



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter 16-44  
Exemption  
March 25, 2016  
Division of Swap Dealer and Intermediary Oversight

**RE: “A”, the registered commodity pool operator for “B” and “C”**

Dear :

This letter is in response to your letter dated January 29, 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 “C” (the “Pool”),<sup>1</sup> 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 from the certification requirement on the basis that the Pool had just two participants at the end of the 2015 fiscal year, both of whom are principals of the commodity trading advisor (“CTA”) managing the Pool’s assets.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. The Pool is an individual series pool that has been in operation since April 2015, and is operated pursuant to a Regulation 4.7 exemption. As of December 31, 2015, the Pool had a net asset value of \$, and two investors. You request, on behalf of the CPO and the Pool, relief from the requirement that an independent public accountant audit the financial statements in the Pool’s annual report for fiscal year 2015. In support of your request, you state that the Pool assets are currently comprised of proprietary investments belonging to principals of the CTA managing the Pool. The participants have also waived their rights to receive an audited Annual Report for the 2015 fiscal year, as evidenced by the documents submitted with your request.

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

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<sup>1</sup> The Pool is an individual series of “B”, a Delaware Series Limited Liability Company and an umbrella commodity pool the CPO operates pursuant to a Regulation 4.7 exemption.

**RE: "A"**

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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.

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 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