

CFTC Letter No. 00-39**March 15, 2000****Exemption****Division of Trading & Markets**

Dear :

This is in response to your letter dated March 3, 2000 in which you state that you are the President of XX, a registered commodity pool operator ("CPO") for Y ("Y"). You further state that Y ceased trading on February 15, 2000, and on behalf of the commodity trading advisor and yourself, the pool's only members, you request an exemptive relief from Commodity Futures Trading Commission ("CFTC") Rule 4.22(d). Specifically, you request that Y be exempt from all audit requirements. In the alternative, you requested that a fifteen-month audit as of the end of March be granted because a certified Annual Report for such a small pool would result in significant expense to the members. You affirm that the pool would be responsible for all costs incurred in preparation of such a report.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. Y commenced operation on September 6, 1994. The certification requirement and all other requirements applicable to the Annual Report have been complied within preceding fiscal years. You will continue to comply with all of the requirements pertaining to the Annual Report, as set forth in rules 4.22(c) (1) through (5), or as decided by the CFTC. The net asset value of the pool as of January 31, 2000, is \$143,341.98. The total number of gross capital contributions to the pool total \$260,000 with total withdrawals of \$223,000. You enclosed copies of the most recent month-end statement pursuant to requirements of rules 4.22(a) and (b). You have submitted a statement in support of this exemption from the only other member of Y.

Rule 4.22(c) requires each registered CPO to file a certified Annual Report with the Commission and distribute copies to the pool participants within 90 calendar days of the end of the pool's fiscal year, or after the permanent cessation of trading, whichever is earlier. Under Rule 4.22(d), the financial statements in the annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. The principal purpose of financial reporting required by Rule 4.22 is to ensure that pool participants receive accurate, fair and timely information on the overall trading performance and financial condition of the pool.

As stated in a March 14, 2000 phone conversation between a member of my staff, Bill Yowell, and V of W, your request that Y be exempted from all audit requirements is denied. However, based upon the representations made in your letter, the Division believes that granting the request on behalf of Y that a fifteen month audit as of the end of March 2000 is neither contrary to the purposes of Rule 4.22 nor to the public interest. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), but subject to

the conditions set forth below, the pool is hereby exempted from the requirement of Rule 4.22(c).

This letter applies solely with respect to the exemption from compliance with the certification requirement of Section 4.22(c) for the fiscal year ending December 31, 2000 and this in no way shall excuse XX or Y from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder, including but not limited to the requirements of Sections 4.22(a) and (b) regarding the distribution of quarterly or monthly Account Statements of the pool.

If you have any questions, please contact me at (202) 418-5463 or Bill Yowell at (202) 418-5454.

Sincerely,

Kevin Walek
Assistant Director

cc: Anthony Gialanella
National Futures Association