

September 19, 2016

SSGA Funds Management, Inc.  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111

Christopher Kirkpatrick, Secretary of the Commission,  
U.S. Commodity Futures Trading Commission,  
Three Lafayette Centre, 1155 21st Street NW.,  
Washington, DC 20581

RE: Notice of Proposed Rulemaking RE: 17 CFR 4.22

Dear Secretary Kirkpatrick:

SSGA Funds Management, Inc. (“SSGA FM”) appreciates the opportunity to comment on the U.S. Commodity Futures Trading Commission (“Commission”) proposal to amend Regulation 4.22 with respect to the duties of a commodity pool operator (“CPO”) to file financial statements of a commodity pool that it manages.

Headquartered in Boston, Massachusetts, SSGA FM is registered with the U.S. Securities and Exchange Commission as a registered investment adviser and registered with the National Futures Association (“NFA”) as a commodity trading advisor (“CTA”). SSGA FM serves as investment adviser to registered open-end funds, including open-end exchange-traded funds, with \$384.96 billion in assets under management as of December 31, 2015. SSGA FM also serves as a CTA (and may be exempt from registration in some cases) with respect to separately managed account clients and certain registered and unregistered commodity pools, with \$157 billion in aggregate assets under management as of June 30, 2016. With respect to these commodity pools, SSGA FM may also act as CPO.

SSGA FM applauds the Commission’s recent notice of proposed rulemaking<sup>1</sup> proposing limited relief to CPOs when providing the Commission, the National Futures Association (“NFA”), and commodity pool participants with a commodity pool’s required annual financial statements. While we recognize that prompt and accurate provision of financial statements is necessary for regulators and investors, we believe that the limited relief in the proposal is appropriate for the reasons set forth herein.

We support the proposed amendment to Rule 4.22(d)(2) that would allow the use of generally accepted accounting principles in the United Kingdom, Luxembourg, Ireland and Canada. This is consistent with prior no-action guidance from the Commission and addresses the fact that many commodity pools may be organized or incorporated in, and may have a primary investor based domiciled in, one of these jurisdictions and therefore use of accounting principles in those jurisdictions may be appropriate. Further, we support the Commission’s proposed amendment to Rule 4.22(g)(2) that would allow, in certain circumstances, a CPO to file unaudited financials for a newly launched commodity pool. We believe that in the circumstances described in the proposal, relief allowing for the provision of unaudited financials is appropriate.

In conjunction with the proposal, the Commission has specifically asked “(s)hould the Commission adopt a provision whereby a CPO could claim relief from the Annual Report audit

<sup>1</sup> 81 Federal Register 51828; Commodity Pool Operator Annual Report (August 5, 2016)

requirement for a pool in which the only participants were the CPO and one or more other “insiders” (i.e., the persons identified in proposed Regulation 4.22(g)(2)(ii)), regardless of the amount of capital contributed to the pool? What other criteria, if any, should be required?” In response, we believe that a further edit, as set forth below, to proposed Rule 4.22(g)(ii) specifically addressing exclusion of “insider” capital contributions, would be appropriate.

The proposed amendment would allow relief from the provision of audited financials only for commodity pools with assets under management (“AUM”) of \$1.5 million or less. When calculating a commodity pool’s AUM, the assets belonging to the CPO, CTA, any principal thereof and any of their immediate family members and any entity that is wholly owned by any of the preceding entities are excluded. The proposing release indicates that to require the expense of audited financials may be “unduly burdensome” relative to a commodity pool’s assets during its seeding period, when all investors are corporate entities or high net worth individuals (and their family) affiliated with the commodity pool. While we agree that the proposed relief is appropriate during this seeding period, we believe that capital contributions by a CPO’s parent or affiliates under common control should also be excluded from the AUM calculation.

The rationale for excluding contributions by affiliated persons would be equally applicable in the case of a parent or commonly controlled affiliate as it is in the case of controlled subsidiaries. Further, in our view, the likelihood of a capital contribution coming from a controlling parent is greater than coming from an operating subsidiary, so the exclusion would be of limited benefit without this further amendment. Finally, limiting the exclusion to contributions by subsidiaries may result in inefficient capital flows. For example, a parent or commonly controlled affiliate of a CPO wishing to benefit from the exclusion could make a capital contribution to a CPO’s subsidiary; this subsidiary in turn could invest in an affiliated commodity pool and the subsidiary’s entire capital contribution would be deleted from the AUM calculation. There does not seem to be any clear policy objective achieved by treating capital contributions made directly by a CPO’s parent or commonly controlled affiliate differently than capital contributions directly by a CPO’s subsidiary or indirectly by the parent or commonly controlled affiliate through the subsidiary of the CPO. Therefore, we recommend that capital contributions made by the CPO’s wholly owned subsidiary, *its direct or indirect parent, or any affiliate under common control* with the CPO be excluded from the AUM calculation of a commodity pool under the proposed amendments to Regulation 4.22(g)(ii).

Once again, SSGA appreciates the opportunity to comment on the Commission’s proposed rule amendment. As noted above, we strongly support the Commission’s goal to provide appropriate but limited relief to CPOs with respect to their financial statement filing obligations, which we recognize are an important tool for regulators and pool investors. We respectfully request the one further modification described herein, which we believe is consistent with the spirit of the rule amendment and does not materially diminish investor protections.

Yours truly,



Ellen Needham

President, SSGA Funds Management, Inc.