

CFTC Letter No. 02-23

March 8, 2002

Exemption

Division of Trading and Markets

Dear:

This is in response to your correspondence dated February 18, 2002 to Mr. Kevin Walek of the Division of Trading and Markets of the Commodity Futures Trading Commission, (Commission) requesting exemptive relief from the requirements of Commodity Futures Trading Commission 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”).

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. 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, the small number of participants, and the fact that the pool did not begin trading until October 2001.

Based on the representations you have submitted in support of your request, it appears that the Fund commenced trading commodity interests in October 2001 and that unaudited monthly statements for the period October through December 31, 2001 have been distributed to all three limited partners. As of December 31, 2001, the net asset value of X was \$X. The Fund is comprised of three (3) participants as of December 31, 2001. You have submitted statements in support of this exemption from each of the three participants. You have also submitted an unaudited financial statement for the quarter ended December 31, 2001, the entire operating history of the Fund.

In light of the representations made in your letter, in particular those relating to the small size of the Fund, the small number of participants in the Fund, and signed consents from all limited partners waiving receipt of a certified annual report, 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: The CPO must file, on behalf of the Fund, a certified financial report for fiscal calendar year 2002, which covers the 15 month period, October 2001 to December 31, 2002.

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