

**CFTC Letter No. 02-78**

**June 17, 2002**

**Exemption**

**Division of Trading and Markets**

Mr. X  
XX, LLC  
XXX  
XXX

Dear Mr. X:

This is in response to your letter dated May 22, 2002 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”), requesting an extension of time until July 1, 2002 to file the December 31, 2001 Annual Report for Y, Ltd., (the “Pool”). The request is filed on behalf of X, LLC, the commodity pool operator (“CPO”) for the Pool. The CPO has claimed an extension under Commission Rule 4.22(f)(2)<sup>[1]</sup> to file the Pools’ Annual Report by May 30 (the “Extended Date”), and is now requesting an additional extension of time, until July 31, 2002, to file the Pool’s fiscal year 2001 report.

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.

In support of your request, you state that the Pool has investments in one or more collective investment vehicles. KPMG, the independent public accounting firm selected to prepare the Pool’s financial statements, has stated that additional information from these underlying collective investment vehicles, some of which are offshore pools, is necessary in order to issue the 2001 financial statements for the Pools. The information specified cannot be obtained in sufficient time for the Annual Report to be prepared and distributed before extended date. The letter from KPMG also 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

Division staff is cognizant of the benefits of providing an audited financial report. However, these benefits must be weighed against the need for pool participants to obtain financial information in a timely manner so that they may make informed investment decisions. Delaying delivery of an annual report until July 31, 2002 outweighs the advantage of having the annual report certified. Therefore, we are denying the relief as requested due to the need for the dissemination of timely information and are

requiring that X, LLC file an unaudited report for the period January 1, 2001 through December 31, 2001, by June 30, 2002. The CPO may, if it chooses, distribute a certified annual report for the period at any time.

This letter, and the denial herein, is based on the representations that have been made to the Division. Any different, changed or omitted facts or conditions might result in a different conclusion. 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

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[\[1\]](#) 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.