CFTC Letter No. 97-36

April 21, 1997

Division of Trading & Markets

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

Dear:

This is in response to your letter dated March 31, 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 V, a registered commodity pool operator (CPO), a permanent extension of time in which to comply with the annual report requirements of Commission Rule 4.7(a)(2)(iii)1 in connection with the operation of four commodity pools for which V serves as CPO (collectively, the Funds), as discussed below.

Rule 4.7(a)(2)(iii) requires that the CPO file with the Commission and the National Futures Association (NFA) and distribute to each pool participant an annual report containing the financial information specified by the rule within 90 calendar days after the end of the pool s fiscal year.

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 in other investment funds (the Sub-funds). You have provided the following information regarding each Fund s withdrawal terms:

- W Allows redemptions on a monthly basis.
- X Allows redemptions on a quarterly basis.
- Y Allows redemptions on a quarterly basis.
- Z Allows redemptions on a quarterly basis.

Each Fund has the calendar year as its fiscal year, such that the annual report will be for the period ending December 31 of the report year. With respect to the annual report required under Rule 4.7 (a)(2)(iii), you represent that because each Fund operates as a fund of funds, V must rely on the Sub-Funds to provide audited financial statements for the underlying vehicles before it is able to prepare and finalize the Funds audited financial statements. V is unable to obtain the audited

financial information from each underlying investment vehicle in sufficient time to meet the March 31 deadline for filing the Funds audited financial reports. Accordingly, you represent that the inability of V to make timely filings of the Funds annual reports is due to circumstances beyond its control.

In light of the foregoing, you request relief from the timing requirement of Rule 4.7 to permit V to distribute to the Funds investors and file with the Commission and the NFA the annual reports for the Funds within 135 days after the end of the Funds calendar year (on May 15), rather than 90 days after year-end as specified in Rule 4.7(a)(2)(iii). In support of your request, you state that investors in the Funds receive monthly statements within 30 days of each month s end and that such information is sufficient for investors to make informed decisions regarding their investments in their respective Fund, including whether to exercise redemption rights with respect to such investments, notwithstanding that receipt of the annual reports for the Funds may be delayed for as much as 135 days after the Funds fiscal year-end.

Based upon your representations, and pursuant to authority delegated by Rule 140.93(a)(1), the Division hereby grants your request with respect to annual reports, to the extent of permitting distribution and filing of annual reports within 135 days after the end of each Fund's calendar year, subject to the condition that current and prospective investors of the Funds are informed of the fact that receipt of the Funds annual reports will not occur within the 90-day time period specified in Commission Rule 4.7(a)(2)(iii).

This letter is based upon the representations made to us, is subject to compliance with the condition set forth above, and is applicable to V 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 operation of the Funds, including their investment structure, differ in any respect from those as represented to us. $\frac{3}{2}$

This letter does not excuse V 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 4o 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.

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).
- 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).