



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5495
tsmith@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 15-44
Exemption
May 6, 2015
Division of Swap Dealer and Intermediary Oversight

Re: Exemptive Relief Request Concerning Quarterly Account Statements Required by Commission regulation 4.7(b)(2) on Behalf of “A”

Dear :

This is in response to your letter (the “Letter”), dated February 12, 2015, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”). You request on behalf of “A”, the commodity pool operator (“CPO”) of numerous commodity pools operated pursuant to Commission regulation 4.7 (collectively, the “Pools,” and listed individually in Appendix A) that invest in one or more other collective investment vehicles operated by unaffiliated CPOs, relief from the 30-day period for distribution of quarterly account statements to participants under Commission regulation 4.7(b)(2). You propose instead to provide the information required under Commission regulation 4.7(b)(2) on a monthly basis within 45 days of the month end.

Based on your Letter, the Division understands the relevant facts to be as follows. You state that in order for “A” to prepare the quarterly account statements for the Pools, it must first obtain account statements for the underlying funds. Once that information is received, you state that “A” then incorporates that information into the account statements of the Pools. You state that if an investee pool is operated by a registered CPO, then the investee pool’s CPO is required to distribute its account statements within 30 days of the end of the applicable reporting period. You state that often such reports are not distributed to “A” as the CPO of the Pools until the last few days of that period. Therefore, you state that it is difficult for “A” to process the received data from those statements into the Pools’ account statements and distribute those statements to the Pools’ participants within the 30-day period prescribed by Commission regulation 4.7(b)(2).

You state that, in addition to the quarterly statements that “A” provides to Pool participants within 30 days after the end of each quarter pursuant to Commission regulation 4.7(b)(2), “A” also currently provides account statements, including all of the information required to be included in a Commission regulation 4.7(b)(2) quarterly account statement, to Pool participants on a monthly basis within approximately 40 days of each month end. You state that, as such, the participants in the Pools receive more frequent information about their

investments in the Pools than participants in other pools operated pursuant to Commission regulation 4.7. Furthermore, you state that, if “A” is granted the requested relief, “A” will, on balance, be providing more current financial information to the participants of the Pools than required by Commission regulation 4.7(b)(2). Specifically, you state, that the participants in the Pools would receive two-thirds of the financial information provided in the quarterly account statements earlier than they would otherwise, and one-third 15 days at most later than they would if “A” were to comply with the quarterly account statement requirements under Commission regulation 4.7(b)(2). In addition, in support of your request, you cite to CFTC Staff Letters 01-90 and 14-142 granting relief under similar circumstances.¹

In consideration of the foregoing, the Division concludes that your request is neither contrary to the purposes of Commission regulation 4.7(b)(2) nor the public interest. Based upon the facts as represented by you, the Division concludes that if “A” is permitted to provide monthly account statements to participants as proposed, “A” will, on balance, be providing more current financial information to its participants than required by Commission regulation 4.7(b)(2). Therefore, pursuant to the authority under Commission regulation 4.12(a), as delegated to the Division under Commission regulation 140.93, the Division hereby grants relief to “A” with respect to the operation of the Pools, as identified individually in Appendix A. This exemptive relief is conditioned upon the following:

1. “A” must distribute to all Pool participants within 45 calendar days after the end of each month an account statement that includes all of the information required to be included in a Commission regulation 4.7(b)(2) quarterly account statement and that is signed and affirmed in accordance with Commission regulation 4.22(h); and
2. “A” must inform current and prospective Pool participants that account statements will be provided within 45 days after the end of the covered month.

The exemptive relief provided in this letter is applicable to “A” solely with respect to the Pools identified in Appendix A. 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 interpretation 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.

¹ See CFTC Staff Letter 01-90 (Dec. 11, 2001) and CFTC Staff Letter 14-142 (Nov. 6, 2014).

“A”

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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,

Thomas J. Smith
Acting Director
Division of Swap Dealer and
Intermediary Oversight

Appendix A