



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-10
Exemption
January 31, 2014
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from Presenting Annual Reports in Accordance with US GAAP

Dear :

This is in response to your July 24, 2013 letter to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), requesting on behalf of "A", the commodity pool operator (the "CPO") of "B", (the "Pool"), requesting that the CPO be granted relief to use Luxembourg generally accepted accounting principles ("Luxembourg GAAP") in lieu of US generally accepted accounting principles ("US GAAP") in the preparation of the financial reports for the Pool.

Based upon your correspondence, the Division understands that the Pool is an offshore investment vehicle incorporated under the laws of Luxembourg, and the CPO has filed an exemption for the Pool from certain requirements of Part 4 under Commission regulation 4.7.¹

Commission Regulation 4.7(b)(3) states that a CPO of a commodity pool operated pursuant to Commission Regulation 4.7 must provide participants with annual financial reports prepared and presented in accordance with generally accepted accounting principles. This provision consistently has been interpreted by Division staff to mean US GAAP.

The Division has offered guidance to CPOs in a letter dated February 11, 2011,² in which the Division has made available on a case-by-case basis relief from the US GAAP requirement of Commission Regulation 4.22, conditioned upon the offshore pool following the additional elements now required by Commission Regulation 4.22(d)(2)(i) with respect to the use of International Financial Reporting Standards ("IFRS").³ You have represented that the

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2012).

² See, Annual Reporting for Commodity Pools, February 11, 2011, available at <http://www.cftc.gov/ucm/groups/public/@iointermediaries/documents/file/cpoannualguidanceletter2010.pdf>.

³ Commission Regulation 4.22(d)(2)(i) requires that:
(A) The pool is organized under the laws of a foreign jurisdiction;

“C”

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preparation of the Pool’s financial statements satisfies these requirements with respect to the use of Luxembourg GAAP in lieu of IFRS.

Accordingly, the Division believes that granting the relief requested on behalf of the CPO is neither contrary to the purpose of Regulation 4.7(b)(3), 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 Pool’s participants that are prepared in accordance with Luxembourg GAAP in lieu of US GAAP.

This letter is based upon the representations made in your correspondence. Any different, changed, or omitted material facts or circumstances may render any opinion set forth in this letter void. You must notify the Division immediately in the event that the operations or activities of the CPO and/or the Pool change in any material way from those represented to the Division. Moreover, this letter represents an opinion expressed by the Division, and does not necessarily represent the views of the Commission or any other division or office of the Commission.

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

Very truly yours,

Gary Barnett
Director, Division of Swap Dealer
and Intermediary Oversight

(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 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.