

CFTC Letter No. 01-72

July 17, 2001

Exemption

Division of Trading and Markets

Dear:

This is in response to your letter dated June 21, 2001, supplemented by additional information received on July 10 and 11, in which you provided information and materials to support your February 28, 2001 request for exemptive relief from the certification requirement of Commodity Futures Trading Commission (“CFTC”) Rule 4.22.

In your request, filed on behalf of Z, the commodity pool operator (“CPO”) for Y and YY, (the “Pools”), you request an exemption from the requirement of Rule 4.22(d) that the financial statements prepared for the Annual Report be certified by an independent public accountant.

Rules 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.

In support of your request you state, among other things, that YY is a feeder fund into Y. The Pools commenced operations on October 13, 2000. The Pool had six (6) participants. The Pool’s investors are actively involved in the process of trading on behalf of the Pools. The total gross capital contribution by the investors at commencement was \$1,925,000. You have submitted statements in support of this exemption from each of the participants. You have also represented that your client submitted uncertified financial information to each participant within 90 calendar days of the end of the year. You are requesting exemption from filing an audited financial report for 2000 due to the short length of time that would be included in the report and cost associated with an audited report.

Based upon the representations made in your letter, the Division believes that granting the request on behalf of the Pools 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 Pools are hereby granted relief from the distribution and certification requirements of Rules 4.22(d) for the pool’s fiscal year ending December 31, 2000.

The relief granted in this letter is conditioned on the following: the future filing of Y and YY must present a certified Annual Report for the period October 13, 2000 through December 31, 2001 in accordance with Rules 4.22(c) and (d). Moreover, this letter applies solely with respect to the exemption from compliance with the certification requirement of Rule 4.22(d) for the fiscal year ending December 31, 2000 and this in no way shall excuse Z, Y or YY from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder.

Further, be advised that your client's 2001 annual report may qualify for an automatic extension. Rule 4.22(f)(2) permits CPOs to claim an extension of time to file a pool's annual report where the pool is invested in other collective investment vehicles (is a fund of fund pool), and the CPO cannot obtain the information its accountant requires about the collective investment vehicles in time for the pool's Annual Report to be prepared, audited, and distributed the due date. If your client qualifies for such relief, the initial notice must be filed in a timely fashion in accordance with Rule 4.22(f)(2).

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
(202) 418-5463

cc: Jane Pfeiffer, Compliance
National Futures Association