Davis Polk

Gabriel D. Rosenberg
+1 212 450 4537
gabriel.rosenberg@davispolk.com

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
davispolk.com

April 17, 2023

Re: Request for No-Action Relief from Registration as a Commodity Pool Operator and Commodity Trading Advisor for Certain Foreign Exchange Transactions

Ms. Amanda Olear
Director
Market Participants Division
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Dear Director Olear:

Royalty Pharma plc (collectively with its subsidiaries, the **Company**) submits this letter requesting confirmation that the Market Participants Division (the **Division** or **MPD**) of the Commodity Futures Trading Commission (the **CFTC** or **Commission**) would not recommend enforcement action against the manager of the Company, RP Management, LLC (the **Manager**), or any member of the Company's board of directors (the **Directors**) for failure to register as a commodity pool operator (**CPO**) or against the Manager for failure to register as a commodity trading advisor (**CTA**) with respect to their activities managing the Company, as described in this request letter.

I. Factual Background

Royalty Pharma plc is a public limited company incorporated under the laws of England and Wales. It is primarily engaged, through its subsidiaries, in the business of acquiring biopharmaceutical royalties, which are rights to receive a percentage of the net sales of biopharmaceutical products of a biopharmaceutical company. Pharmaceutical royalties are typically created when an owner of intellectual property, often a research institution or small biotech company, licenses that intellectual property to a licensee, typically a small biotech or large pharma company, in exchange for the right to receive a percentage of the net sales of biopharmaceutical products based on that intellectual property. The Company purchases biopharmaceutical royalties from licensors and, as a result, licensees generally become obligated to make their royalty payments to the Company rather than to the original licensor. The Company finances its and its subsidiaries' biopharmaceutical royalty investment activities, in part, by issuing debt. The debt has historically been denominated in U.S. dollars (**USD**), but may also be denominated in other currencies in the future, including Euros (**EUR**).

Prior to the Company's initial public offering in June 2020 (the **IPO**), the Manager relied upon the exemption from CPO registration contained in CFTC Rule 4.13(a)(3) and the exemption from CTA registration in Section 4m(3) of the Commodity Exchange Act (**CEA**) and CFTC Rule 4.14(a)(10) (together, the **Exemptions**).[1] Because the Company became an issuer of registered equity securities

[1] The Directors did not rely on an exemption from CPO registration as the Company's board of directors was established as part of the initial public offering discussed below and the related restructuring of the Company's organizational structure.

at the time of the IPO, the Manager was no longer able to avail itself of the Exemptions. After a request by the Company (the **Initial Request**), the Division issued no-action relief to the Company on March 23, 2021 in CFTC Staff Letter 21-06 (the **Existing Relief**). The Existing Relief permits the Company to enter into interest rate swaps to hedge the interest rate risk from the Company's floating rate debt without the Manager or the Directors having to register with the CFTC as a CPO or, in the case of the Manager, as a CTA, subject to conditions set out in the letter.

The Initial Request was limited to activities in interest rate swaps, and thus the Existing Relief includes a condition that the Company limit its swaps activity to interest rate swaps. The Initial Request did not request relief for activities in foreign exchange (**FX**) instruments because, at the time of the Initial Request, the Company did not hedge its relatively small FX risk.

However, unexpected recent events have significantly increased the Company's exposure to FX risk and, as a result, the Company believes it could be prudent to hedge that FX risk. The Company understands that it may seem anomalous that it is approaching the staff for additional relief approximately 18 months after the MPD's issuance of the Existing Relief. However, there are two reasons that the Company did not anticipate that it may need to hedge its FX risk from revenues and, thus, that it would need no-action relief with respect to FX derivatives. First, the Company's revenues from non-USD markets have substantially increased, both because the Company's revenues have increased substantially and more than previously contemplated, and because the proportion of the Company's revenues from non-USD markets has increased. Second, since the Company began discussing the Initial Request with the Division, FX volatility has meaningfully and unpredictably increased market-wide given the COVID-19 pandemic and other macroeconomic events. These two factors have combined to substantially increase the Company's exposure to FX risk. While the Company has not hedged its relatively small FX risk since its IPO, this substantial increase in FX exposure may make it prudent for the Company to begin hedging FX risk.

