

CFTC Letter No. 01-34

April 4, 2001

Exemption

Division of Trading and Markets

Dear:

This is in response to your correspondence dated March 26, 2001, requesting that Y, the commodity pool operator (“CPO”) for YY, YYY, YYYY, YYYYY. (“the Pools”) be granted an extension of time to file its certified Annual Reports. You requested an extension until May 31, 2001.

You state that the Pools rely on the exemption under Rule 4.7. Pursuant to Rule 4.7, the CPO of an exempt pool must file financial statements within 90 calendar days after the end of the exempt pool’s fiscal year; however, those statements are not required to be certified by an independent public accountant. Most CPOs operating pools under the Rule 4.7 exemption nonetheless voluntarily include certified financial statements in their annual reports. The Commission does not wish to discourage this practice and therefore allows such CPOs to claim the relief provided in Rule 4.22(f) as if certification were required.^{[\[1\]](#)}

Rule 4.22(f)(1) allows a CPO to request an extension in the event that the CPO cannot distribute an Annual Report for a pool that it operates within 90 days after the end of the pools’ fiscal year without substantial undue hardship. Such request must include detailed supporting documentation to justify the need for the extension. The CPO must also provide a letter from the pool’s independent public accountant addressing certain questions specified in Rule 4.22(f)(1).

In support of your request you have included a statement from your auditor that each Pool has engaged the Z to provide certain administrative services to the Pools, including the maintenance of certain financial information. The Z has indicated that it has experienced delays in submitting information to the Pools as a result of a change during the fiscal year in their computer systems used to provide such financial information to the Pools.

Based upon the need for this financial information and the accountant’s representation that the availability of such information has been delayed due to no fault of the CPO, 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), Y is hereby granted an extension of the time to file the annual reports for YY, YYY, YYYY, YYYYY until May 31, 2001.

This letter applies solely with respect to the time requirement of Rule 4.7(a)(2)(iii) for the Pools’ Annual

Reports for 2000 and this in no way shall excuse Y or YY, YYY, YYYY, YYYYY from compliance with any other applicable requirements or prohibitions 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.

Very truly yours,

Kevin P. Walek
Assistant Director
(202) 481-5463

cc: Jane Pfieffer, Compliance
National Futures Association

[\[1\]](#) 65 Fed. Reg. 66663 at 66664 (November 7, 2000).