

CFTC Letter No. 02-55**April 25, 2002****Exemption****Division of Trading and Markets**

Dear Mr. X:

This is in response to your letter dated February 6, 2002 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“CFTC”), filed on behalf of X, L.L.C. the commodity pool operator (“CPO”) for Y, L.P. (the “Pool”). You state that the Pool is invested in a fund that has filed for bankruptcy. Your initial request was supplemented with a statement from the court-appointed accountant for the trustee that the audit of the fund in which the Pool was invested would not be completed until October 2002. You requested an extension of time until October 31, 2002 to file the December 31, 2001 Annual Report for the Pool.

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 (“GAAP”) 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.

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 pool’s 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 had a material investment in Z.^[1] Z has filed for bankruptcy, resulting in questions about the value of the Pool’s investment in Z. You submitted correspondence from --& --, the court-appointed accountant for the trustee, indicating that the audited financial statements of Z will not be issued until approximately October 15, 2002.

The bankruptcy of an entity in which a pool is invested does not necessarily preclude the preparation of an annual report for the pool in accordance with GAAP. The footnotes to the report should disclose the fact that a material investment of the Pool is subject to an SEC enforcement proceeding and is in bankruptcy. The footnotes should explain the details of the investment, its carrying value (if any) in the statement of financial condition and how any such value was determined, the impact of that investment on the statement of operations, and any other relevant information. A certified public accountant can issue an opinion on that annual report which may be subject to a scope limitation with regard to the

affected investment. Under these circumstances, such a scope limitation would not render the accountant's opinion inconsistent with the requirements of Rule 4.22(d).

In light of the substantial delay in distributing an annual report to the participants that would be necessary to ascertain the final effect of Z's pending bankruptcy on the financial condition of X, we are denying the requested relief and are requiring that X file an annual report that complies with both 4.22 (c) and (d). However, in order to permit reasonable time for you to prepare the annual report, the Division has determined to grant an extension of 60 days from the date of this letter to file the Annual Report. The Division believes that granting the extension of 60 days 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), X is hereby granted an extension of time to file the Annual Report for the Pool until June 24, 2002.

This letter applies solely with respect to the 2001 Annual Report filing for Y, L.P. and this in no way shall excuse X, L.L.C., or 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.

Very truly yours,

Kevin P. Walek
Assistant Director

cc: Regina Thoele, Compliance
National Futures Association

^[1] Z has been charged by the Securities and Exchange Commission ("SEC") with fraud and conversion.