

CFTC letter No. 05-01
January 5, 2005
Exemption
Division of Clearing and Intermediary Oversight

Mr. Thomas W. Sexton
Vice President and General Counsel
National Futures Association
200 W. Madison Street
Chicago, IL 60606

RE: Relief from Commission Rule 4.22

Dear Mr. Sexton:

National Futures Association (“NFA”) plans to implement a voluntary pilot program for commodity pool operators (“CPOs”) to file electronically with NFA their commodity pool annual reports commencing with the reports for the year ending December 31, 2004. In your letter dated November 29, 2004, you requested, on behalf of CPOs, that the Commodity Futures Trading Commission (“Commission”) provide relief to CPOs who wish to participate in the pilot program from the requirement of Commission Rule 4.22(j)^[1] that the oath or affirmation in the report filed with a registered futures association contain a manual signature.

Commission Rule 4.22(c) requires that a registered CPO file with NFA an annual report for each pool that it operates within 90 days of the end of the pool’s fiscal year or the permanent cessation of trading. Pursuant to Rule 4.22(h), each such report, including those provided under Rule 4.7 and Rule 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the person making the oath, the information contained in the document is accurate and complete. The oath or affirmation must be made by a person duly authorized to bind the pool operator, in accordance with Rule 4.22(h)(3).

Currently all such filings with NFA are made in paper form.^[2] NFA plans to offer CPOs the ability to file commodity pool annual reports electronically through NFA’s web-based EasyFile system, which is currently used by introducing brokers (“IBs”) for filing their financial reports.^[3] CPOs will be able to access EasyFile through the security manager process in NFA’s On-Line Registration System.

The electronic filing system for CPOs will have three components. First, the CPO must submit a PDF version of the full annual report, including the balance sheet, income statement, schedule of investments, and the independent auditor’s opinion, if applicable.^[4] Second, the CPO must directly enter approximately 30 key financial balances into a standardized form. These balances will be obtained from the balance sheet, income statement and statement of changes in net asset value included in the pool’s

PDF filing, and the system will also include on-line instructions to help CPOs determine which amounts to include in the electronic schedule.

Third, when the CPO submits the electronic filing, the system will prompt the CPO to read and agree to an electronic oath or affirmation.^[5] This oath or affirmation will cover both the information included in the PDF annual report and the financial data entered in the schedule of key financial balances.

CPOs will be expected to maintain records indicating where the key financial balances directly entered into the EasyFile schedule appear in the complete annual report. In addition, CPOs will continue to be required to maintain a manually signed copy of the oath or affirmation in their records, as specified in Rule 4.22(j)(2), and to provide such oath or affirmation to NFA upon request.

Based upon the foregoing, it appears that granting the requested exemption would not be contrary to the public interest or the purposes of Rule 4.22. Accordingly, by the authority delegated under Rule 140.93 (a)(1), the Division exempts CPOs participating in NFA's pilot program for electronic filing from the requirement of Rule 4.22(j) that the oath or affirmation in the commodity pool annual reports filed with a registered futures association contain a manual signature. This exemption is, however, subject to the CPO's compliance with the following conditions: 1) the CPO is participating in NFA's pilot program for electronic filing of pool annual reports; 2) the CPO must provide all information specified by NFA as constituting a complete electronic annual report filing under the pilot program; 3) the CPO must maintain all required records relating to the annual report, including, but not limited to, a manually signed copy of the report, including the oath or affirmation, in accordance with Rule 4.22(j)(2), and records indicating the location in the annual report of each key financial balance entered into the EasyFile schedule; and 4) the CPO's oath or affirmation regarding the annual report is made by a person duly authorized to bind the pool operator, and covers the complete annual report as well as the schedule of key financial balances.

This letter, and the relief granted herein, is based upon the representations that have been made to the Division and are subject to compliance with the conditions set forth above. Any different, changed, or omitted facts or conditions might render the exemption void. NFA must notify the Division immediately in the event that the operation of its electronic filing system for commodity pool annual reports changes in any material way from those represented to us.

This letter exempts CPOs solely from the requirement that the annual report filed with a registered futures association contain a manually signed oath or affirmation. It does not excuse CPOs from compliance with any other aspect of the Commission's reporting requirements, nor does it excuse CPOs from compliance with any other applicable requirements contained in the Commodity Exchange Act or the Commission's regulations issued thereunder.

If you have any questions concerning this correspondence, please contact Eileen R. Chotiner of my staff, at (202) 418-5467.

Very truly yours,

James L. Carley
Director

[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2004).

[2] Although Commission Rule 4.22(i) permits CPOs to deliver annual reports to participants by electronic means, subject to certain conditions specified in the rule, the requirement of Rule 4.22(j) that the report filed with a registered futures association contain a manually signed oath or affirmation has precluded CPOs from filing electronically with NFA.

[3] The Commission approved NFA's rules adopting EasyFile for IBs on June 28, 2004.

[4] CPOs operating pools offered solely to qualified eligible participants ("QEPs") pursuant to Rule 4.7 may claim relief from the certification requirement of Rule 4.22(d) with respect to the exempt pools' financial statements. *See* Rule 4.7(b)(3).

[5] Through the security manager process, only persons who are duly authorized to bind the pool operator, in accordance with Rule 4.22(h)(3), will be granted the ability to submit the financial statements, although other persons may be provided with the ability to enter the key financial balances.