



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

CFTC Letter No. 18-11
Other Written Communication
April 16, 2018
Division of Swap Dealer and Intermediary Oversight

Re: Rescission of CFTC Staff Letter No. 16-47

Dear :

On March 29, 2016, the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) issued CFTC Staff Letter No. 16-47 (“Letter 16-47”).¹ In Letter 16-47, based on the representations made by “A”, the Division granted “A” exemptive relief from the requirement in Commission regulation 4.22(d) to have an independent public accountant audit the financial statements in the annual report for “B”. The Division also granted “A” exemptive relief from the requirement in Commission regulation 4.27(c) to prepare and file with the National Futures Association (“NFA”) a report with respect to the directed assets of the “B” under the advisement of “A” consistent with Appendix A of Part 4 (*i.e.*, Form CPO-PQR). The Division specifically noted in Letter 16-47 that it did not excuse “A” “from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission regulations issued thereunder.”²

With respect to the annual report requirement, Letter 16-47 only excused “A” from the requirement to have an independent public accountant audit the financial statements in the annual report for the “B” pursuant to Commission regulation 4.22(d). It did not excuse “A” from filing with NFA and distributing to participants an annual report with unaudited financial statements that otherwise satisfied Commission regulation 4.7(b)(3), the principle purpose of which “is to ensure that pool participants receive accurate, fair, and timely information on the overall trading performance and financial condition of the pool.”³

¹ CFTC Staff Letter No. 16-47 (March 29, 2016), *available at* <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/16-47.pdf>. This and other Commission staff letters are available on the Commission’s website, <http://www.cftc.gov>.

² *Id.*

³ *Id.*

“A”

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Recently, the Division, through its own initiative and efforts, discovered that “A” has not complied with the terms of Letter 16-47, as it has not filed with NFA or distributed to participants annual reports with unaudited financial statements for the “B” for fiscal years 2015 and 2016. “A” has confirmed its noncompliance with Commission regulation 4.7(b)(3) to the Division through outside counsel.

In Letter 16-47, Division stated, as it does in other staff letters, that it may “condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.”⁴ Because “A” failed to comply with Commission regulation 4.7(b)(3) consistent with the terms of the relief provided by Letter 16-47, the Division hereby immediately rescinds Letter 16-47.

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,

Matthew B. Kulkin
Director
Division of Swap Dealer and
Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

⁴ *Id.*