



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 15-70
Exemption
March 30, 2015
Division of Swap Dealer and Intermediary Oversight

RE: Rule 4.7 and Rule 4.22--Request for Use of International Financial Reporting Standards in the Preparation of Pool Financial Statements

Dear:

This is in response to your letter dated November 25, 2013, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf “A”, the commodity pool operator (the “CPO”) of The “B” (the “Pool”), that the Division exempt “A” from the provisions of Commission Regulations 4.7 and 4.22,¹ such that “A” be permitted to provide its participants, and file with the National Futures Association (“NFA”), audited financial statements with respect to the Pool prepared in accordance with International Financial Reporting Standards (“IFRS”), and reconciled to U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), in lieu of providing such statements prepared in accordance with U.S. GAAP.

Based on the representations made in your letter, and additional conversations with counsel, the Division understands the relevant facts as follows.

“A” is organized and operated in the United Kingdom and operates the Pool as part of a “master-feeder” structure. In this structure, U.S. participants gain exposure to an offshore master fund, “C” (“the Master Fund”), through the Pool, which is incorporated in Delaware. The Master Fund is organized and operated in the Cayman Islands. “A” has elected to use IFRS as the accounting treatment for the Master Fund.

Commission Regulations 4.7 and 4.22 require that with respect to the Pool, the CPO prepare and deliver to participants both periodic account statements and an Annual Report,² each of which must contain certain financial statements. These regulations further require that these

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2014).

² The Division notes that in addition to distributing the Annual Report required by both Commission Regulations 4.7 and 4.22 to participants, such report must also be filed with NFA.

statements be computed and presented in accordance with generally accepted accounting principles. The Division has consistently interpreted this to mean U.S. GAAP.

However, the Commission, in Regulation 4.22(d)(2)(i), provided relief to permit a CPO to compute and present financial statements in accordance with IFRS where the pool is:

- A. Organized under the laws of a foreign jurisdiction;
- B. The Annual Report will include a condensed schedule of investments, or, if required by the alternate accounting standards, a full schedule of investments;
- C. The preparation of the pool's financial statements under International Financial Reporting Standards is not inconsistent with representations set forth in the pool's offering memorandum or other operative document that is made available to participants;
- D. Special allocations of ownership equity will be reported in accordance with § 4.22(e)(2); and
- E. In the event that the International Financial Reporting Standards require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.³

Under the provisions of Commission Regulation 4.22(d)(2)(i), the Pool would not be able to calculate and present its financial statements in accordance with IFRS, because it does not meet the requirements of Commission Regulation 4.22(d)(2)(i)(A), in that the Pool is organized pursuant to Delaware law. Based on the representations made in the request, it appears that the Pool would otherwise meet the remaining requirements under Commission Regulation 4.22(d)(2)(i).

However, requiring “A” to use U.S. GAAP in the computation and presentation of the Pool’s financial statements presents two notable challenges: 1) it is inconsistent with the understanding of the Pool’s participants, who agreed to receive the Pool’s periodic account statements and annual financial statements presented in accordance with IFRS, as disclosed in the Pool’s offering documents; and 2) it would require “A” to incur additional expense in having the financial statements recalculated and certified in accordance with U.S. GAAP in addition to the original IFRS preparation.

In lieu of requiring that the Pool’s periodic account statements and annual financial statements be prepared in accordance with U.S. GAAP, you have proposed that “A” be permitted to prepare these statements in accordance with IFRS, and then reconcile them to U.S. GAAP, to

³ 17 CFR 4.22(d)(2)(i).

the extent that the IFRS preparation would result in a material difference from a U.S. GAAP preparation.

The Division believes that this presentation and reconciliation would provide the Pool's participants with information presented in a manner consistent with the Pool's disclosure document, while minimizing the additional expense to the CPO. Moreover, staff understands that financial statements prepared in accordance with IFRS with a separate reconciliation to U.S. GAAP will provide the Pool's participants with information that is effectively equivalent to that provided by financial statements prepared pursuant to U.S. GAAP.

Based upon the facts as represented, the Division believes that providing the relief requested herein is neither contrary to the purposes of Commission Regulations 4.7 and 4.22 nor the public interest. Accordingly, pursuant to the authority delegated to it by Commission Regulations 140.93 and 4.12(a), the Division grants "A" exemptive relief from the provisions of Commission Regulations 4.7 and 4.22 which require that the CPO prepare the financial statements required by those regulations in accordance with U.S. GAAP. This relief is conditioned upon "A" preparing the statements required for the Pool pursuant to Commission Regulations 4.7 and 4.22 in accordance with IFRS, and reconciling them to U.S. GAAP, where the IFRS preparation presents a material difference from that statement's preparation in accordance with U.S. GAAP.

This letter is based upon the representations you have made to the Division. Any different, changed, or omitted material facts or circumstances may render any opinion set forth in this letter void. This relief shall not excuse "A" from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder, including, but not limited to, Part 4 of the Commission's regulations. You must notify the Division immediately in the event that the operations or activities of "A" and/or the Pool change in any material way from those represented to the Division.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Michael Ehrstein, Special Counsel, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

Thomas J. Smith
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