

CFTC letter No. 02-101

August 28, 2002

Exemption

Division of Clearing and Intermediary Oversight

X
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XXXX

Dear X:

This is in response to your correspondence dated July 25, August 6, and August 26, 2002 to the Division of Clearing and Intermediary Oversight of the Commodity Futures Trading Commission, (“Commission”) requesting exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22 that commodity pool participants be provided with an audited Annual Report. The request is filed on behalf of Y, the commodity pool operator (“CPO”) for YY (the “Fund”).

Rules 4.22(c) and (d) require each registered CPO to file a certified Annual Report with the Commission and distribute copies to the fund participants within 90 calendar days of the end of the fund’s fiscal year. The principal purpose of financial reporting required by Rule 4.22 is to ensure that fund participants receive accurate, fair and timely information on the overall trading performance and financial condition of the fund.

You request exemption from filing an audited financial report for 2001 due to the expense of providing certified Annual Report for the short period the Fund traded 2001. The Fund commenced trading on December 3, 2001 and has a January 15, 2002 fiscal year-end date. Therefore, the Fund was operating for only a six- week period in fiscal year 2001. You state that the Fund is primarily a municipal bond fund and that no commodity futures trading occurred in the Fund in 2001. You further state that if the exemption request is granted, that a certified Annual Report covering the period from December 3, 2001 and ending January 15, 2003 will be issued to all participants and filed with the Commission and, that the Fund has already retained auditors to issue such report. You also submitted unaudited financial statements for the period December 3, 2001 through January 15, 2002 the entire operating history of the Fund.

In light of the representations made in your letter, in particular those relating to the short operating period of the Fund, 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 January 15, 2002.

The relief granted in this letter is conditioned on the following: First, the CPO must distribute an

unaudited Annual Report for the Fund that otherwise complies with Rules 4.22(c) and (d). The unaudited Annual Report should have been filed with the Commission and National Futures Association within 90 calendar days of the end of the pool's fiscal year. Second, the CPO must file, on behalf of the Fund, a certified financial report for fiscal year 2001 which covers the 13-month period December 3, 2001 through January 15, 2003.

This letter in no way shall excuse Y or YY 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, Donald Bass, Futures Trading Specialist, on my staff, at (202) 418-5462.

Very truly yours,

Kevin P. Walek
Assistant Director
(202) 418-5463

cc: Regina Thoele, Compliance
National Futures Association