

CFTC Letter No. 02-95

August 13, 2002

Exemption

Division of Clearing and Intermediary Oversight

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XXXX

Dear X:

This is in response to your correspondence dated July 30, 2002 filed with Division of Clearing and Intermediary Oversight (“Division”) staff regarding Y, the commodity pool operator (“CPO”) for YY and YYY (the “Pools”). You request exemptive relief from the timing requirement of Rule 4.7 to permit the CPO to distribute to the Pools’ investors the quarterly report for the Pools within 45 days after the end of each reporting period, rather than 30 days after quarter-end as required by Rule 4.7(b)(2).

In support of your request you state, among other things, that the Pools are organized as “fund of funds” with investments in one or more collective investment vehicles. The CPO is unable to provide participants with these reports within 30 calendar days after the end of the quarter due to reasons beyond its control. Specifically, the Pools are invested in from four to six underlying funds. The financial information received from some of these underlying funds does not arrive early enough to allow the CPO time to prepare and distribute quarterly reports within 30 days after the end of each quarter. Despite the best efforts of the CPO and underlying fund’s administrators to obtain information by phone, fax or email, the actual quarterly financial information cannot be obtained quickly enough to meet the 30-day requirement. Further, you have indicated that the Pools distribute monthly valuation reports to the participants approximately 30 to 45 days after the reporting month end. The CPO accepts estimated valuations for these monthly valuations. However, the quarter-end NAV requires a precise valuation from each underlying fund administer as this information is used for subscription and redemption activity. Therefore, you are requesting permission for the CPO to distribute the quarterly reports for the Pools to its participants within 45 days after the end of the quarter.

Based upon the information submitted in support of this request and the authority delegated by Rule 140.93(a)(1), the Division hereby grants your request. This exemption is conditioned upon the CPO informing current and prospective investors in the Pools that the Pools’ quarterly reports will be distributed and filed within 45 calendar days of the end of each quarter. Further, it is conditioned upon the Pools continuing to provide monthly valuation reports to the participants approximately 30 to 45 days after the reporting month end.

This exemption is applicable to Y solely with respect to YY and YYY. This exemption applies solely with respect to the extension of time to file quarterly reports and shall not excuse Y or YY and YYY from compliance with any other applicable requirements or prohibitions contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder. You must notify us immediately in the event that the activities or operations of the Pools change in any material respect from those as represented to us.

This letter is based on the representation you have made to us. Any different, changed or omitted facts or conditions might cause us to reach a different conclusion. If you have any questions regarding this letter, please contact me or Don Bass, 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