

CFTC Letter No. 00-46

March 31, 2000

Exemption

Division of Trading and Markets

Dear :

On March 7, 2000, the Division of Trading and Markets received your correspondence dated March 6, 2000. The correspondence requests exemptive relief from the requirement of Commodity Futures Trading Commission ("Commission") Rule 4.7(a)(iii)(A). The rule requires the filing of an Annual Report on behalf of XX, the commodity pool operator ("CPO") for Y (the "Fund").

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. The Fund is an exempt pool pursuant to Section 4.7 of the Commodity Exchange Act ("CEA"). The fiscal year end of the Fund is December 31st. The Fund was launched as of April 1, 1999 and ceased trading on September 30, 1999. The last disbursements in the Fund were made on November 30, 1999. The Fund had a total of three investors. Two of the three investors in the Fund were proprietary in nature and were directors of the Fund. The third investor in the Fund was an offshore investment vehicle in which the two directors of the Fund were also directors of the offshore investment vehicle investing in the Fund; the investors in that fund receive audited financial statements for the fund. No moneys were raised on behalf of the Fund from the public and no marketing had commenced prior to ceasing trading. The head trading manager of the Fund ceased employment with the Fund before ever marketing the Fund to outside investors, and all moneys received from the three investors in the Fund were subsequently returned. You have submitted a balance sheet as of December 31, 1999. The CPO is requesting an exemption from Commission Rule 4.7(a)(2)(iii)(A) which requires that the CPO distribute to their investors and file with the Commission and the National Futures Association an Annual Report within 90 days after the end of each annual period.

Section 4.7(a)(2)(iii)(A) requires that within 90 calendar days after the end of the exempt pool's fiscal year, the CPO file with the Commission and with the National Futures Association and distribute to each participant, an annual report for the pool, signed and affirmed in accordance with §4.22(h) which contains, at a minimum: (1) A Statement of Financial Condition as of the close of the exempt pool's fiscal year; (2) A Statement of Income (Loss) for that year; and (3) Appropriate footnote disclosure and any other material information. If a claim for exemption has been made pursuant to Section 4.7, the CPO must make a statement to that effect on the cover page of the annual report.

Based upon your representation, it is clear that you did not comply with the filing requirements of Regulation 4.7. Although you have submitted a balance sheet as of December 31, 1999, that information is grossly deficient and does not meet the requirement of the regulation, which, among other things, requires the reporting of income and losses during the period. In light of these facts, the Division must deny your request for exemption. XX should file an unaudited annual report for the Y for 1999, with the Commission and with National Futures Association within 30 days of the date of this letter.

This letter is based on the representation you have made to us. Any different, changed or omitted facts or conditions might cause us to reach a different conclusion. This letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Z. Patricia Ross, Futures Trading Specialist on my staff, at (202) 418-5469.

Very

truly
yours,

Kevin P.
Walek
Assistant
Director

cc: Anthony Gialanella, Compliance
National Futures Association