

Notice to Members

Title: **Revised Code of Practice requirements for Pool Providers**

Update No.: **08 of 13**

Date of Issue: **23 April 2013**

1 Issue

Grain Trade Australia has released revised wording to be included in the Australian Grain Industry Code of Practice for the conduct of grain pools. GTA is now seeking member and broader industry review and submission on this issue.

2 Background

The draft Code requirements for the conduct of grain pools follows a submission from a number of industry participants who called for additional prescriptive elements to be added to the Code.

Key requirements in the reworded draft include:

- Separation of pool assets and liabilities from other pools and the general trading book;
- Ability of pool participants to measure the pool performance against the strategy and management plan adopted by the Pool Provider
- That the Pool Provider must be able to justify to Pool Participants the EPR
- If there is an Adverse Material Change of more than 5% to the EPR this needs to be notified to Pool participants immediately.
- Following closure of a Pool, and within six months of the final payment of a Pool, the Pool Provider will:
 - engage an independent auditor to audit:
 - the accounting records of the Pool;
 - the Pool Provider's compliance with its duties under this Code;
 - the Pool Provider's compliance with the terms and conditions of the Pool; and
 - publish and deliver the findings of the auditor to Pool Participants.

3 Submissions and Site Nominations

GTA is inviting submissions from the broader grain industry with submissions closing on 13th May 2013.

The Draft requirements for grain pools are attached and also available on the GTA website.

1. Pools

1.1 Duties of a Pool Provider

When operating a Pool, a Pool Provider must:

- act with honesty and integrity;
- exercise reasonable care and diligence;
- act in the best interests of the Pool Participants and , if there is a conflict between the Pool Participants' interests and the Pool Provider's interests, give priority to the Pool Participants' interest;
- ensure that any costs or fees resulting in the Pool Provider receiving a financial benefit from the Pool are disclosed
- not make use of information acquired through being the Pool Provider to gain an improper advantage for itself or another person or cause detriment to the Pool Participants; and
- ensure the clear identification of grain belonging to a Pool and the separation of Pool assets and liabilities from other Pools and that of the Pool Provider.

A Pool Provider must have in place the appropriate skills, payment systems, risk systems/procedures, governance and compliance, policies and resources to manage the Pools that they offer and regularly review these to evaluate the currency of their application.

1.2 Terms and conditions of a Pool

A Pool Provider will publish and make available to all prospective Pool Participants terms and conditions of the Pool which address matters including (but not limited to):

- the risk to Pool Participants of delivering grain into a Pool;
- the strategy and management plan to be adopted by the Pool Provider of the Pool;
- how Pool Participants can measure pool performance against the strategy and management plan adopted by the Pool Provider of the Pool.
- the risk mitigation tools used by the Pool Provider (such as hedging or derivative products);
- the costs/fees (including management, service and administration fees) chargeable by the Pool Provider and how they are calculated;
- the term of the Pool;
- the regions or locations where the Pool will operate;
- how estimated and final returns of the Pool are calculated (both on an aggregated Pool and individual Pool Participant level) and notified to Pool Participants;
- pool payments such as early contracting bonuses and quality payments made to select Pool Participants and the impact such payments may have on other Pool Participants' returns; and
- the timing and methods of payment available under the Pool and the costs or interest associated with each different payment method.

1.3 Estimated Pool Return

- Where a Pool Provider posts an Estimated Pool Return (or similar terminology) for a Pool, that EPR will be a fair and reasoned estimate that the Pool Provider will be able to justify to Pool Participants at the time it is posted.
- The EPR will be regularly updated via a posting on the Pool Providers website at least monthly. Where there is a Material Adverse Change to the EPR, the Pool Provider will update the EPR as soon as practicable.

1.4 Reporting and Audit of Pool

- During the term of the Pool, the Pool Provider will publish and deliver to Pool Participants, at least quarterly, reports concerning the performance and operation of the Pool. Where there is a Material Adverse Change to the EPR of a Pool, the Pool Provider will report on the reasons for the change.
- The Pool Provider will ensure adequate records of the Pool's operations are kept and prepare separate accounting records for each Pool adhering to requirements of an accredited external auditor
- Following closure of a Pool, and within six months of the final payment of a Pool, the Pool Provider will:
 - engage an independent auditor to audit:
 - the accounting records of the Pool;
 - the Pool Provider's compliance with its duties under this Code;
 - the Pool Provider's compliance with the terms and conditions of the Pool; and
 - publish and deliver the findings of the auditor to Pool Participants.

Definitions:

Estimated Pool Return or EPR

Is the financial return that Pool Participants can expect net of all Pool Provider charges at a designated price basing point, i.e. country silo, port or free on board.

Material Adverse Change

In relation to an EPR means a reduction of the original published EPR of more than 5%.

Pool

Refers to a grouping of grain treated by a Pool Provider as a Pool for the purposes of buying grain, grouped according to time of delivery, location, quality, grade or variety of grain or such other matters as determined by the Pool Provider. Sales are made from the grain Pool and profits (losses) are shared between the Pool Participants.

Pool Provider

Means a commercial organisation that derives a financial advantage from conducting a Pool for the benefit of Pool Participants.

Pool Participant(s)

Is a person or organisation that provides grain to a Pool.