

CFTC Letter No. 02-48

April 15, 2002

Exemption

Division of Trading and Markets

Dear Mr. X:

This is in response to your letter dated March 12, 2002, and the subsequent information received by our office on April 2, 2002, in which you requested exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22. You filed the request on behalf of XX, YY, and ZZ, the commodity pool operators (the “CPOs”) for X, L.P. and Y, L.P. (the “Funds”). You requested an exemption from the requirement of Rule 4.22(d) that an independent public accountant certify the financial statements prepared for the Annual Report. Further, you have requested that these annual reports be accepted as the final annual reports to be filed with the Commission for these entities because the Funds have ceased operating as commodity pools within the meaning of Rule 4.10(d).

Rule 4.22(c) requires each registered CPO, for each commodity pool that the CPO operates, 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 state in support of your request that the Funds ceased trading in 1995. Each of the Funds has liquidated substantially all of its assets but continues to maintain a small portion of its original assets in a custodial account in order to meet certain contingent liabilities. Because of the nature of the contingent liabilities, the CPOs are not able to determine when a final liquidation can occur. You submitted copies of correspondence that has been furnished to all investors explaining the status of the liquidation. Current investments in the custodial account are cash and repurchase agreements only. You stated that no transactions in commodity futures have been entered into since the 1995 liquidation and that no such transactions will be entered into in the future. The CPOs have undertaken to prepare unaudited annual reports for the Funds that will comply with all other requirements of Rule 4.22(c) and (d). You contend that an

exemption from the certification requirement of Rule 4.22 (d) is in the best interest of the Funds’ participants who, absent such relief, will be required to bear the cost of the audits.

Based upon the representations made in your letter, the Division believes that granting the request on behalf of the CPOs is neither contrary to the purposes of Part 4 of the CFTC’s regulations nor to the public interest. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the CPOs are

hereby granted relief from the certification requirement of Rule 4.22(d) for the Funds' fiscal year ending December 31, 2001, on the condition that the 2001 annual reports must prominently state that the Funds are no longer being operated as commodity pools subject to the Commission's rules. Further, the Division acknowledges that these will be the last annual reports filed with the Commission for the Funds because the Funds have ceased operating as commodity pools within the meaning of Rule 4.10(d).

This letter applies solely with respect to the matters covered herein, and shall in no way excuse XX, YY, and ZZ or X, L.P. and Y, L.P from compliance with any other applicable requirements contained in the Act 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 CPOs or the Funds change in any material way from those represented to us.

If you have any questions regarding this letter, please contact me, at (202) 418-5463 or Donald Bass, Futures Trading Specialist on my staff, at (202) 418-5469.

Very truly yours,

Kevin P. Walek
Assistant Director

cc: Regina Thoele, Compliance
National Futures Association