

CFTC Letter No. 02-93

August 5, 2002

Exemption

Division of Clearing and Intermediary Oversight

X
XX
XXX
XXXX
XXXXX

Dear X:

This is in response to your letters dated July 15 and July 29, 2002 to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), requesting exemptive relief from the requirement of Rule 4.22(d)^[1] that the financial statements prepared for the Annual Report be certified by an independent public accountant. The request is filed on behalf of XX, the commodity pool operator (“CPO”) for Y, and YY (the “Pools”).

Rule 4.22(c) requires each registered CPO to file an Annual Report with the Commission and distribute copies to 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 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. You request exemption from filing audited financial reports for 2001 due to the fact that the pools did not begin trading until November 2001 and have only a small number of participants.

Based on the representations you have submitted in support of your request, it appears that the Pools commenced trading commodity interests in November 2001. As of December 31, 2001, Y, had four participants. The YY, also began trading in November 2001 and, as of December 31, 2001, and had only one investor, that was the Y, and no individual investors. You have submitted statements in support of this exemption from all of the participants in the two pools. You have also submitted unaudited statements for November and December 2001, the entire operating history of the Pools. You further state that if the exemption is granted, a certified annual report covering the 14 month period from November 1, 2001, through December 31, 2002 will be issued to all participants of each pool and filed with the Commission.

In light of the representations made in your letter, in particular those relating to the small number of

participants in the Pools, 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 relief from the certification requirement of Rule 4.22(d) for the Pools' fiscal year ending December 31, 2001.

The relief granted in this letter is conditioned on the following: First, the CPO must distribute unaudited Annual Reports for the Pools that otherwise comply with Rules 4.22(c) and (d). The unaudited Annual Reports should be filed with the Commission and National Futures Association within 90 calendar days of the end of the pools' fiscal year (which the funds have already provided). Second, the CPO must file, on behalf of the Pools, certified financial reports for fiscal year 2002, which cover the 14 month- period from November 2001 through December 31, 2002.

This letter in no way shall excuse XX or Y, and YY from 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 Pools 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).

[2] 7 U.S.C. § 1 *et seq.* (2000).