CFTC Letter No. 00-72

May 30, 2000

Exemption

Division of Trading & Markets

Re: Request for exemption from the requirement of Rule 4.22(d) that the Annual Report of a commodity pool include certified financial statements

---

Dear :

This is in response to your letter dated April 3, 2000, which was received by this office on April 17, 2000, in which you request on behalf of XX, ("XX") exemption from the requirement of Rule 4.22(d)[1] that the financial statements contained in a commodity pool annual report be certified. You are requesting this exemption on behalf of XX, the commodity pool operator ("CPO") for Y ("the Pool"), with respect to the Annual Reports that Rule 4.22(c) specifies the CPO must distribute to participants, and file with the Commission, as of December 31, 1999 and December 31, 2000.

Rule 4.22(c) requires each registered CPO to file an 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 or the permanent cessation of trading, whichever is earlier. Under Rule 4.22(d), the financial statements in the annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. 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 correspondence, we understand the relevant facts to be as follows. The NFA registration identification number for the Pool is #; and the registration identification number for XX, the General Partner of the Pool, is #. The certified annual reports will present performance from September 1, 1999 through December 31, 1999 and from December 31, 1999 through January 31, 2000. During January 2000, the Pool merged with the W, and as of December 31, 1999, there were 5 participants in the Pool. As of January 31, 2000, there were no participants in the Pool. Each participant has furnished a supporting statement. The Fund commenced operations on September 1, 1999. The total amounts of gross capital contributions to and withdrawals from the Fund as of March 12, 2000 are $225,424.00 and $225, 250.65, respectively. The Net Asset of the Pool as of February 29, 2000 is $0. A copy of the most recent month-end account statement distributed to the Pool participants is enclosed. XX will comply with all of the other requirements pertaining to the Annual Report, as set forth in Rules 4.22 (c)(1) through (5).

Based upon the representations made in your letter, the Division believes that granting the request to XX with respect to the Pool for the fiscal year ending December 31, 1999 and for the subsequent period ending upon the permanent cessation of trading of the Pool, 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) but subject to the conditions set forth below, XX is hereby granted relief from the certification requirement of Rule 4.22(d) with respect to the Annual Report required as of December 31, 1999 and for the period ending upon the permanent cessation of trading.

The relief granted in this letter is conditioned on the distribution of an unaudited Annual Report for 1999 and for the period ending upon the permanent cessation of trading that otherwise complies with Rules 4.22(c) and (d). Moreover, this letter applies solely with respect to exemption from compliance with the certification requirement of Section 4.22(d) for the fiscal year ending December 31, 1999 and for the period lending upon the permanent cessation of trading, and this exemption in no way shall excuse XX or the Pool from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder, including, but not limited to, the requirements of Rules 4.22(a) and (b) regarding the distribution of quarterly or monthly Account Statements of the pool.

This letter is based on the representations you have made to us. Any different, changed or omitted facts or conditions might cause us to reach a different conclusion. This letter represents the position of the Division of Trading and Markets only.

It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Bill Yowell, Futures Trading Specialist on my staff, at (202) 418-5454.

Very truly yours,

Kevin P. Walek
Assistant Director
(202) 418-5463

cc: Anthony Gialanella, Director of Compliance
National Futures Association

1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).