

13 May 2013

Mr Geoff Honey

CEO

Grain Trade Australia

Level 11, Royal Exchange Building

56 Pitt Street

SYDNEY NSW 2000

Dear Geoff,

Revised Code of Practice requirements for Pool Providers

The Victorian Farmers Federation (VFF) Grains Group provides the following submission to Grain Trade Australia (GTA) regarding the Revised Code of Practice requirements for Pool Providers.

1. Background

The VFF Grains Group have previously identified the issue of potential market failure in (grain) Pool's and lack of consumer/grower protections in early 2012.

The VFF's position was that an industry authority that sourced funding via the then existing Wheat Export Charge ("WEC") on grain producers could provide oversight of Pool providers as the Wheat Export Authority had done to some degree at the time.

The VFF proposed a 'light touch' regulatory oversight body that could be charged with improving overall market confidence and efficiency by ensuring transparency, integrity, and competition.

Some industry participants consider such issues should be left to the market to resolve of its own accord or through self-regulation including voluntary codes. VFF do not support this position, as 'leaving it to the market to sort out' will invariably and initially result in the grower incurring the cost of fund manager failures, and in the long term will result in the demand for full regulation under the Corporations Act 2001.

With the wind-up of the Wheat Export Authority, and recent issues arising with performance of Pool managers, VFF consider the industry now have to review alternative means of oversight. These include the GTA proposed Code of Conduct as well as other forms of regulation, such as reviewing ASIC exemptions from the managed investment, licensing and financial product disclosure provisions of the Corporations Act.

VFF at this stage does not advocate heavy-handed regulation, but emphasise the need to ensure a degree of consumer (grower) protection while still enabling a competitive environment for Pool managers to operate. However, VFF consider that the voluntary non-binding code of practice as currently proposed will not provide this assurance.

2. Market Confidence

VFF considers the Code-of-Practice as proposed is non-binding and does not provide any real discipline on Pool managers to adhere to the code; does not provide assurance to the market; and does not provide recourse for growers/consumers. As a result the code as proposed will not improve market confidence.

VFF considers that to achieve its intended purpose the proposed code needs strengthening in many aspects including: Compliance; Corporate Governance; Pool Management; independence; and Transparency, as discussed below.

3. 'Future Proofing' Pools - the Corporations Act 2001

VFF considers it is clear that Pools do meet the definitions of financial services products and potentially managed investment schemes, subject to the features of the particular pool being offered.

VFF recommends that the proposed Code should mirror or align with the provisions of the Corporation's Act 2001 that apply to Financial Services Licenses and Responsible Entities. By utilising existing regulatory framework definitions and criteria this will assist in defining appropriate corporate governance criteria for Pool Managers rather than having to 'reinvent the wheel'. It will also assist the industry evolve towards more commercially accepted best practice, in effect 'future proofing' itself if existing regulatory exemptions are eventually removed.

The VFF also recommends that the nature of the 'Pool' product being offered by different Pool managers needs to be more appropriately defined and published, including, fees, charges, derivative products used, and appropriate regulatory exemptions that apply.

4. Compliance

VFF considers the proposed Code does not provide any real compliance or enforcement regime. VFF considers the proposed complaints handling process as totally inadequate to provide such discipline or market confidence.

VFF considers that for the Code-of-Practice to be effective it does need some form of regulatory recourse for non-compliance to act as an incentive to Pool managers to abide by the Code and meet their obligations to pool participants.

VFF are concerned that recent Pool manager performance issues highlighted in the press may result in full regulation of Pools under the Corporations Act 2001. VFF recommend that to avoid this outcome and for self-regulation to now succeed, the GTA investigate and implement a compliance regime within an industry Code incorporating 'lighter touch' regulatory oversight & compliance mechanisms, such as:

- a) The voluntary code could be moved to a prescribed code to enable the ACCC to investigate breaches and enforce compliance, and/or
- b) The Pool manager's exemptions from the financial services licensing and managed investment scheme provisions of the Corporations Act 2001 be linked to compliance with the proposed Code. This could entail amendments of existing exemptions to reference the Code so that in effect a (significant) breach of the Code would be considered a breach of the exemption.

Failing this, the Code requires an enforceable Compliance regime if such self-regulation is to succeed, the alternative ultimately being the removal of ASIC exemptions from regulation under the Corporations Act 2001.