In addition to FX risk from revenues, the Company may be exposed to FX risk in the future if it issues debt denominated in currencies other than U.S. dollars (**USD**). When the Company began preparing the Initial Request, it had exclusively fixed rate USD term loans. However, as a public company, the Company's capital structure and scale have evolved over the past two and a half years, and the Company believes that it may further evolve in a way that would make issuing debt in non-USD currencies beneficial. Thus, the ability to hedge risk associated with non-USD financing alternatives may play an important role in the next phase of the Company's growth.

If the Company were able to hedge its FX risk using "foreign exchange forwards" and "foreign exchange swaps" as defined in the CEA (**Deliverable FX Derivatives**), it would not be entering into "commodity interests" as defined in the CEA and therefore would not need relief from the CPO and CTA registration requirements. However, because the vast majority of the Company's non-USD market revenues are converted to USD before payment to the Company, it does not receive direct payment in foreign currency, and thus will not have the foreign currency necessary to settle a Deliverable FX Derivative. With respect to non-USD debt, while the Company may be able to hedge FX and interest rate risk on non-USD debt through combinations of interest rate swaps and Deliverable FX Derivatives, the Company believes that it may be more efficient to hedge some of its risks on non-USD debt through non-deliverable derivatives and cross-currency swaps, which are "commodity interests." As a result, the Company can only adequately hedge its FX risk using cross-currency swaps and non-deliverable forwards, swaps, options and futures (collectively, **FX Hedging Derivatives**), even in deliverable currency jurisdictions.

II. Unexpected Changes to the Company's FX Exposure

As noted above, there are two reasons that the Company did not anticipate that it could need to enter into FX Hedging Derivatives and, thus, that it would need no-action relief with respect to FX

derivatives: (1) an unexpected increase in the Company's revenues from non-USD markets and (2) an increase in FX volatility due to the COVID-19 pandemic and other macroeconomic and geopolitical events. The combination of the first factor (that the proportion of the Company's royalties from non-USD markets has increased dramatically) and the second factor (that the macroeconomic environment as it relates to FX volatility has changed meaningfully and unpredictably) have significantly increased the Company's exposure to FX risk.

A. Substantial Increase in Revenues from Non-USD Markets

In the last two years, the Company's business has grown substantially and more than initially projected. The Company deployed over $4.9 billion of capital in 2020 and 2021, compared to $3.1 billion of capital deployed in 2018 and 2019. While the Company provided guidance to public investors at the time of its IPO that it expected to deploy over $7 billion in capital over the next five years, the Company has already deployed over $6.7 billion in the nearly two and a half years since its IPO.

In May 2022, the Company announced an updated capital deployment target of $10 to 12 billion over the next five years. Similarly, at the time of its IPO, the Company provided public guidance to investors that it anticipated approximately $1.74 billion of Adjusted Cash Receipts (**ACR**) for fiscal year 2020.[2] The Company's performance since February 2020 has outpaced its initial guidance and growth targets, and it provided public guidance to investors on November 8, 2022, during its most recent third quarter 2022 earnings call that it anticipates approximately $2.78 billion of ACR for fiscal year 2022. On May 17, 2022, the Company also released an updated long-term outlook, projecting ACR of $3 billion to $3.5 billion by 2025.

The Company was not able to predict this acceleration in growth because it has largely been driven by rapid market shifts and broader macroeconomic changes. The Company believes that a significant factor contributing to the acceleration in growth has been a substantial decrease in the valuations of biopharmaceutical companies, which has made funding alternatives to equity issuances, like the royalty investments offered by the Company, more attractive. For example, the S&P Biotechnology Select Industry Index, which tracks the price of a basket of biotechnology companies,[3] rose from over 8,000 at the time of the Company's IPO to a high of over 13,000 in February 2021, but rapidly declined to less than 5,000 by June 2022, with the index remaining below 6,500 as of mid-November 2022.

In addition to this general growth, the proportion of the Company's royalties from non-USD markets has increased dramatically in the past two years. The Company's revenues come from royalty payments it receives from biopharmaceutical companies (e.g., Johnson & Johnson, Merck, Pfizer, etc.) when those biopharmaceutical companies sell biopharmaceuticals for which the Company has purchased royalties. The Company has no control over where those biopharmaceutical companies sell or advertise the biopharmaceuticals.

Based on the public earnings releases of its royalty payors, as well as detailed royalty reports provided by those payors, the Company estimates that approximately 40% of the underlying sales of its biopharmaceutical royalty investments occur outside of the United States and expose the Company to FX risk. The Company estimates that approximately 15%, or about $260 million, of its ongoing royalties at the time of the Company's IPO were earned on EUR-denominated sales, based on available data from its royalty marketers and payors. The Company now estimates that approximately 20% of its ongoing royalties are earned on EUR-denominated sales, or about $460 million. This represents an increase of approximately 78%, or over $200 million in royalties with incremental FX exposure from EUR-denominated sales alone, as compared to the FX exposure at the time of the

[2] The Company reports ACR on a non-GAAP basis as a proxy for top-line income.

