

CFTC Letter No. 01-33

April 3, 2001

Exemption

Division of Trading and Markets

Dear:

This is in response to your letter dated March 7, 2001, supplemented by additional correspondence dated March 19, 2001, and a telephone conversation on April 3, 2001, in which you requested exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22. The request is filed on behalf of XX, the commodity pool operator (“CPO”) for Y (the “Fund”). You request an exemption from the requirement of Rule 4.22(d) that the financial statements prepared for the Annual Report for the period ending December 31, 2000 be certified by an independent public accountant. Further, as the pool is in the process of liquidating, you have also requested that the closeout report also be exempted from the certification requirements of 4.22(d).

Rule 4.22(c) requires each registered CPO to file an 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. Rule 4.22(d) requires that the financial statements in the Annual Report must be prepared in accordance with generally accepted accounting principles and 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.

Based on the representations you have submitted in support of your request, it appears that of December 31, 2000, the Partnership had only two investors. The two investors requested redemption of their remaining interests of less than one-half million dollars as of January 30, 2001. These two investors have requested that the CPO request this relief as they would have to bear the costs of the certified Annual Report. You have indicated that you expect to wind-up pool operations in the next few weeks, but no later than May 30, 2001. You have already filed an unaudited Annual Report for the year ending December 31, 2000 that otherwise complies with Rule 4.22(c) with the Commission and have distributed this report to the two participants. Finally, during the telephone conversation you indicated that you would like to amend your original request so that the closeout report required by Rule 4.22 for the period of operation in 2001 necessary to wind-up pool operations could also be an unaudited report.

Based upon these representations, the Division believes that granting these requests to the CPO 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), the CPO is hereby granted relief from the certification requirement of Rules 4.22(d) for the pool’s Annual Report for the period ending December 31, 2000. Further, the CPO is hereby granted relief from the certification requirement of Rules 4.22(d) for the

pool's closeout report, which will include the period from January 1, 2001 through May 31, 2001. The relief granted in this letter is conditioned on the CPO distributing to the participants an unaudited closeout report will include the period from January 1, 2001 through May 31, 2001. This report must otherwise comply with Rules 4.22(c) and (d).

This letter applies solely with respect to the exemption from compliance with the certification requirement of Rule 4.22(d) for the period designated above and this in no way shall excuse XX or Y from compliance with any other applicable requirements or prohibitions 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.

Very truly yours,

Kevin P. Walek
Assistant Director
(202) 481-5463

cc: Jane Pfieffer, Compliance
National Futures Association