

CFTC letter No. 03-11
January 22, 2003
Interpretation
Division of Clearing and Intermediary Oversight

Re: Request for exemption from Rule 4.22 periodic and annual reporting requirements

Dear :

This is in response to your letter dated November 26, 2002, to the Division of Clearing and Intermediary Oversight^[1] (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request on behalf of "U" and "V", each a registered commodity pool operator ("CPO")^[2] that the Division extend the exemption from the periodic reporting requirements of Rule 4.22^[3] issued by letters dated October 22, 1998, November 15, 1999, and May 6, 2002 (the "Prior Letters")^[4] to "U" and "V", in connection with their operation of certain commodity pools (the "Sub Funds"), to a certain other commodity pool for which "U" and "V" will serve as co-CPOs. Specifically, the other commodity pool is "W", which is also a Sub Fund.

The exemptions granted by the Prior Letters recognized that all of the participants in the Sub Funds were commodity pools ("Feeder Funds") operated by "U" and "V". The Division thus reasoned that to require "U" and "V" to provide financial reports to the participants in the Sub Funds would be, practically speaking, to require "U" and "V", as the CPOs of the Sub Funds, to provide financial reports to themselves as the CPOs of the Feeder Funds. Accordingly, by the Prior Letters, the Division exempted "U" and "V" from the requirements of Rule 4.22 with respect to the operation of the Sub Funds.

In support of your current request you represent, among other things, that: (1) "U" and "V" are the CPOs of "W"; (2) the only participants in "W" are certain Feeder Funds,^[5] and (3) investors are not permitted to invest directly in "W" or any other Sub Funds.

Based upon the representations contained in your correspondence, the Division believes that granting your request would not be contrary to the public interest and the purposes of Rule 4.22. Accordingly, by the authority delegated to it under Rule 140.93(a), the Division hereby: (1) exempts "U" and "V" from the periodic and annual reporting requirements of Rule 4.22 in connection with the operation of "W"; and (2) confirms that the exemption granted by the Prior Letters continues to apply with respect to the operation of the Sub Funds. This relief is subject to the conditions that: (1) "U" and "V" remain the Co-CPOs of "W"; (2) participation in "W" is limited to any fund for which solely "U" and "V" are the CPOs; and (3) the annual reports of the feeder funds operated by "U" and "V" contain financial statements that include, among other information, the fees associated with the operation of the Sub Funds in which they invest, expressed in dollars, and a detailed schedule of investments made by each

such fund.^[6]

This letter does not excuse “U” or “V” from compliance with any other applicable requirements contained in the Commodity Exchange Act (the “Act”),^[7] or in the Commission’s regulations issued thereunder. For example, each remains subject to all relevant 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 Commission’s regulations and to all other applicable provisions of Part 4. Finally, this letter is applicable to “U” and “V” solely in connection with the operation of “W”.

This letter, and the exemption provided herein, are based upon the representations you have made to the Division. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify the Division immediately in the event the activities or operations of “U”, “V” or “W” change in any material way from those represented herein.

If you have any questions concerning this correspondence, please contact Peter Sanchez, an attorney on my staff, at (202) 418-5432.

Very truly yours

Jane Kang Thorpe
Director

^[1] As of July 1, 2002, a reorganization of Commission staff became effective. 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] Each is also registered with the Commission as a commodity trading advisor (“CTA”).

^[3] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

^[4] CFTC Staff Letters No. 99-06, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,544 (October 22, 1998); 99-51 [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,949 (November 16, 1999); and 02-57 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,042, respectively.

^[5] Specifically, these are “X” and “Y”, for each of which “U” and “V” are the Co-CPOs.

^[6] See, letter from John C. Lawton, Acting Director, Division of Trading and Markets, to all CPOs (February 1, 2002) (<http://www.cftc.gov/files/tm/tmcpoannualreport2001.pdf>) (stating that “detailed

income, fee and liquidity information for material investee pools and in total for all investee pools [are] ‘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.”)

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