

CFTC Letter No. 02-51**April 15, 2002****Exemption****Division of Trading and Markets**

Dear Mr. X:

This is in response to your letter dated March 20, 2002 to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“CFTC”), filed on behalf of X Inc. the commodity pool operator (“CPO”) for Y Fund LP (the “Pool”). Your letter was intended to claim an extension of time to file the Pool’s unaudited 2001 Annual Report.

X operates the Pool pursuant to the exemption available under Commission Rule 4.7.^[1] Rule 4.7 requires that an Annual Report containing certain financial information be distributed to pool participants and filed with the CFTC within 90 days after the end of the pool’s fiscal year. While Rule 4.7 permits the CPO to distribute an unaudited financial report, many CPOs for 4.7 pools choose to distribute audited financial reports. Rule 4.22(f)(2) allows a CPO to claim an extension of that time in the event that the CPO “cannot obtain information necessary to prepare *certified financial statements* for a pool that it operates within [90 days] as a result of the pool investing in another collective investment vehicle,” subject to certain conditions.^[2] (emphasis supplied). Among those conditions is that the CPO represent that it has been “informed by the certified public accountant selected to *audit the commodity pool’s financial statements* that specified information establishing the value of the Investments is *necessary in order for the accountant to render an opinion on the commodity pool’s financial statements.*”^[3]

You have represented that X does not intend to have its 2001 annual report certified. As a consequence of the Pool’s annual report not being certified, the CPO does not qualify for the extension under Rule 4.22(f)(2). Notwithstanding this fact, it is necessary to provide you with sufficient time to prepare the annual report for this year. For this reason, the Division has determined granting an extension until May 30 is neither contrary to the purposes of Rule 4.7 nor to the public interest. The CPO is granted an extension until May 30, 2002 to file the unaudited Annual Report for the Pool for the fiscal year ending December 31, 2001. This

extension is granted for this year only. You have stated that you intend to have an independent public accountant prepare an audited annual report for the period ending December 31, 2002. In the future, the annual report may be filed within the extended time provided by Rule 4.22(f)(2) only if the CPO meets the qualifications necessary to file a claim for extension pursuant to Rule 4.22(f)(2). Otherwise, the annual report must be filed within 90 days after the end of the pool’s fiscal year, as required by Rule 4.7.

This exemption applies solely with respect to the extension of time to file the 2001 annual report and shall not excuse X or the Pool from compliance with any other applicable requirements or prohibitions

contained in the Commodity Exchange Act or in the Commission's regulations issued thereunder.

If you have any questions regarding this letter, please contact me at (202) 418-5462.

Very truly yours,

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

cc: Regina Thoele, Compliance
National Futures Association

[\[1\]](#) Rule 4.7 provides an exemption from certain disclosure, reporting and recordkeeping requirements to CPOs with respect to pools that are offered solely to Qualified Eligible Participants as defined in Rule 4.7(a).

[\[2\]](#) Rule 4.22(f)(2).

[\[3\]](#) Rule 4.22(f)(2)(iii)(B).