

CFTC Letter No. 97-35**April 21, 1997****Division of Trading & Markets**

Re: Rule 4.22 -- Request for Extension of Time in which to File Quarterly Reports for Two Funds of Funds

Dear :

This is in response to your letter dated March 25, 1997 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your letter dated April 7, 1997. By your correspondence, you request on behalf of X , a registered commodity pool operator (CPO), a permanent extension of time in which to comply with the quarterly report requirements of Commission Rule 4.7(a)(2)(ii)¹ in connection with the operation of two commodity pools for which X serves as CPO, Y and Z (collectively, the Funds).

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. Each Fund is organized as a fund of funds which invests its assets with various managers and other investment funds (the Sub-funds). Both Funds allow redemption of partnership interests on the last day of the fiscal year and, with the consent of the Managing Partner, on the last day of any calendar quarter, provided the investor furnishes written notice of the redemption 90 days prior to the withdrawal date.

You represent that X cannot complete the quarter-end reports for the Funds required under Rule 4.7(a)(2)(ii) until it has received quarter-end information from the Sub-funds. The quarter-end information from the Sub-funds does not arrive early enough to allow X to prepare and distribute the quarter-end reports for the Funds within the 30-day period specified in Rule 4.7(a)(2)(ii). Accordingly, X is unable to make timely filings of the Funds quarterly reports due to circumstances beyond its control.

In light of the foregoing, you request relief from the timing requirement of Rule 4.7 to permit X to distribute to the Funds investors the quarterly reports for the Funds within 45 days after the end of each reporting period, rather than 30 days after quarter-end as required by Rule 4.7(a)(2)(ii). In support of your request, you state that X will make every effort to distribute the quarterly reports as quickly as possible.

Based upon your representations and pursuant to authority delegated by Rule 140.93(a)(1), the

Division hereby grants your request with respect to quarterly reports, to the extent of permitting distribution and filing within 45 days after the end of each reporting period, subject to the condition that current and prospective investors in the Funds are informed of the fact that receipt of the Funds' quarterly reports will not occur within the thirty-day time period specified in Commission Rule 4.7(a)(2)(ii).²

This letter is based upon the representations made to us, is subject to compliance with the condition set forth above, and is applicable to X solely with respect to the Funds. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the activities or operations of the Funds, including their investment structure, differ in any respect from those as represented to us.³

This letter does not excuse X from compliance with any other applicable requirements contained in the Commodity Exchange Act⁴ (the Act) or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 40 of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all otherwise applicable provisions of Part 4.

Finally, the relief granted by this letter is prospective only and does not in any way limit the Commission's ability to proceed against X for any past violations of the Act or the Commission's regulations promulgated thereunder, if the Commission determines that such action is appropriate. If you have any questions concerning this correspondence, please contact me or Teresa Dondlinger Trissell, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996). Rule 4.7(a)(2)(ii) requires that the CPO distribute to each pool participant a quarterly report containing the financial information specified by the rule within 30 calendar days after the end of the reporting period.

² The Division advises, however, that the Commission has under review the subject of the timeframe requirements for required reports under Rule 4.7. Any relief granted herein is subject to such further determinations as the Commission may make on this subject.

³ For example, in the event that any of the Funds ceases to invest in Sub-funds or to satisfy the requirements of Rule 4.7, the relief granted herein will no longer be available with respect to that Fund.

⁴ The Act is found at 7 U.S.C. §§ 1 et seq. (1994).