

**CFTC Letter No. 02-10**  
**February 19, 2002**  
**Exemption**  
**Division of Trading and Markets**

Dear:

This is in response to your letter dated December 17, 2001 received by our Office on December 28, 2001, and your subsequent information received February 14, 2002, in which you requested exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22. You filed the request as the commodity pool operator (“CPO”) for X (the “Fund”). You request an exemption from the requirement of Rule 4.22(d) that the financial statement prepared for the Annual Report be certified by an independent public accountant.

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.

In support of your request you state, among other things, that the Fund commenced operating on February 2000. The Fund had four (4) participants and terminated operations as of April 30, 2001. You represent that the net asset value of the Fund at April 30, 2001 was \$XX and each participant was responsible for his/her share of costs related to the certified audit. You have submitted statements in support of this exemption from each of the four participants. You have also submitted a non-certified account statement as of April 30, 2001. You are requesting exemption from filing an audited financial report for year 2001 to avoid reducing each participant’s ownership interest due to year-end audit fees.

Based upon the representations made in your letter, the Division believes that granting the request on behalf of the Fund 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 Fund is hereby granted relief from the certification requirement of Rule 4.22(d) for the Fund’s fiscal year ending December 31, 2001.

The relief granted in this letter is conditioned on the CPO complying with the requirements set forth in Rules 4.22(c)(1) through (5). The CPO must distribute to the participants an unaudited Annual Report for 2001 that otherwise complies with Rules 4.22(c) and (d). The CPO must also file a copy of the unaudited 2001 Annual Report with the Commission and National Futures Association.

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, 2001 and this in no way shall excuse XX, Inc. or YY, LP 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 Pfeiffer, Compliance  
National Futures Association