

**CFTC Letter No. 02-12**  
**February 25, 2002**  
**Exemption**  
**Division of Trading and Markets**

Dear:

This is in response to your correspondence dated January 21, 2002 to Mr. Kevin Walek, 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 X, the commodity pool operator ("CPO") for Y (the "Fund"). You propose to provide participants in the Fund with an unaudited Annual Report for 2001 that otherwise complies with Rule 4.22.

Rules 4.22(c) and (d) require each registered CPO to file a certified 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. 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 2001 due to the expense of providing a certified Annual Report compared to the size of the Fund.

Based on the representations you have submitted in support of your request, it appears that the Fund commenced trading commodity interests on March 8, 1991. As of December 31, 2001, the net asset value of Y was \$XX. The Fund is comprised of ten (10) participants, and the majority of the units in the Fund are owned by the CPO, the principals of the CPO and relatives of the principals of the CPO. You have stated that the Fund will not solicit any new participants. You have submitted statements in support of this exemption from each of the ten participants. You have also submitted a non-certified month end statement for the period ended December 31, 2001.

In light of the representations made in your letter, in particular those relating to the small size of the Fund, the "closely held" nature of the Fund, and the fact that the Fund is not soliciting new participants, 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 following: First, the CPO must distribute an unaudited Annual Report for Y that otherwise complies with Rules 4.22(c) and (d). The unaudited Annual Report should be filed with the Commission and National Futures Association within 90 calendar days of the end of the pool's fiscal year. Second, prior to soliciting or accepting any new participants to the Fund, the CPO must file, on behalf of the Fund, a certified financial report for the

immediate prior calendar year.

This letter in no way shall excuse X or Y 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

cc: Jane Pfeiffer, Compliance  
National Futures Association

John S. Dixon  
CFTC, Chicago Regional Office