

CFTC Letter No. 01-13

March 15, 2001

Exemption

Division of Trading and Markets

Dear:

This is in response to your correspondence dated February 15, 2001 requesting exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22 that commodity pool participants be provided with an audited Annual Report. The request is filed on behalf of XX, the commodity pool operator (“CPO”) for Y (the “Partnership”). You propose to provide participants in the Partnership with an unaudited Annual Report for 2000 that otherwise complies with Rule 4.22.

In support of your request you state, among other things, that the Partnership was organized in April and commenced trading as of June 2000. The Partnership had a total of eleven (11) limited partners. As of December 31, 2000, the total partner’s capital was approximately \$2,000,057. You have submitted statements in support of this exemption from each of the eleven limited partners. You have also submitted a non-certified annual report for the period ended December 31, 2000. You request exemption from filing an audited financial report for 2000 due to the time and expense of providing a certified Annual Report.

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. In a number of cases smaller pools, which began trading late in the year, have requested relief from the certification requirement of Rule 4.22(d) for their first annual report, covering a “stub” period of only a few months. In these cases, the CPO distributes an unaudited annual report for the stub period, and the audit for the next annual report covers the results of the full year plus the stub period.

The basis for such requests is that the cost of an audit for the short period of trading is unduly burdensome relative to the size of the pool. In most cases, the stub period is four months or less. Within the past several years, the longest period for which this relief has been granted for a stub period has been six months, and that request involved a pool with an ending net asset value of less than \$200,000. By contrast, your letter indicates that the Partnership was in operation for seven months of 2000, and had substantially larger ending net assets.

In light of the length of time the Partnership was in operation and the substantial size of the Partnership, the Division is denying your request. You will be required to distribute and file a certified Annual

Report for the period June 1, 2000 through December 31, 2000 in accordance with Rules 4.22(c) and (d). Two copies of the certified Annual Reports must be filed with the Commission and one with the National Futures Association.

Based on the denial of this request and in consideration of the time in which you would otherwise be required to file a certified report, the Division grants you an extension of time to file the certified 2000 Annual Report until May 31, 2001.

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: Jane Pfieffer, Compliance
National Futures Association

Henry Matecki
CFTC, Chicago Regional Office