

**CFTC Letter No. 98-08****November 12, 1997****Division of Trading & Markets****Re: Request for Relief From the Books and Records Location Requirement of Rule 4.23(a)**

Dear :

This is in response to your letter dated October 13, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request that the Division exempt "X", a registered commodity pool operator ("CPO"), from the requirement in Rule 4.23(a)<sup>1</sup> that a CPO maintain certain books and records for each pool it operates at its main business office in accordance with Rule 1.31.

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "X's" main business office is in Tennessee. However, the books and records of the pools of which "X" serves as a CPO are located at "X's" branch office in New Jersey, where all of the accounting for the pools occurs. "X" seeks relief from the location requirement of Rule 4.23(a) in order that it may maintain the books and records of the pools that it operates at its branch office in New Jersey.

Based upon the foregoing representations, pursuant to the authority delegated by Rule 140.93(a) (1) and subject to the conditions specified herein, the Division hereby exempts "X" from the requirements of Rule 4.23(a) such that "X" may maintain the books and records for the pools it operates at its branch office in New Jersey. This exemption is, however, subject to the conditions that: (1) "X" notify the Division if the location of any such records changes from that represented to us; (2) "X" remains responsible for the maintenance of all required books and records and for assuring their availability to the Commission, the National Futures Association, or any other agency authorized to review such books and records, in accordance with Commission regulations; (3) within forty-eight hours after a request by a Commission representative, "X" will obtain the original books and records from its branch office in New Jersey and provide them for inspection at "X's" main business office in Tennessee; and (4) "X" discloses in the Disclosure Document for each pool it operates that all Commission-required books and records are kept at "X's" branch office in New Jersey. This exemption is further subject to the condition that "X" remains fully responsible for compliance with Rule 4.23.

The relief granted by this letter does not excuse "X" from compliance with any other applicable

requirements contained in the Commodity Exchange Act ("Act")<sup>2</sup> or the Commission's regulations issued thereunder. For example, "X" remains subject to the antifraud provisions of Section 40<sup>3</sup> of the Act, 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.

This letter is based upon the representations made to us and is subject to compliance with the conditions stated above. Any different, changed, or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the operations or activities of "X", including the location of the books and records of the pools it operates, change in any way from those represented to us. If you have any questions concerning this correspondence, please contact me or Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>2</sup> 7 U.S. C. § 1 et seq. (1994)

<sup>3</sup> 7 U.S.C. § 60 (1994).