

CFTC Letter No. 02-85
July 11, 2002
Interpretation
Division of Trading and Markets

Re: Request for Exemption from Rules 4.7(b)(2) and 4.7(b)(3)

Dear :

This is in response to your letter dated June 17, 2002, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"),^[1] as supplemented by e-mails dated July 8 and July 9, 2002, and telephone conversations with Division staff. By your correspondence, you request that "X" & "Y", each a registered commodity pool operator ("CPO") and a co-CPO of the "Master Fund", be granted an exemption from the periodic and annual reporting requirements of Rule 4.22, as modified by Rules 4.7(b)(2) and 4.7(b)(3).^[2]

Based upon your representations, we understand the facts to be as follows. In addition to the Master Fund, "X" and "Y" serve as the co-CPOs of the "Feeder Fund". The Master Fund has as its only participant the Feeder Fund. "X" has previously claimed relief under Rule 4.7 with respect to both the Master Fund and the Feeder Fund.

Rules 4.7(b)(2) and 4.7(b)(3) require that a CPO of a pool operated under Rule 4.7 provide participants with periodic and annual reports, as set forth in the Rules. Therefore, absent the requested exemption, "X" and "Y", as the co-CPOs of the Master Fund, would be required to provide periodic and annual reports to themselves as the CPOs of the Feeder Fund.

Based upon the representations contained in your letter, the Division believes that granting the requested exemption would not be contrary to the public interest and the purposes of Rules 4.7(b)(2), 4.7(b)(3), and 4.22.^[3] Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" and "Y" from the periodic and annual reporting requirements of Rules 4.7(b)(2), 4.7(b)(3), and 4.22 in connection with their operation of the Master Fund. This relief is subject to the conditions that: (i) "X" and "Y" remain the co-CPOs of the Master Fund and the Feeder Fund; (ii) participation in the Master Fund is limited to the Feeder Fund; and (iii) the annual reports of the Feeder Fund contain financial statements that include, among other information, the fees associated with the operation of the Master Fund expressed in dollars and a detailed schedule of investments made by the Master Fund.^[4]

The exemption granted by this letter does not excuse "X" or "Y" from compliance with any other applicable requirements contained in the Commodity Exchange Act (the "Act")^[5] or the Commission's regulations issued thereunder. For example, "X" and "Y" remain subject to all antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18,

and 19 of the regulations and to all other applicable provisions of Part 4. Moreover, this letter is applicable to “X” and “Y” solely in connection with their operation of the Master Fund.

This letter, and the exemption granted herein, is based upon 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 or activities of “X”, “Y”, the Master Fund, or the Feeder Fund change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe
Director

^[1] As of July 1, 2002, a reorganization of Commission staff became effective. The responsibility for addressing requests for interpretative, no-action, and exemptive letters (including letters such as your June 17, 2002, letter) is now with the Division of Clearing and Intermediary Oversight. Accordingly, for purposes of this letter, the term “Division” includes the Division of Clearing and Intermediary Oversight and its predecessor, the Division of Trading and Markets, as the context requires.

^[2] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

^[3] See, CFTC Interpretative Letter No. 01-86, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,691 (Nov. 21, 2001).

^[4] See, letter from John C. Lawton, Acting Director, Division of Trading and Markets, to all CPOs (February 1, 2002) (</files/tm/tmcpoannualreport2001.pdf>) (stating that "detailed income, fee and liquidity information for material investee pools and in total for all investee pools [is] 'material information,' " required to be disclosed in a pool's annual report, and further stating that, "the schedule of investments at the investor pool level should contain the details of the investments carried by the investee pool. A schedule of investments at the investor pool level which simply lists the name of the investee pool is not sufficient.").

^[5] 7 U.S.C. § 1 *et seq.* (2000).