



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Thomas J. Smith
Chief Accountant

CFTC Letter No. 09-28
Exemption
July 8, 2009
Division of Clearing and Intermediary Oversight

Re: Use of International Financial Reporting Standards in the preparation of the financial statements of "A," "B," "C," "D," "E," and "F"

Dear:

This is in response to your June 12, 2009 letter to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), on behalf of "X" and "Y", the commodity pool operators (collectively, the "CPOs") of "A," "B," "C," "D," and "E," and "F," respectively (collectively, the "Pools"), requesting that the CPO be granted relief to use International Financial Reporting Standards ("IFRS") in lieu of US generally accepted accounting principles ("US GAAP") in the preparation of the financial reports for the Pools.

Based upon your correspondence, the Division understands the pertinent facts to be as follows:

- The Pools are offshore pools organized under the laws, respectively, of "Z," "Q," "Z," "G," "Q," and "H";
- "X" has filed an exemption for "A" under Commission Regulation 4.7,¹ and an exemption from registration for "B," "C," "D," and "E" under Commission Regulation 4.13; "Y" has filed an exemption from registration for "F" under Commission Regulation 4.13; and
- You have represented to the Commission that, upon a grant of relief from the US GAAP requirement, the extant offering statement for "A" will state that IFRS will be the standard for all financial reporting, and that participants in the Pools will be notified of the change and provided with amended disclosure.

Commission Regulation 4.7(b)(3) states that a CPO of a commodity pool operated pursuant to a Regulation 4.7 exemption must provide participants with annual financial reports

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch. I (2009).

prepared and presented in accordance with generally accepted accounting principles. This provision consistently has been interpreted by Division staff to mean US GAAP.

Commission Regulation 4.13(c)(2) states that if a CPO of a commodity pool operated pursuant to a Regulation 4.13 exemption provides participants with annual financial reports, such annual financial reports must be prepared and presented in accordance with generally accepted accounting principles. Like the Division's interpretation regarding Regulation 4.7, this provision consistently has been interpreted by the Division staff to mean US GAAP.

You have represented in your correspondence that the Pools' financial reports would be prepared in accordance with IFRS in lieu of US GAAP, and would comply with the following conditions:

- The CPOs will use valuation methods specified in the American Institute of Certified Public Accountants Audit and Accounting Guide, *Audits of Investment Companies*, to determine fair values of investments;
- The Pools' financial statements will report both realized and unrealized gains and losses through the Statement of Operations;
- The Pools will prepare a condensed schedule of investments;² and
- The Pools will report special allocations of partnership equity in accordance with CFTC Interpretative Letter 94-3.

Accordingly, the Division believes that granting the relief requested on behalf of the CPOs is neither contrary to the purpose of Regulations 4.7 and 4.13, nor to the public interest. Therefore, pursuant to the authority delegated in Regulations 140.93(a)(1) and 4.12(a), and subject to the CPOs' continued compliance with the conditions stated herein, the CPOs may distribute annual financial statements to the Pools' participants that are prepared in accordance with IFRS in lieu of US GAAP.

This letter, and the position taken herein, are based upon the representations provided to the Division, and are subject to continued compliance with the conditions stated herein. Any different, changed or omitted facts or circumstances might render the position taken herein void. The CPO must notify the Division in writing immediately in the event that the operations or activities of the Pools change in any way from those represented. The relief set forth in this letter does not relieve the CPO from any other applicable requirements of the Commission's regulations.

² As required by AICPA SOP 95-2, subsequently amended by SOP 01-1 and SOP 03-4.

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If you have any questions concerning this correspondence, please contact Mr. Ronald Carletta, Branch Chief, at (646) 746-9726.

Very truly yours,

Thomas J. Smith

cc: Regina Thoele, National Futures Association, Chicago
Ronald Carletta, CFTC, New York