

CFTC Letter No. 01-05**January 30, 2001****Exemption****Division of Trading & Markets**

Dear:

This is in response to your correspondence dated January 4, 2001, and subsequent correspondence, in which you requested exemptive relief from the requirements of Commodity Futures Trading Commission ("CFTC") Rule 4.22. The request is filed on behalf of Y ("Y"), the commodity pool operator ("CPO") for YY (the "Pool"). You request an exemption from the requirement of Rule 4.22(d) that the financial statements prepared for the Annual Report be certified by an independent public accountant.

In support of your request, you state, among other things, that the pool, YY commenced operations on September 1, 1999. The Pool is comprised of six participants, including Y, the operating manager. All of the members of the Pool are Y, officers of Y, or their close relatives. The total amount of gross capital contributions to the Pool has been \$1,537,817 and the total amount of withdrawals has been \$279,000. The net asset value of the Pool as of November 30, 2000 was \$927,639. The Pool will not solicit any new participants who are not similarly associated, e.g., as principals of the CPO or as close relatives of the principals. You state that a certified audit would be significantly expensive relative to the Pool's assets and would cost the Pool's participants approximately one percent (1%) of the Pool's assets. You have submitted statements in support of this exemption from each of the six participants.

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, in particular the close relationships among the pool's participants, the Division believes that granting the request on behalf 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, the Pool is hereby granted relief from the certification requirement of Rule 4.22(d) for the Pool's fiscal year ending December 31, 2000.

The relief granted in this letter is conditioned on [1] the distribution of an unaudited Annual Report for each year for YY that otherwise complies with Rules 4.22(c)

and (d). The unaudited Annual Report should also be filed each year with the Commission and National Futures Association; and [2] prior to the CPO soliciting any new participants who are not similarly

associated, e.g., as principals of the CPO or as close relatives of the principals for the Pool, the CPO must file on behalf of the Pool, a certified financial report for the immediate prior calendar year. Further, as long as the Pool continues to do business without soliciting unaffiliated participants,¹ this relief shall continue to remain in effect and the CPO need not make the same claim for relief at the end of each year. This letter in no way shall excuse Y or YY from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder.

This letter is based on the representation you have made to us. Any different, changed or omitted facts or conditions might cause us to reach a different conclusion. If you have any questions regarding this letter, please contact me or Z. Patricia Ross, Futures Trading Specialist on my staff, at (202) 418-5469.

Very truly yours,

Kevin P. Walek
Assistant Director

cc: Jane Pfeiffer, Compliance
National Futures Association

¹ For purposes of this relief, new participants would include the CPO, any new persons that are properly registered as principals of the CPO, and family members of these persons.