



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-6700
Facsimile: (202) 418-5547
EFlaherty@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 15-71
Exemption
November 25, 2015
Division of Swap Dealer and Intermediary Oversight

RE: Commission Regulations 4.7 and 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 June 9, 2015, 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 (the “CPO”) of “B” and “C” (together, the “Pools”), that the Division exempt “A” from the provisions of Commission Regulations 4.7 and 4.22,¹ such that “A” be permitted to provide the Pools’ participants, and file with the National Futures Association (“NFA”), financial statements with respect to the Pools 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 to be as follows.

“A” is organized and operated in Brazil, and the Pools are organized under the laws of Delaware. “A” operates the Pools as part of a “master-feeder” structure. In this structure, U.S. participants gain exposure to offshore master funds: “D” in the case of “B”; and “E” in the case of “C”, (the “Master Funds”). The Master Funds are organized under the laws of the Cayman Islands. “A” has elected to use IFRS as the accounting treatment for the Master Funds.

Commission Regulations 4.7 and 4.22 require that with respect to the Pools, that “A” prepare and deliver to the Pools’ participants both periodic account statements and an annual report,² each of which must contain certain financial statements. These regulations further

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2015).

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.

require that those 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), “A” would not be able to calculate and present the Pools’ financial statements in accordance with IFRS, because the Pools do not meet the requirements of Commission Regulation 4.22(d)(2)(i)(A), in that the Pools are organized pursuant to Delaware law. Based on the representations made in the request, it appears that the Pools 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 Pools’ financial statements presents two notable challenges: 1) it is inconsistent with the understanding of the Pools’ participants, who agreed to receive the Pools’ periodic account statements and annual financial statements presented in accordance with IFRS; 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 Pools’ 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 in the case of the annual report, reconcile the financial statements contained therein to U.S. GAAP, to the extent that the IFRS preparation would result in a material difference from a U.S. GAAP preparation.

³ 17 CFR 4.22(d)(2)(i).

The Division believes that this presentation and reconciliation would provide the Pools' participants with information presented in a manner consistent with the Pools' disclosure documents, 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 Pools' 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 exemptive relief from the provisions of Commission Regulations 4.7 and 4.22, which obligate "A" to prepare the Pools' financial statements in accordance with U.S. GAAP. This relief is conditioned upon "A" preparing the statements required for the Pools pursuant to Commission Regulations 4.7 and 4.22 in accordance with IFRS, and, in the case of the financial statements contained in an Annual Report, 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.

The exemptive relief provided in this letter is applicable to the CPO solely with respect to the Pools. 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 exemptive relief 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.

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,

Eileen T. Flaherty
Director
Division of Swap Dealer and Intermediary
Oversight