[3] The number of constituents in the index varies over time. As of October 2022, the index had 151 constituents.

Company's IPO. The Company expects the proportion of EUR-denominated sales to continue to grow to approximately 25% of its royalties over the next several quarters. Even assuming that the Company maintains a constant proportion of 20% of royalties earned on EUR-denominated sales over the next several years, the Company estimates that its FX exposure from EUR-denominated sales would grow to approximately $600 million to $700 million by 2025 based on the ACR growth estimates discussed above, which would represent an increase in FX exposure of approximately 130% to 170% since the Company's IPO.

B. Substantial Increase in FX Volatility

In the last two years, the macroeconomic environment as it relates to FX volatility has changed meaningfully and unpredictably, most notably because of the COVID-19 pandemic and its ongoing impact on interest rates, inflation and market volatility. According to historical data from Bloomberg, a USD value of 100 million in unhedged EUR exposure fluctuated by an average of $1.8 million, or less than 2%, every month in the year preceding our initial relief request (February 2019 to January 2020). Over the same time period, it fluctuated by as much as $2.7 million in a one-month period. In contrast, in the more than two years since then (from February 2020 to October 2022), a USD value of 100 million in unhedged EUR exposure fluctuated by an average of $3.3 million every month, and by as much as $8.1 million in a one-month period. This implied volatility of up to 8% in a given month for unhedged EUR exposures, combined with the Company's estimated nominal increase of approximately $200 million in EUR-denominated royalty exposure discussed above, represents a significant increase in FX volatility risk for the Company, the vast majority of which cannot be hedged with deliverable FX forwards.

III. Hedging the Company's FX Exposure

In recent years, the Company has not hedged FX risk. To adequately hedge FX risk, the company would need to enter into FX Hedging Derivatives. Since the Company's FX exposure was minimal at the time that the Company began discussing the Initial Request with the Division, it chose, as a business matter, to not hedge FX risk.[4] The recent substantial increase in FX exposure makes it prudent for the Company to begin hedging FX risk.

If the Company received its royalty interest payments for non-USD jurisdictions in the local currency, it would be able to hedge its FX exposure using deliverable FX instruments. For example, if the Company expected to receive Japanese Yen for its royalty payments sourced from Japan, it could enter into deliverable a Yen/USD FX forward to hedge that risk. Deliverable FX Instruments are not "commodity interests" for purposes of the CEA and, as a result, if the Company only hedged its FX risk using Deliverable FX Instruments, its FX hedging activity would not require any party to register as a CPO or CTA.

However, the Company primarily receives its royalty interest payments in USD, even from sales in non-USD jurisdictions. The conversion between the non-USD sales and the USD royalty interest payments is generally based on an average spot FX rate over the period during which the sales occurred. The Company has no control over the mechanics of this conversion. For example, for its royalty payments based on sales in Japan, the Company will receive USD (not Yen) based on the average spot FX rate over the period during which the Japanese sales occurred. The Company estimates that approximately 85% of its underlying non-USD royalties will be paid in this converted form (i.e., a non-USD royalty paid in USD) over the next several years.

[4] Prior to the IPO, in 2015 and 2016, the Company entered into a small number of non-deliverable FX forwards to hedge FX risk.

As a result, the Company will not receive the non-USD currency necessary to settle a deliverable FX forward. Instead, it may need to hedge using FX Hedging Derivatives.

In addition, the Company would be exposed to FX risk if it issues debt denominated in currencies other than USD. While the Company could hedge some of its FX risk on non-USD debt using Deliverable FX Derivatives, the Company believes that it cannot adequately and efficiently hedge its FX risk without the use of FX Hedging Derivatives, including cross-currency swaps. For example, if the Company were to issue EUR-denominated debt, it may seek to hedge its exposure to fluctuations in the USD-EUR exchange rate over the life of the debt by entering into a fixed-for-fixed cross-currency swap, which would effectively allow the Company to convert both the proceeds and interest payment obligations of EUR debt into USD proceeds and payment obligations at a fixed rate for the life of the debt.

