

CFTC Letter No. 01-22

March 28, 2001

Exemption

Division of Trading and Markets

Re: Y (“Y”)

Dear:

On March 12, 2001, the Division of Trading and Markets received your correspondence by facsimile requesting an extension of time in which to file the December 31, 2000 Annual Report for the above named pool on behalf of XX (“XX”), its commodity pool operator (“CPO”). After several conversations with staff regarding your request, you submitted an amended request by facsimile on March 23, 2001. You requested an extension until June 15, 2001 to file the pool’s 2000 Annual Report.

The Commission recently adopted changes to Rule 4.22(f)^[1]. Under new rule 4.22(f)(2), operators of pools that invest in other collective investment vehicles (commonly referred to as “funds of funds”) may claim an automatic extension of up to 60 days – for a total time to file of up to 150 days after the end of the pool’s fiscal year – simply by filing a notice. (The sixty-day extension covered the substantial majority of requests for extensions of time that had been filed prior to the adoption of the automatic procedure.) The notice must contain representations by the pool operator that (1) the pool has investments in one or more collective investment vehicles; (2) The commodity pool operator has been informed by its certified public accountant that specified information establishing the value of those investments is necessary in order for the accountant to render an opinion on the commodity pool’s financial statements, and (3) this information cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the extended due date requested.

As explained in the Federal Register release, requests for extensions of more than 60 days must be filed under Rule 4.22(f)(1). These requests are “not granted automatically, and must include detailed supporting documentation to justify the need for the extension.”^[2] You have requested an extension of 75 days, and thus your request is processed under Rule 4.22(f)(1).

In support of your request you state, among other things, that Y has investments in one or more collective investment vehicles. You have submitted a statement from Z, the independent accountant selected to audit Y, that the audited financial statements of one of these collective investment vehicles, YY (“YY”), are required in order for them to render an opinion on Y’s financial statements. You have confirmed with W, that YY’s audited financial statements cannot be obtained until the end of May 2001, which is not sufficient time for Y’s Annual Report to be prepared, audited and distributed before June 15, 2001.

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. The representations made in your letter and that of your accountant establish the type of unusual circumstances that warrant relief under Rule 4.22(f)(1). Based upon those representations, the Division believes that granting the request on behalf of XX for Y 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), XX is hereby granted an extension of the deadline to file the 2000 Annual Report for Y until June 15, 2001.

This letter applies solely with respect to the extension of time to file the Annual Report for the fiscal year ending December 31, 2000 and does not excuse XX from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder.

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

^[1] 17 C.F.R. § 4.22(f). See 61 Fed. Reg. 81333 (Dec. 26, 2000)

^[2] 65 Fed. Reg. at 81334