CFTC Letter No. 02-52
April 15, 2002
Exemption
Division of Trading and Markets

Dear Ms. X:

This is in response to your letter dated March 4, 2002 to National Futures Association which was forwarded on March 21, 2002 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("CFTC"), requesting an extension of time until August 31, 2002 to file the December 31, 2001 Annual Report for the Y Fund L.P., Z Fund L.P., and YY, L.P. (the "Pools"). The request is filed on behalf of X, L.L.C., the commodity pool operator, ("CPO"), for the Pools.

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)(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. The 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 state, among other things, that Y has a material investment (99.5 percent) in XY Fund, L.P and that the audited financial statements of XY will not be issued until mid-August. You state that the Pools are each invested in Y. You represent that you have been informed by your certified public accountant, L.L.C., that the audited financial statements are necessary in order for them to render an opinion on Y and the Pools financial statements

Division staff is cognizant of the benefits of providing an audited financial report. However, these benefits must be weighed against the need for pool participants to obtain financial information in a timely manner so that they may make informed investment decisions.

Delaying delivery of an annual report until August 31 – five months after the normal deadline – and 3 months after the extended deadline for "funds of funds" –outweighs the advantage of having the annual report certified. Therefore, we are denying the relief as requested and are requiring that X file an unaudited report for the period January 1, 2001 through December 31, 2001, as required by Rule 4.7. The CPO may, if it chooses, distribute a certified annual report for the period at any time.

Notwithstanding the denial of your request, the Division recognizes that the CPO will require sufficient time to prepare an annual report for this year. The Division has determined that granting the CPO an extension of 60 days from the date of this letter, to file the unaudited Annual Report for the fiscal year

ending December 31, 2001, is neither contrary to the purposes of Rule 4.7 nor to the public interest. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), X is hereby granted an extension of time to file the 2001 Annual Report for the Pool until June 14, 2002. This extension is granted for this year only. In the future the unaudited annual report must be filed within the time required by Rule 4.7 or any other relief available therefrom.

This exemption applies solely with respect to the extension of time to file the 2001 annual report and shall not excuse X, Y or the Pools from compliance with any other applicable requirements or prohibitions contained in the Commodity Exchange 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 at (202) 418-5462.

Very truly yours,

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

cc: Regina Thoele, Compliance
    National Futures Association