



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

CFTC Letter No. 18-09
Exemption
March 30, 2018
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 November 30, 2017, and telephone correspondence on March 15, 2018, 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”, (the “U.S. Feeder”) and “C”, (the “Master Fund”) (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 U.S. Feeder’s participants, and file with the National Futures Association (“NFA”), financial statements with respect to the U.S. Feeder 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.

Background

Based on the representations made in your letter, the Division understands the relevant facts to be as follows. “A” operates the Pools as part of a “master-feeder” structure. In this structure, the U.S. participants in the U.S. Feeder gain exposure to the Master Fund, which is organized under the laws of the Cayman Islands. “A” has elected to use IFRS as the accounting treatment for the Master Fund. As such, the account statements prepared by the Master Fund for delivery to the U.S. Feeder are prepared according to IFRS.

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

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2017).

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.

“A”

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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 additional accounting standards, including IFRS, where the pool is organized under the laws of a foreign jurisdiction, and:

- A. The other jurisdiction follows accounting principles, standards or practices set forth in paragraph (d)(2)(ii) of this section and the Annual Report presents and computes the financial statements of the pool in accordance with the applicable accounting principles, standards or practices followed by such other jurisdiction;
- B. The Annual Report includes a condensed schedule of investments, or, if required by the applicable accounting principles, standards or practices followed by such other jurisdiction, a full schedule of investments;
- C. The Annual Report reports special allocations of ownership equity in accordance with paragraph (e)(2) of this section;
- D. The Disclosure Document or offering memorandum for the pool identifies the accounting principles, standards or practices of the other jurisdiction pursuant to which the Annual Report presents and computes the financial statements of the pool; and
- E. Where the accounting principles, standards or practices of the other jurisdiction require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by United States generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.³

Legal Analysis

Under the provisions of Commission Regulation 4.22(d)(2)(i), “A” would not be able to calculate and present the U.S. Feeder’s financial statements in accordance with IFRS, because it does not meet the foreign organization requirement in that the U.S. Feeder is organized pursuant to Delaware law. Based on the representations made in the request, it appears that the U.S. Feeder would otherwise meet the remaining requirements under Commission Regulation 4.22(d)(2)(i)(A)-(E).

³ 17 CFR 4.22(d)(2)(i).

“A”

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However, requiring “A” to use U.S. GAAP in the computation and presentation of the U.S Feeder’s financial statements presents two notable challenges: 1) it is inconsistent with the understanding of the U.S. Feeder’s participants, who currently receive 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 U.S. Feeder’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 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.

The Division believes that this presentation and reconciliation would provide the U.S. Feeder’s participants with information presented in a manner consistent with the disclosure documents they received, 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 U.S. Feeder’s participants with information that is effectively equivalent to that provided by financial statements prepared pursuant to U.S. GAAP.

Relief Granted

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 obligating “A” to prepare the U.S. Feeder’s financial statements in accordance with U.S. GAAP.

Conditions

This relief is conditioned upon “A” preparing the statements required for the U.S. Feeder 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.

The exemptive relief provided in this letter is applicable to “A” solely with respect to the U.S. Feeder. 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

“A”

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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,

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