



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-66
Exemption
July 29, 2016
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 May 25, 2016 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 "C" generally accepted accounting principles ("C 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 organized under the laws of "D", and that the CPO has filed an exemption for the Pool 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 prepare annual financial reports 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 preparation of the Pool's financial statements satisfies these requirements with respect to the use of "C" GAAP in lieu of IFRS.

¹ Commission regulations referred to herein are found at 17 C.F.R. Ch.I (2016).

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;

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 prepare the Pool's financial statements in accordance with "C" GAAP in lieu of US GAAP.

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 letter void. Finally, the Division 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

(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.