

CFTC letter No. 02-105
September 25, 2002
Exemption
Division of Clearing and Intermediary Oversight

X
XX
XXX
XXXX
XXXXX

Dear X:

This is in response to your letter dated September 18, 2002 and fax of September 23, 2002 to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) requesting exemptive relief from the requirement of Rule 4.22(d)^[1] that the financial statements prepared for the Annual Report be certified by an independent public accountant. The request is filed on behalf of XXX, the commodity pool operator (“CPO”) for Y (the “Pool”).

Rule 4.22(c) requires each registered CPO to file an Annual Report with the Commission and distribute copies to 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. You request exemption from filing an audited financial report for 2002 due to the fact that the pool ceased trading on June 30, 2002 and has only two individual participants, both principals of the CPO.

Based on the representations you have submitted in support of your request, it appears that the Pool commenced trading commodity interests in August 2000. As of June 30, 2002 the net asset value of the Pool was \$3,428,849. The Pool was comprised of two individual participants, both principals of the CPO, and proprietary funds. You have submitted statements in support of this exemption from each of the individual participants. You have also submitted unaudited statements for January 1 through June 30, 2002.

In light of the representations made in your letter, in particular those relating to the small size of the Pool and the small number of participants in the Pool, the Division believes that granting the request on behalf of 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), XXX is hereby granted relief from the certification requirement of Rule 4.22(d) for the Pool’s fiscal year ending December 31, 2002.

This letter in no way shall excuse XXX or Y from compliance with any other applicable requirements contained in the Commodity Exchange Act^[2] or in the Commission's regulations issued thereunder.

This letter, and the exemption granted herein, is based on the representations that have been made to the Division. Any different, changed or omitted facts or conditions might render the exemption void. You must notify the Division immediately in the event the operations of the CPO or the Pool change in any material way from those represented to us.

If you have any questions regarding this letter, please contact me or Donald Bass, a 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

^[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

^[2] 7 U.S.C. § 1 *et seq.* (2000).