

CFTC Letter No. 02-68**June 5, 2002****Exemption****Division of Trading and Markets**

Dear X:

This is in response to your letter dated May 30, 2002 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”), filed on behalf of XX, the commodity pool operator (“CPO”) for Y (the Pool). The CPO has claimed an extension under Commission Rule 4.22(f)(2)^[1] to file the Pool’s Annual Report by May 30 (the “Extended Date”), and is now requesting an additional extension of time, until June 14, 2002, to file the Pool’s fiscal year 2001 report.

Rule 4.22(f)(1) allows a CPO to request an extension in the event that the CPO cannot distribute the Annual Report for a pool that it operates within 90 days after the end of the pool’s fiscal year, as required by Rule 4.22(c), 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 that the Pool has investments in one or more collective investment vehicles. Your letter stated that additional time is needed to gather audited financial statements from underlying funds in order for the 2001 audited financial statements for the above Pool to be completed. Z, the independent public accounting firm selected to audit the Pool’s financial statements, has confirmed that additional information from these underlying firms is necessary in order to issue the audited 2001 financial statements for the Pools. The information specified cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date. You included in your submission a letter from Z which states that the auditors have found nothing to date that would indicate that the Pools are not meeting the segregation or record keeping requirements of Part 4 of the Commission’s regulations.

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. 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), XX is hereby granted an extension until June 14, 2002 to file the 2001 Annual Report for Y.

This letter applies solely with respect to the extension of time to file the Pool’s Annual Report for the fiscal year ending 2001 and in no way shall excuse XX or Y compliance with any other applicable requirements contained in the Commodity Exchange Act^[2] 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

[\[1\]](#) Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001). Rule 4.22(f)(2) allows a CPO, subject to certain conditions, to claim an extension of time to file a pool's annual report in the event that the CPO cannot obtain information necessary to prepare the pool's certified financial statements as a result of the pool investing in another collective investment vehicle.

[\[2\]](#) 7 U.S.C. § 1 *et seq.* (2000).