

CFTC Letter No. 02-31
April 4, 2002
Exemption
Division of Trading and Markets

Dear:

This is in response to your letter dated March 28, 2002 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“CFTC”), requesting an extension of time until June 29, 2002 to file the December 31, 2001 Annual Report for The X, Ltd. (the “Pool”). The request is filed on behalf of Y, L.L.C., the commodity pool operator (“CPO”) for the Pool.

Rule 4.22(f)(1) allows a CPO to request an extension in the event that the CPO cannot distribute an Annual Report for a pool that it operates within 90 days after the end of the pools’ fiscal year without substantial undue hardship. The request must include detailed supporting documentation to justify the need for the extension. The CPO must also provide a letter from the pool’s independent public accountant addressing certain questions specified in Rule 4.22(f)(1).

In support of your request you state, among other things, that the Pool participants transferred their assets from an entity domiciled in the United States to a new Cayman Island entity administered in Bermuda. As a consequence the Pool’s accountant must use a method of accounting that recognizes the change in character from one entity to the other. The complexities involved include identifying transactions for the first four month period, eliminating the inter-company transfers and combining the transactions with those of the subsequent 8 month period. In addition there have been delays in obtaining confirmations from the Pool’s brokers. These complexities, together with the extension of the scope to test the transactions for the first four months and to test the accounting for the combination of the entities has led to delays with the completion of the audit.

Therefore, based upon the representations made in your letter, the Division believes that granting the request on behalf of X 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 Division hereby grants your request. This exemption is conditioned upon the CPO providing a certified annual report to all Pool participants no later than June 29, 2002. This exemption is applicable to X solely with respect to the Pool.

This exemption applies solely with respect to the extension of time to file the 2002 Annual Report and shall not excuse X or the Pool from compliance with any other applicable requirements or prohibitions contained in the Commodity Exchange Act or in the Commission’s regulations issued thereunder. You must notify us immediately in the event that the activities or operations of the Pool change in any material respect from those as represented to us.

This letter is based on the representations 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 Theole, Compliance
National Futures Association