

CFTC Letter No. 01-90
December 11, 2001
Exemption
Division of Trading and Markets

Dear :

This is in response to your letter dated October 8, 2001, and your subsequent letter received by facsimile on December 4, 2001, filed with Division of Trading and Markets (“Division”) staff regarding XXX, the commodity pool operator (“CPO”) for Y (the “Pool”). You request exemptive relief from the requirement of Rule 4.7(b)(2) that the CPO must distribute to the Pools’ investors periodic financial reports on a quarterly basis, within 30 calendar days of the end of each quarter.

You propose to file the periodic reports on a monthly basis, which is more frequent than what the regulation requires, but within 45 days of the end of each month, which will result in information from the last month of each quarter being presented later than the rule requires.

In support of your request you state, among other things, that the Pool is organized as a “fund of funds” which invests its assets with various managers and other investment funds (the “Under-Funds”). The current operating agreement provides that participants in the Pool receive monthly periodic reports. The CPO is unable to provide participants with these reports within 30 calendar days after the end of the month due to reasons beyond its control. Specifically, the CPO is not the administrator of the Under-Funds and the month-end information received for these Under-Funds does not arrive early enough to allow the CPO time to prepare and distribute month-end reports within 30 days after the end of each month. Therefore, you are requesting permission for the CPO to distribute the monthly reports for the Pool to its participants within 45 days after the end of the month.

The Division concludes that if the CPO is allowed to provide monthly financial information to its participants as proposed, the CPO will, on balance, be providing more current financial information to its participants than that required by the rule. The participants in the Pool would be receiving two-thirds of the financial information earlier and one-third later than if the Pool were to comply with the requirement of filing quarterly financial information.

Based upon your proposal and pursuant to authority delegated by Rule 140.93(a)(1), the Division hereby grants your request. This exemption is conditioned upon the following: (1) the CPO must comply with the proposal set forth above, and (2) the CPO must inform current and prospective investors in the Pool that the Pools’ reports will be distributed and filed within 45 calendar days of the end of each month rather than within 30 calendar days of the end of each quarter. This exemption is applicable to XXX solely with respect to Y. This exemption applies solely with respect to the extension of time to file periodic reports and shall not excuse XXX or Y from compliance with any other applicable requirements or prohibitions contained in the Commodity Exchange Act or in the Commission’s regulations issued

thereunder. You must notify us immediately in the event that the activities or operations of the Pool change in any material respect from those as represented to us.

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 Pfieffer, Compliance
National Futures Association