

GLENCORE

AGRICULTURE

GRAIN TRADE AUSTRALIA

Level 7
12 O'Connell Street
Sydney NSW 2000

Attention: GTA Commerce Committee

28 July 2017

Dear Sirs

Further industry consultation for Technical Guideline Document No.4 – Operating Standards for Pool Providers – Submission

We appreciate the opportunity to provide additional comments in relation to the revised draft of GTA Technical Guideline Document No. 4 Operating Standards for Pool Providers (TGD). These comments are provided on behalf of Glencore Agriculture Pty Ltd.

Glencore reiterates the key issues in our submission dated 13 February 2007. While Glencore does not itself operate Pools, as a key participant in the Australian grain industry, it sees benefit in ensuring that there are appropriate and rigorous controls in place for Pool Providers to protect the reputation of the industry and also growers who, we estimate, could commit up to \$1 billion worth of grain and oilseeds to Pools annually. We are pleased the revised TGD does, in some parts, provide greater protection to growers and Pool participants. However, there are matters which Glencore raised in its earlier submission that have not been adequately addressed. We would urge the GTA Commerce Committee to revisit Glencore's earlier submission prior to finalising the TGD.

The key issue Glencore sees with the operation of Pools is the prevalence of Estimated Pool Returns (EPRs) within the industry. As you know, the key risk with EPRs is the lack of consistency and transparency across the industry as to how EPRs are calculated and advertised and the potential for an EPR to not reflect the final returns of a Pool. Together, this creates a high level of undisclosed financial risk for growers; a risk which is disproportionately and wholly assumed by the grower. Adding to this risk is the inability of a grower in most instances to liquidate its position when EPRs are revised downwards after contracting. Without comprehensive regulation (more than what is currently proposed in the TGD), Glencore sees no alternative than for EPRs to be expressly prohibited under the TGD to protect growers and the industry's reputation in the event of a Pool failure.

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Even if GTA had an appetite to continue to endorse EPRs, Glencore queries whether additional regulation for publishing EPRs would protect growers from the inherent uncertainty in published EPRs. This is because EPRs are, in nature, largely based on subjective opinions of market movements which can change unexpectedly and regularly due to global and Australian supply and demand. A Pool Provider will likely always have a “reason” why an EPR may have been set at a certain level. Unlike a cash trader operating its own book, the difference here is that the growers assume the risk of an incorrect trading decision, an incorrect analysis of the future market or a revision downward of an EPR after contracting. This is the same grower that may have been enticed to enter a Pool based on an EPR higher than the current spot market that was ultimately determined as incorrect.

Glencore also provides the following general comments:

1. Audit obligations: Glencore acknowledges the increased audit obligations of a Pool Provider under section 5. We have two specific comments on the proposed changes:
 - (a) We query the benefit of an independent audit signing off on the Pool Provider’s skills, risk systems and governance protocols after the Pool has closed. While this may assist a grower decide about entering into a future Pool operated by that Provider, this independent sign-off will not provide any comfort to the original growers who invested in the Pool that is being audited (that is, this information is too late for an informed investment decision).
 - (b) We also do not believe the obligations of a Pool Provider are sufficiently certain to provide value to any audit. As a result, we query whether an auditor would be willing to provide the appropriate sign-offs and, if an auditor is willing, whether such sign-off will effectively be meaningless on the basis there would be substantial assumptions or limitations.

Glencore reiterates its previous submission and says that such protection can only be provided to growers, and the above issues can only be appropriately resolved, if the TGD sets out rules governing who can operate Pools and the minimum prudential, compliance and financial standards that must be satisfied before a Pool can open.

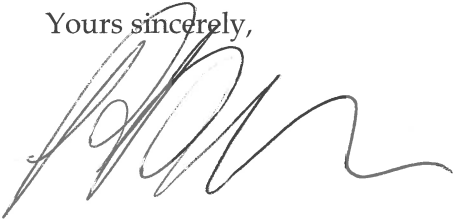
2. Hawking provisions: Glencore sees benefit in ensuring the general principles in section 7 apply not just to the pool disclosure documents but also for any forms of Pool advertising or communications (including SMS and emails). In our experience, growers often make decisions into enter into a Pool on the basis of a published EPR and, perhaps, without having access to or having fully considered any disclosure document. In addition to the general legal obligations in respect to misleading and deceptive conduct, we see the benefit in expressly requiring the general principles in section 7 apply to all forms of communications and actions taken by a Pool Provider and not be limited to a disclosure document.
3. GTA Dispute Resolution Rules: Glencore would welcome any decision to incorporate GTA Dispute Resolution and Arbitration Rules (**GTA Dispute Rules**) into the TGD and any Pool Provider Terms and Conditions. However, in the TGD it should be made clear that any industry participant would have standing to raise concerns with the operation of a Pool. Currently there are no standing rights to commence a dispute under the GTA

Dispute Rules for anyone who is not party to a contract. GTA made it clear in its submission to ASIC that the ASIC exemption for Pools should continue on the basis that the grain industry was sufficiently robust to self-regulate. Aligned with that submission, Glencore considers it is incumbent on GTA to facilitate an industry where any member of the grain industry can call another GTA member to account regardless of whether there is a contractual relationship between those parties. This should be reflected in the TGD.

4. GTA Trade Rules: Due to the nature of Pool contracting and how tonnes are delivered into Pools, we query the benefit of incorporating the Trade Rules. Also, we query the benefit in GTA preparing standard Pool Terms given the divergent payment terms that flow from the numerous Pools currently operating.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'PHILIP HUGHES', with a long horizontal flourish extending to the right.

PHILIP HUGHES

General Manager – Trading, Australia & New Zealand