5. Corporate Governance

It appears that GTA have incorporated general obligations similar to those of Financial Services Regulation for the holder of an Australian Financial Services Licence, as well as the duties of the Responsible Entity of a Managed Investment Scheme. As mentioned, VFF agree that these criteria should be replicated/aligned in the proposed Code-of-Practice to allow the evolution of Pool managers towards industry best practice.

VFF agree that the various criteria highlighted under section 1.1 through 1.4 should include both proscriptive and general obligations, such as the below (see 1.1):

- *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.

VFF consider, however, that there is need for some more proscriptive obligations around Pool Management and reporting/transparency.

6. Pool Management

VFF considers the draft code needs to further expand on Pool Manager obligations to ensure appropriate separation of management to that of the controlling entity's other trading / cash books.

There must be no real or perceived conflict of interest between Pool management decisions and the controlling entities other interests. For example, there must be clear and transparent processes around how sales are allocated between Pools and 'cash' books to prevent the temptation for high priced sales to be 'allocated' to other trading operations to the detriment of the Pool.

Where a service provider is offering multiple products (e.g. Pools and Cash) with a single marketing/sales team, then policies and procedures for allocating sales need to be clearly articulated, monitored, and reviewed and reported within an appropriate corporate governance and risk framework.

7. Reporting and Transparency

VFF recommend publication of all aspects of Pool Management from Corporate Governance, Risk Management, Policies & Procedures, EPRs, FPR's, and final Pool audits should all be published publicly on a Pool Provider's web site to provide open market transparency. This information should continue to be reported (remain on the web) subsequent to Pool closure as a historical record of performance.

VFF also recommend minimum industry standard guidelines for reporting Estimated Pool Returns (EPR's), Estimated Silo Returns (ESRs) and Final Pool Returns (FPRs) be established to enable ready market comparison between providers. Such standards should define all revenue, cost, and fees applying to a Pool that ultimately impact the net return to growers. For example: minimum reporting requirements and industry standard terminology applying to cost of finance, freight rates, and management fees.

8. Conclusion

- a) The VFF do not advocate heavy-handed regulation, but the need to ensure a degree of consumer (grower) protection while still enabling a competitive environment.
- b) The VFF believe that an approach of 'leaving it to the market to sort out' invariably results in the grower incurring the cost of fund manager failures, and will inevitably result in removal of ASIC exemptions from the Corporations Act 2001.
- c) The VFF consider the proposed Code-of-Practice as it stands is non-binding and does not provide any real discipline on Pool managers to adhere to the code, nor assurance or recourse for growers, and as a result will not improve market confidence.
- d) The VFF recommend that GTA investigate and implement a compliance regime to improve confidence in an Industry Code, that could comprise either:
 - o The voluntary code becoming a prescribed industry code to enable the ACCC to investigate breaches and enforce compliance, and/or
 - o The potential that a Pool manager's exemption from the financial services licensing and managed investment scheme provisions of the Corporations Act 2001 should be linked to compliance with the code.

Failing this, the Code requires an enforceable Compliance regime if such self-regulation is to succeed, the alternative ultimately being the removal of ASIC exemptions under the Corporations Act 2001.

- e) The VFF recommends that criteria that apply to Financial Services Licenses and Responsible Entities should be aligned with the proposed Code criteria rather than 'reinvent the wheel'. This will also assist the industry evolve towards commercially accepted best practice and 'future proof' the industry if existing regulatory exemptions are eventually removed.
- f) The VFF considers an important aspect of the draft code is the need to further expand on Pool Managers obligations to ensure appropriate separation of management to that of the controlling entity's other trading / cash books.
- g) The VFF recommend all aspects of pool management be published publicly on a Pool Provider's web site to provide open market transparency, including historical Pools.

The VFF also recommend minimum industry standard guidelines for reporting Estimated Pool/Silo Returns and Final Pool/Silo Returns be established.

The VFF Grains Group thanks GTA for the opportunity to provide public input into the review of the Revised Code of Practice requirements for Pool Providers. If you have any questions please do not hesitate to contact myself or Stephen Sheridan at the VFF Grains Group Office.

Yours sincerely,



Brett Hosking
President, VFF Grains Group
Victorian Farmers Federation