IV. Request for Expanded No-Action Relief

The Company believes that the rationale underlying the Existing Relief is equally applicable to any hedging activity using FX Hedging Derivatives in which it would engage. Specifically, the Company is in the business of acquiring biopharmaceutical royalties and does not believe that it is, or operates, a commodity pool. However, given the broad definitions of commodity pool, CPO and CTA, it is possible that if the Company were to enter into FX Hedging Derivatives for hedging purposes, it could be considered a commodity pool and its Manager or Directors would be required to register as a CPO and its Manager as a CTA. In addition, as discussed in detail in the Initial Request, the MPD has provided market participants with no-action relief in several analogous contexts.[5]

As a result, the Company is requesting an expansion of the Existing Relief to permit the Company to engage in FX hedging activity using FX Hedging Derivatives without requiring any party to register as a CPO or CTA. The Company intends to continue to comply with, and expects the relief requested herein to be conditioned on compliance with, all of the conditions of the Existing Relief,[6] other than expanding Condition 3 to permit both interest rate and FX hedging using FX Hedging Derivatives and making a conforming change to Condition 6. Specifically, the Company requests that Condition 3 be amended by adding the underlined language and deleting the stricken language as follows:

> The swap(s) will be limited to ~~interest rate~~ swaps that hedge interest rate risks and/or foreign exchange risks associated with ~~arising from~~ the Company's financing arrangements and/or the biopharmaceutical royalties that the Company has acquired or intends to acquire;

and that Condition 6 be conformed by deleting the following stricken language:

[5] *See, e.g.*, CFTC Letter No. 19-02, *No-action Relief from Registration as a CPO and/or a CTA for "A", the manager of "B"* (Feb. 14, 2019); CFTC Letter No. 17-48, *No-action Relief from Registration as a CPO and/or a CTA for "A", the operator of "B", and Subsidiaries* (Aug. 2, 2017); CFTC Letter No. 17-68, *Interpretation of the term Commodity Pool with respect to "A"* (Sep. 22, 2017); CFTC Letter No. 14-96, *"A" and affiliates request for exemption of Production Payment Vehicles from commodity pool regulation* (July 25, 2014); CFTC Letter No. 12-44, *No-Action Relief from the Commodity Pool Operator Registration Requirement for Commodity Pool Operators of Certain Pooled Investment Vehicles Organized as Mortgage Real Estate Investment Trusts* (Dec. 7, 2012).

[6] Specifically: Condition 1 ("The swaps will have the effect of reducing risk relative to the risk of the unhedged positions"); Condition 2 ("The swap positions held by the Company will not be established, held, altered or terminated for the purpose of speculation or trading"); Condition 4 ("The swaps will not introduce any new risks to the Company other than counterparty risk"); and Condition 5 ("The terms and conditions of the swaps will be consistent with those generally available in the traditional swaps market").

The Manager and the Company will employ reasonable risk management policies and procedures to reasonably ensure compliance with the foregoing conditions, including periodic testing to confirm ongoing compliance with respect to any amendments to the ~~interest rate~~ swaps or the structure.

* * * * *

Thank you very much for your consideration of this matter. Please feel free to contact Gabriel D. Rosenberg (212-450-4537 or gabriel.rosenberg@davispolk.com) or Gregory S. Rowland (212-450-4930 or gregory.rowland@davispolk.com) of Davis Polk & Wardwell LLP if you would like to discuss this letter in greater detail. Pursuant to CFTC Rule 140.99(c)(3)(ii), the Company hereby undertakes that, if at any time prior to the issuance of a no-action letter, any material representation made in this letter ceases to be true and complete, it will promptly inform the Commission staff in writing of all materially changed facts and circumstances.[7]

Respectfully submitted,

Gabriel D. Rosenberg

Gabriel D. Rosenberg

Cc:

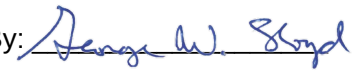
George W. Lloyd
Executive Vice President, Investments & Chief Legal Officer
Royalty Pharma

[7] 17 C.F.R. § 140.99(c)(3)(ii).

Certification

(Pursuant to CFTC Rule 140.99(c)(3)(i))

I hereby certify that the material facts set forth in the attached letter, dated April 17, 2023 are true and complete to the best of my knowledge. If at any time any material representation made in the attached letter ceases to be true and complete, I will ensure that Commission staff is informed promptly in writing of all material changed facts and circumstances.

By: 

George W. Lloyd
Executive Vice President, Investments & Chief Legal Officer
Royalty Pharma