

CFTC Letter No. 99-16**April 5, 1999****Exemption****Division of Trading & Markets**

RE: Request for exemption from the 1998 year-end audit and reporting requirements pursuant to Regulation 4.22 of the Commodity Exchange Act, as amended (the "Act")

Dear:

This is in response to your letters dated March 18, 1999 and March 31, 1999, in which you request on behalf of "A", an exemption from the requirements of Rules 4.7(a)(2)(ii) and (iii) to provide an Account Statement for the fourth quarter of 1998, and 4.22(c) and (d) that the commodity pool operator ("CPO") distribute and file a certified Annual Report for the pool's fiscal year ending December 31, 1998. Instead, you propose to provide participants with an unaudited annual report for 1998 that otherwise complies with Rule 4.22(c) and to include this information in the in the first quarter Annual Statement and the Annual Report for the period ending December 31, 1999.

In support of your request, in your letter dated March 18, 1999, you state that: the pool commenced operations on December 29, 1998; no commodity interests (as defined in Regulation § 4.10(a)) were acquired or traded by "A" in 1998; and investors in "A" understood that the requisite quarterly Account Statements and Annual Reports would begin with the 1999 fiscal year. You contend that, in light of the above facts, an audit by a certified independent public accountant would add only limited value to the presentation of the Company's financial statements.

In your letter dated March 31, 1999, upon staff's request for additional information, you added that the pool currently has seventy-five (75) investors and provided the Limited Liability Company Agreement, which demonstrates that the investors were informed and agreed that audits and reports were to begin with the 1999 fiscal year.

Rules 4.22(c) and (d) require each registered CPO to file a certified Annual Report with the Commission and distribute copies to the pool participants within 90 calendar days of the end of the pool's fiscal year. 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. Based upon the

representations made in your letter, and in particular, the extremely short period (3 days) that the company was in operation during 1998, the Division believes that granting the request on behalf of "A" 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), "A" is hereby granted relief from the certification requirement of Rule 4.22(d) for the pool's fiscal year ending December 31, 1998. This relief is conditioned on the company's undertaking to include data from 1998 in its 1999 audit report.

This letter applies solely with respect to the exemption from compliance with the certification requirement of Section 4.22(d) for the fiscal year ending December 31, 1998 and this in no way shall excuse "A" from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder, including but not limited to the requirements of Sections 4.22(a) and (b) regarding the distribution of quarterly or monthly Account Statements of the pool.

This letter, and the relief contained herein, are based upon the representations provided to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event that the operations or activities of the company change in any material respect from those represented to us.

If you have any questions concerning this letter, please contact me at (202) 418-5463 or Bill Yowell, Futures Trading Specialist, at (202) 418-5454.

Sincerely,
Kevin P. Walek
Assistant Director

cc: Anthony Gialanella

National Futures Association