

CFTC Letter No. 02-58

May 16, 2002

Exemption

Division of Trading and Markets

Dear X:

This is in response to your letters dated March 26 and April 30, 2002 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), requesting an extension of time until May 31, 2002 to file the 2001 Annual Reports for Y and YY (the "Pools"). The request is filed on behalf of Z, the commodity pool operator ("CPO") for the Pools.

Rule 4.7 requires that an Annual Report containing certain financial information be distributed to pool participants and filed with the CFTC within 90 days after the end of the pool's fiscal year. While Rule 4.7 permits the CPO to distribute an unaudited financial report, many CPOs for 4.7 pools choose to distribute audited financial reports. 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 have provided a letter from W, the certified public accounting firm selected to audit the Pools' financial statements, which states that the auditors are delayed due to implementing a new AICPA guideline pertaining to the amortization of premiums and discounts on preferred securities. The letter further indicates that the auditors found nothing that would lead them to believe that the CPO was not meeting the segregation and record keeping requirements of Part 4 of the Commission's regulations.

In light of the representations made in your letter, the Division believes that granting the request on behalf of the CPO 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), Z is hereby granted an extension until May 31, 2002 to file the 2001 Annual Reports for Y and YY.

This letter applies solely with respect to the extension of time to file the Pools' Annual Report for the fiscal year ending December 31, 2001 and in no way shall excuse Z or Y and YY from compliance with any other applicable requirements contained in the Commodity Exchange Act^[1] 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 CPO or the Pool change in any

material way from those represented to us. If you have any questions regarding this letter, please contact me or Donald Bass, a Futures Trading Specialist on my staff, at (202) 418-5462.

Very truly yours

Kevin P. Walek
Assistant Director
(202) 418-5463

cc: Regina Thoele, Compliance
National Futures Association

[\[1\]](#) 7 U.S.C. § 1 *et seq.* (2000).