



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Thomas J. Smith
Chief Accountant

CFTC Letter No. 09-18
Exemption
March 17, 2009
Division of Clearing and Intermediary Oversight

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

Dear :

This is in response to your February 5, 2009 letter to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), on behalf of "X," the commodity pool operator (the "CPO") of "A," "B" and "C" (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 of the Cayman Islands;
- The CPO has filed an exemption from registration for "A" under Commission Regulation 4.13(a)(4), and for "B" and "C" under Commission Regulation 4.7;¹ and
- The offering memoranda for the Pools state that annual financial statements will be prepared using IFRS.

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. This provision consistently has been interpreted by the Division staff to mean US GAAP.

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

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 CPO 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 have not made any special allocations of partnership equity; therefore, reporting special allocations of partnership equity in accordance with CFTC Interpretative Letter No. 94-3 is inapplicable.

Accordingly, the Division believes that granting the relief requested on behalf of the CPO is neither contrary to the purpose of Regulation 4.13(c)(2), 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 CPO's continued compliance with the conditions stated herein, the CPO 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.

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

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