Specifically, “F” is % owned by “E”, which is % owned by “D”. The remaining % of “F” is owned by “K”, which is % owned by “A”.

<sup>7</sup> Specifically, “G” is nearly % owned by “E”, which is % owned by “D”.

<sup>8</sup> Specifically, “I” is nearly % owned by “K”, which is % owned by “A”. The remainder is owned by “E”, which is % owned by “D”.

<sup>9</sup> Specifically, “J” is nearly % owned by “E”, which is % owned by “D”.

that are not owned by “D” are reflected in “D’s” consolidated annual report as non-controlling interests. You also state that all “B” (and not just those “B” who have an interest in “A”), have access to the consolidated audited annual report for “A”, which reflects the rest of the interests held in the applicable “C”. As a result, because all of the interests in the “C” under “D” are held by either “D” or “A”, you state that all “B” will receive consolidated audited annual reports that reflect all of the interests they indirectly hold in those “C” that are held by “D”. With respect to “I”, you state that “A” will file with NFA unaudited annual reports for “I”. Additionally, you state that individual “C” financial information will be made available to all “B”. You further state that all “B”, including those “B” who are no longer employed by “A” or its affiliates, will have access to all of the aforementioned financial information as well through an electronic portal.

In furtherance of your relief request, you also state that all “B” are or were senior employees of “A” or its affiliates. You also state that the reason for this type of ownership structure is because “A” and its affiliates want “B” to have pro rata exposure to all businesses of “A” and its affiliates, including, but not limited to their investment management business and its proprietary investment funds. As a result, “B” can only purchase interests in “A” and/or “D”, as applicable, and do not have discretion to purchase interests in any underlying pools.

#### Relief Granted

Based upon the representations made in the Correspondence, the Division believes that granting relief is neither contrary to the purpose of Commission regulation 4.7(b)(3) nor to public interest. Accordingly, pursuant to the authority delegated by Commission regulations 140.93 and 4.12(a), “A” is hereby granted relief from the requirement in Commission regulation 4.7(b)(3) to file with NFA and distribute to participants an audited annual report for the “C” (excluding “D”); provided, that:

1. “A” distributes to all “B”, including those who are no longer employed by “A” or its affiliates, and files with NFA the consolidated audited annual report for “D” that includes the financial information for all of the other “C”, including detailed holdings, gains and losses, and other financial statement amounts attributable to such “C”;
2. “A” distributes to all “B”, including those who are no longer employed by “A” or its affiliates, the consolidated audited annual report for “A”;
3. “A” files with NFA the unaudited annual report for “I”; and
4. “A” provides access through an electronic portal to all “B”, including those who are no longer employed by “A” or its affiliates, individual “C” financial information, including the unaudited annual report for “I”.

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

“A”

Page 4

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.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

Eileen T. Flaherty  
Director  
Division of Swap Dealer and  
Intermediary Oversight