

**CFTC Letter No. 00-90****August 30, 2000****Exemption****Division of Trading & Markets**

Dear:

On August 11, 2000, the Division of Trading and Markets received your facsimile correspondence addressed to Mr. Henry Matecki, Chief Accountant dated August 7, 2000. The correspondence requests exemptive relief from the requirement of Commodity Futures Trading Commission ("Commission") Rules 4.22(c) and (d) that the commodity pool operator ("CPO") distribute and file a certified Annual Report for the pool's fiscal year ending December 31, 1999. 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 a "fund of funds" and the CPO has not filed a certified financial statement for the calendar year 1999. It was not possible to assemble a report until you received financial statements from the underlying funds in which the Fund had invested. You currently have the reports and can assemble a financial statement for the Fund if it is required.

All of the Fund's financial results were a function of the results of the underlying investments in other funds and there were no trades executed by the managers of the Fund. The Fund was comprised of a general partner account, of which W and X were the only managing members and five limited partnership accounts. Two of the limited partner accounts belonged to Z. W and X, and a third account belonged to the wife of X. The remaining two accounts ("outside" accounts) were an individual account which belonged to V, and a joint account held by Mr. and Mrs. G, close friends of Z. W and X. The Fund was liquidated at the end of 1999, due to the inability to raise sufficient funds to make the Fund an economically viable endeavor, and all of the monies invested in the Fund have been returned to the investors. The Fund never exceeded \$5 million and the investments of the two "outside" limited partners never exceeded 15% of the Fund. The Fund was composed of partners who are close friends and would like to avoid spending additional accounting fees to assemble any further financial statement, certified or noncertified, for the Fund. You have submitted statements in support of an exemption from filing a certified financial statement from each of the participants.

Rules 4.22(c) and (d) require 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. 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.

Based upon the foregoing representations, the Division will deny in part and grant in part your request. The

Fund is required to file, but has not filed, an Annual Report for 1999 and based on your representation, the report can be assembled now that you have the financial statements from the underlying funds. In light of these facts, the Division must deny your request for exemption from filing an Annual Report for Y for 1999.

You further note that based on the structure of the Fund, its partners, and the fact that the Fund was liquidated at the end of 1999, you request that the Fund be permitted to file an uncertified Annual Report for 1999. Based upon the representations made in your letter, the Division believes that granting that portion of the request on behalf of the Fund 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 Fund is hereby granted relief from the certification requirement of Rule 4.22(d) for the Fund's fiscal year ending December 31, 1999.

The relief granted in this letter is conditioned on the distribution of an unaudited Annual Report for 1999 that otherwise complies with 4.22(c) and (d). Moreover, this letter applies solely with respect to the exemption from compliance with the certification requirement of Section 4.22(d) for the fiscal year ending December 31, 1999 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.

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. 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  
National Futures Association