

CFTC Letter No. 02-57**May 6, 2002****Exemption; Other Written Communication****Division of Trading and Markets**

Re: Rule 4.22 – Request for exemption from CPO reporting requirements in connection with registered CPOs' operation of certain investee funds solely for the purpose of facilitating the trading of commodity pools operated by those CPOs.

Dear:

This is in response to your letter dated March 7, 2002, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by your letter dated March 20, 2002 and e-mail message dated March 21, 2002 and by telephone conversations with Division staff. By your correspondence, you request on behalf of your clients "P" and "Q" that the Division extend the exemption from the periodic reporting requirements of Rule 4.22^[1] it issued by letters dated October 22, 1998 and November 15, 1999 (the "Division Letters")^[2] to "P" and "Q" (each a registered commodity pool operator ("CPO"))^[3] in connection with their operation of certain commodity pools (the "Sub Funds") to certain other commodity pools for which "P" and "Q" will serve as CPOs (the "New Sub Funds"). Specifically, the New Sub Funds are: "R" and "S".

The exemption granted by the Division Letters recognized that all of the participants in the Sub Funds were feeder funds operated by "P" and "Q". To require "P" and "Q" to make periodic financial reports to the participants in the Sub Funds would be, practically speaking, to require "P" and "Q" (as the CPOs of the Sub Funds) to deliver and to report to themselves (as the CPOs of the feeder funds). Accordingly, by the Division Letters "P" and "Q" were exempted from the requirements of Rules 4.21 and 4.22 with respect to the operation of the Sub Funds.

In support of your current request you represent, among other things, that: (1) "P" and "Q" intend to permit "R" and "S" to trade commodity interests; (2) the only participants in "R" are "T" and "U", both of which are pools as to which "Q" is the CPO; (3) the only participants in "S" are "V" (of which "P" and "Q" are jointly the CPOs) and "U"; (4) investors are permitted to invest in the feeder funds, but not in "R" or "S"; and (5) no feeder fund or sub fund operated by "P" or "Q" other than the Sub Funds, the New Sub Funds and those feeder funds identified as such in the Division Letters and in this letter trade commodity interests, whether directly or indirectly through participation in commodity pools.

Based upon the foregoing representations contained in your correspondence, the Division believes that granting your request would not be contrary to the public interest and the purposes of Rule 4.22. Accordingly, by the authority delegated to it under Rule 140.93(a), the Division hereby: (1) confirms that the exemption granted by the Division Letters continues to apply with respect to the operation of the Sub Funds; and (2) exempts "P" and "Q" from the requirements of Rule 4.22 in connection with the

operation of the New Sub Funds. This relief is subject to the conditions that: (1) “P” and “Q” remain the CPOs of the New Sub Funds; (2) participation in the New Sub Funds is limited to the feeder funds identified in your correspondence, and any fund for which one or both of “P” and “Q” is (are) the (sole CPO(s); and (3) the annual reports of the feeder funds contain financial statements that include, among other information, the fees associated with the operation of the Sub Funds in which they invest, expressed in dollars, and a detailed schedule of investments made by each such fund.^[4]

This letter does not excuse “P” or “Q” from compliance with any other applicable requirements contained in the Commodity Exchange Act (the “Act”),^[5] or in the Commission’s regulations issued thereunder. For example, each remains subject to all antifraud provisions of the Act and the Commission’s regulations, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations and to all other applicable provisions of Part 4. Finally, this letter is applicable to “P” and “Q” solely in connection with the operation of the Sub Funds and the New Sub Funds.

This letter, and the exemption provided herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event the activities or operations of “P”, “Q”, “R” or “S” changes in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Chris Cummings an attorney on my staff, at (202) 418-5445.

Very truly yours

John C. Lawton
Acting Director

^[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

^[2] CFTC Staff Letters No. 99-06, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,544 (October 22, 1998) and 99-51 [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,949 (November 16, 1999).

^[3] Each is also registered with the Commission as a commodity trading advisor.

^[4] See, letter from John C. Lawton, Acting Director, Division of Trading and Markets, to all CPOs (February 1, 2002) (<http://www.cftc.gov/files/tm/tmcpoannualreport2001.pdf>) (stating that “detailed income, fee and liquidity information for material investee pools and in total for all investee pools [are]

‘material information,’” required to be disclosed in a pool’s annual report, and further stating that, “the schedule of investments at the investor pool level should contain the details of the investments carried by the investee pool. A schedule of investments at the investor pool level which simply lists the name of the investee pool is not sufficient.”)

[\[5\]](#) 7 U.S.C. § 1 et seq. (2000)