

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK, NY 10036-6689

00-34
③

COMMITTEE ON FUTURES REGULATION

RECEIVED
C.F.T.C.

SUSAN C. ERVIN
CHAIR
DECHERT
1775 EYE STREET NW
WASHINGTON DC 20006
(202) 261-3325
FAX: (202) 261-3333
servin@dechert.com

'00 DEC 7 10:58 AM
OFFICE OF THE CLERK
RITA M. MOLESWORTH
SECRETARY
WILLKIE FARR & GALLAGHER
787 SEVENTH AVENUE
NEW YORK, NY 10019
(212) 728-9221
FAX: (212) 728-9221
rmolesworth@willkie.com

'00 DEC 8 AM 9 41

RECEIVED
C.F.T.C.

COMMENT

December 7, 2000

Jean A. Webb, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Revisions to Rule 4.22 – Distribution of Annual Reports by Commodity Pool Operators

Dear Ms. Webb:

The Committee on Futures Regulation (the "Committee") of this Association respectfully submits this comment letter to the Commodity Futures Trading Commission (the "Commission" or "CFTC") in response to its request for comments concerning its proposed amendments to Rule 4.22 (the "Proposed Amendments"), which were published in the Federal Register on November 7, 2000 (65 Fed. Reg. 66663). The Association is an organization of approximately 21,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable in the field of the regulation of futures and other derivative instruments and has a history of publishing reports analyzing critical regulatory issues which affect the futures industry and related activities.

The Committee believes the Proposed Amendments will be very helpful in addressing the frequent situations in which a registered commodity pool operator ("CPO") is unable to distribute to pool participants a certified Annual Report for a pool within 90 days of the close of the pool's fiscal year, as required under the Commission's Rule 4.22, because the CPO cannot obtain the information necessary for the pool's independent public accountants to finish auditing the pool's financial statements by the time specified in Rule 4.22. This problem is particularly acute for pools which invest in other pools. While the Committee supports the Proposed Amendments, it has three comments concerning desirable refinements in the Proposed Amendments.

First, the Committee believes that a pool that has filed a notice of claim of an extension of time to file an Annual Report should not be required to file statements in subsequent years making the same claims. The Committee understands that Commission staff no-action letters granting the relief which the Proposed Amendments will provide have generally required only that CPOs notify the Commission if circumstances change. The Committee believes that this approach should be incorporated in the Proposed Amendments. Requiring an additional claim each year would place an unnecessary burden on CPOs and would detract from the Commission's intention to ease filing requirements for CPOs in the circumstances addressed by the Proposed Amendments.

Second, the Committee believes that the maximum extension of time that a pool may claim to file its Annual Report should be at least 120 calendar days, rather than 60 calendar days, beyond the end of the period specified in Rule 4.22. The Commission proposes that if a CPO qualifies for filing a claim of extension of time to distribute an Annual Report for a pool, the CPO must indicate the date by which it intends to file and distribute the Annual Report, which must be no more than 150 calendar days after the end of the pool's fiscal year (i.e., a maximum extension of 60 days). The Commission states that Commission staff have reviewed past requests and found that, in general, the requested extension period ranged from 30 to 60 days. However, in the experience of members of the Committee, there have been a number of instances in which a CPO needed to request extensions beyond 60 days for the same reasons that the Proposed Revisions are designed to address. The Committee does not believe that pools for which longer extensions are needed should be unable to benefit from the Proposed Revisions. However, in the experience of members of the Committee, extensions are seldom needed for more than 120 days (i.e., 210 calendar days after the end of the pool's fiscal year). The Committee therefore suggests that the Commission consider adopting this 120-day cutoff instead of the 60-day proposed cutoff.

Third, the Commission suggests that the CFTC clarify that a CPO's claim for an extension for a pool is effective upon receipt by the CFTC of the claim. The Committee believes that this was the Commission's intent, but that intent is not stated explicitly in the Proposed Amendments.

The Committee appreciates the opportunity to comment on the Proposed Amendments and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised in this letter.

Sincerely yours,

Susan C. Ervin

Association of the Bar of the City of New York

Committee on Futures Regulation

Susan C. Ervin, Chair
Rita M. Molesworth, Secretary*

Roger Anderson
Conrad Bahlke**
Ralph Berman
Scott Bernstein
Christopher Bowen
Henry Bresgstein
Steven Bunkin
Guy C. Dempsey
Gary DeWaal
Kathryn Dillon
Shirin Emami
Michael Emerson
Garret I. Filler
Michael Griffin*
Joyce M. Hansen
Douglas Harris
James Hill
Robert Klein

Dennis Klejna
Norma Levy
Robert McLaughlin
Richard Miller*
Charles Mills*
Ronald Oppenheimer
Paul Pantano
Richard Rosen
Josh Rovine*
Michael Sackheim
Robert P. Schlossberg*
Edmund R. Schroeder
Joseph Scordato
Stephen F. Selig*
Lore Steinhauser
Rita Stephanz
Lauren Teigland
M. Holland West*

** Chair of Subcommittee who drafted this letter of comments.

* Member of Subcommittee who drafted this letter of comments.

Adjunct Members

Lenel Hickson, Jr. - abstained from participation in this letter of comments
Cindy Ma
C. Robert Paul - abstained from participation in this letter of comments
Alan Rechtschaffen
Rebecca Simmons