

CFTC Letter No. 01-27

March 29, 2001

Exemption

Division of Trading and Markets

Dear:

This is in response to your letter dated March 26, 2001, in which you provided the additional information and materials required to support your January 15, 2001 request for exemptive relief from the requirements of Commodity Futures Trading Commission (“CFTC”) Rule 4.22.

In your request, filed on behalf of XX, the commodity pool operator (“CPO”) for XXX (the “Fund”), 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. Instead, you propose to:

- a) provide participants with an unaudited Annual Report for 2000 that otherwise complies with Rules 4.22(c) and (d);
- b) include this information in the Annual Report for the period ending December 31, 2001; and
- c) provide Fund participants with a certified Annual Report for the 14-month period ended December 31, 2001.

Rule 4.22(c) requires each registered CPO to file an Annual Report with the Commission and to distribute copies to the pool participants within 90 calendar days of the end of the pool’s fiscal year. Rule 4.22(d) requires that the financial statements in the Annual Report must be prepared in accordance with generally accepted accounting principles and 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.

Your request for an exemption from filing an audited financial report for 2000 is based upon the short time period (2 months) that would be included in the report and the substantial costs associated with an audited report. In support of your request you state, among other things, that the:

1. Fund received capital contributions and began operating on November 1, 2000;
2. Fund has eleven (11) participants;
3. net asset value of the Fund on December 31, 2000 was \$904,609; and
4. Fund has had no withdrawals to date.

You have also submitted: a) statements in support of this exemption from each of the eleven participants; b) an unaudited annual report for the period ended December 31, 2000; and c) the most recent (February 2001) month end account statement. Additionally, XX, the CPO, asserts that it will

comply with all of the other requirements pertaining to the Annual Report.

Based upon the representations made in your letter, as supplemented, the Division believes that granting the request on behalf of the CPO 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), the CPO is hereby granted relief from the certification requirement of Rules 4.22(d) for the pool's fiscal year ending December 31, 2000.

The relief granted in this letter is conditioned on the following: First, the CPO distributes to each participant an unaudited Annual Report for 2000 that otherwise complies with Rules 4.22(c) and (d). Second, the unaudited Annual Report is filed with the Commission and National Futures Association within 90 calendar days of the end of the pool's fiscal year. Third, the future filing on behalf of the Fund presents a certified Annual Report for the 14-month period November 1, 2000 through December 31, 2001 in accordance with Rules 4.22(c) and (d).

This letter applies solely with respect to the exemption from compliance with the certification requirement of Rule 4.22(d) for the fiscal year ending December 31, 2000 and this in no way shall excuse XX or XXX 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 Pfieffer, Compliance
National Futures Association

Bob Agnew
Kansas City Regional Office

Y, Managing Member
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