

GLENCORE

GRAIN

GRAIN TRADE AUSTRALIA

Level 7
12 O'Connell Street
Sydney NSW 2000

Attention: GTA Commerce Committee

13 February 2017

Dear Sirs

Review of TGD No. 4 Operating Standards for Pool Providers 2017/18 - Submission

Thank you for the opportunity to provide our comments in relation to the draft GTA Technical Guideline Document No. 4 Operating Standards for Pool Providers (TGD). These comments are provided on behalf of Glencore Grain.

Key issues

In our view, the key issues relating to the operation of Grain Pools are as follows:

- The continuation of the ASIC exemption for Grain Pools means that Pool Providers are not regulated to the same level as other Managed Investment Schemes in Australia. Accordingly, there is no independent body that is empowered to regulate the operation of Grain Pools in Australia.
- There are currently no rules governing who can operate Grain Pools or setting out minimum prudential or financial disclosure requirements. Accordingly, Pool Providers can (and do) operate Grain Pools on behalf of Pool Participants with very little scrutiny regarding their financial standing or ability to operate and manage Grain Pools. This can expose growers to significant financial risk.
- There is currently limited transparency in relation to fees and charges deducted by Pool Providers, and charged to Pool Participants.
- Pool Providers can (and, in our experience, often do) advertise extremely optimistic and unrealistic Estimated Pool Returns (EPRs) to attract Pool Participants to deliver grain into their Grain Pools. This is a material concern, when taken with the second bullet point above.

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- In some cases, Pool Providers do not comply with the Code, even though they are GTA Members and have agreed to manage and operate Grain Pools in accordance with the TGD and Code.
- There is currently limited ability to sanction Pool Providers for breaches of the Code or TGD (e.g. loss of “accreditation” or GTA membership).
- The current complaint handling process under clause 2.9 of the Code (Customer Complaints) provides limited recourse for growers or other affected parties.

In our view, the issues set out above have the potential to lead to a negative reputational impact, not just on Glencore Grain as a member of the Grain industry but also on Grain Trade Australia, as the peak industry body with a vision statement of ensuring “an efficient, equitable and open commercial grain industry in Australia”.

Our recommendations

To address the concerns outlined above, we recommend that GTA considers implementing the following changes to the current framework (including the TGD):

1. Grain Pools should be subject to greater industry oversight and accountability to protect growers. We estimate growers will commit up to \$1 billion worth of grain and oilseeds to Pools this coming year, it is important that Pools are subject to an appropriate level of oversight to ensure that growers are not exposed to undisclosed financial or credit risks. ASIC’s recent renewal of its exemption to Grain Pools means that ASIC will not be providing regulatory oversight of Pool Providers. The Operating Standards for Pool Providers (including the TGD), and Code, must therefore be enforced by industry (i.e. GTA) to ensure compliance.
2. The Code should be amended so that Pool Providers must satisfy certain criteria before they receive accreditation from GTA to manage and operate Grain Pools in Australia. Pool Providers should be required to meet certain minimum prudential or financial disclosure requirements to ensure that they have requisite financial standing to be able to operate and manage Grain Pools.
3. Sections 4 and 6 of this TGD (Estimated Pool Return and Definitions) should be amended so that Pool Providers must provide Pool Participants (and potential Pool Participants) with more information and transparency in relation to the Grain Pool product offerings, any changes in EPRs that occur during the season and the reasons for those changes. In some cases, reporting is currently non-existent. Even when a Pool Provider is inclined to update an EPR, there is currently only a requirement to update monthly or after a material adverse change (a 5% reduction in the EPR). This could result in a significant amount of time that an EPR remains inflated compared to the daily cash price which, in a competitive market, would more often reflect the true state of the market. As an example, during the 2016-2017 harvest, we continued to see high EPRs published despite a falling market and

at one point a spread of \$25 between the EPR and the cash price. Despite the requirements in the TGD, it was a significant time before we saw reductions in some published EPRs. This issue presents significant challenges for growers to manage their business and accurately compare the performance of various Grain Pools and other sales alternatives. We suggest that Sections 4 and 6 of the TGD be amended to reflect these issues and that compliance with the TGD (and Code) is enforced. For example, Section 4 of the TGD could be amended to set out more express requirements for Pool Providers to update Pool Participants when EPRs are likely to see a Material Adverse Change.

4. In addition to the general principles around updating EPRs discussed above, Glencore sees the benefit in obliging Pool Provider when updating EPRs to provide date stamped updates on their website or elsewhere where EPRs are published. This will ensure there is transparency around when EPRs are in fact updated with such transparency incentivising Pool Providers to ensure they are setting and revising realistic EPRs.
5. It is not uncommon for Pool Providers to advertise, without any apparent basis, extremely optimistic EPRs for their Grain Pools in order to attract commitments from growers. In addition to exposing growers to significant risk, this has the effect of distorting the market and preventing accurate comparisons with other alternatives that are available to them (e.g. cash sales, delivered sales and various types of forward contracts). Many growers make a decision to place grain into a Pool simply on the basis of the EPR. Once again, we suggest that these issues can be addressed by amending Sections 4 and 6 of this TGD and providing greater enforcement rights for GTA within the TGD and the Code more generally. In addition, the grain industry would benefit from the TGD establishing a standard basis as to how EPRs should be derived. For example, Glencore considers that EPRs should reflect the value of sales to date and spot value of unsold tonnage rather than unsubstantiated "potential" estimated values.
6. We consider the grain industry would benefit from incorporating provisions in the TGD prohibiting hawking Grain Pool products despite those actions being exempt under the ASIC Class Order. These anti-hawking provisions should extend to unsolicited phone calls, emails and text messages - all forms of communication we consider are commonly used in the grain industry. We consider these forms of communications are often insufficient to provide full information to growers when making marketing decisions, can be misleading and often do not comment on downside risks nor that an EPR is just an estimate. As a result, growers are not necessarily able to form a reliable judgment on the accuracy of the EPR from this unsolicited communication and are potentially making marketing decisions based on unrealistic expectations. The risk of a reduced EPR will ultimately be borne by the grower. While we appreciate the TGD does provide suggested strategies to growers to assist in protecting them when purchasing Pool products (see section 1.1 of the TGD), we consider it is incumbent on the grain industry and Pool Providers specifically to ensure all growers are protected and include in the TGD more

positive obligations on Pool Providers in how these products are marketed. We consider anti-hawking provisions would facilitate that objective.

7. We suggest that there be greater enforcement of the TGD to ensure that independent audits are carried out and delivered to Pool Participants as required by Section 5 of the TGD (Reporting and Audit of Pool).
8. We also suggest that section 2.9 of the Code (Customer Complaints) be amended to provide for a more robust framework for receiving and handling complaints, leading to enforceable resolutions.

We thank you for the opportunity to make this submission. Glencore Grain would be happy to respond to any further questions you may have or to discuss with you to expand on the issues raised in this submission.

Yours sincerely,



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General Counsel