



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Kevin P. Walek
Assistant Director

CFTC Letter No. 10-09
Exemption
February 25, 2010
Division of Clearing and Intermediary Oversight

Re: "X" a registered commodity pool operator for "Y"

Dear :

This is in response to your letter dated January 29, 2010, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"). You request on behalf of "X", the commodity pool operator ("CPO") for "Y" (the "Pool"), an exemption from the requirements of Commission Regulation 4.22(c)¹ that the CPO distribute and file a certified Annual Report for the Pool's fiscal year ending December 31, 2009. Additionally, the CPO requests relief from the distribution and filing of an uncertified Annual Report and relief from the requirement that financial information for fiscal year 2009 be included in the Annual Report for fiscal year 2010.

Based upon the representations made in your correspondence, we understand the facts to be as follows. You request, on behalf of the CPO and Pool, an exemption from the requirements of Regulation 4.22(c) that the CPO distribute and file a certified Annual Report for the Pool's fiscal year ending December 31, 2009. Additionally, the CPO requests relief from the distribution and filing of an uncertified Annual Report and relief from the requirement that financial information for fiscal year 2009 be included in the Annual Report for fiscal year 2010. In support of your request, you state that the Pool has 2 participants: the CPO and the Pool's CTA, which are under common ownership. The Pool began trading in January 2004 and has temporarily ceased trading since June 2008, and the total present value of the Pool is \$1X,XXX. You further attached waivers executed by the principal of the pool participants evidencing consent to the relief requested by the CPO.

Regulations 4.22(c) and (d) require each registered CPO 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 Regulation 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 letters, the Division believes that granting the request for relief from the certification and distribution requirements on behalf of "Y" is neither contrary to the purposes of

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (2009).

Rule 4.22 nor to the public interest. Accordingly, “Y” is hereby granted relief from the certification and distribution requirements of Regulations 4.22(c) and (d) for the Pool's fiscal year ending December 31, 2009.

The Division has determined, however, that it is not in the public interest to grant the relief requested with respect to the filing of the uncertified Annual Report and the inclusion of financial information regarding fiscal year 2009 in the Annual Report prepared for fiscal year 2010. Therefore, the Division is denying the request for relief from the filing requirement for the Pool's 2009 Annual Report and from the requirement that financial information for fiscal year 2009 be included in the Annual Report for fiscal year 2010.

The relief granted in this letter is conditioned on [1] the filing of an unaudited annual report for 2009 that otherwise complies with 4.22(c) and (d) with NFA, and [2] the future distribution and filing on behalf of “Y” of a certified Annual Report for the period from January 1, 2009 through December 31, 2010 in accordance with Rules 4.22(c) and (d). This in no way shall excuse “X” or “Y” from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder, including but not limited to Part 4 of the Regulations.

This letter, and the relief contained herein, is based upon the representations provided to us. Any different, changed or omitted material facts or circumstances might render this letter void.

If you have any questions concerning this letter, please contact me at (202) 418-5463, or Amanda Olear, an attorney on my staff, at 202-418-5283.

Very truly yours,

Kevin P. Walek

cc: Regina Thoele, Compliance
National Futures Association