

CFTC Letter No. 99-65**December 14, 1999****Exemption****Division of Trading & Markets**

Re: Request for Relief from Books and Records Location Requirement of Rule 4.23

Dear :

This is in response to your letter dated September 29, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a facsimile transmission dated December 1, 1999 and telephone conversations with Division staff. By your correspondence, you request that the Division exempt "X", an applicant for registration as a commodity pool operator ("CPO"), from the requirement of Rule 4.23 that a registered CPO must maintain certain books and records at its main business office in accordance with Rule 1.31.¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X" operates a fund that currently trades securities. After the firm's registration as a CPO becomes effective, the fund also will trade commodity interests. While "X's" main business office is located in "Y",² the books and records that will be required by Rules 4.23(a)(3), (4), (5) and (b)(3) (the "Records") will be generated at "X's" branch office in "Z",³ where certain administrative and accounting functions are performed. You request that "X" be exempted from the location requirement of Rule 4.23, so that it may maintain the Records at its branch office in "Z". In support of your request, you represent that "X" will disclose in its Disclosure Documents the location of all books and records required to be kept by Rule 4.23.

Based upon the foregoing, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.23. Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division exempts "X" from the requirements of Rule 4.23 so that "X" may maintain the Records at its "Z" branch office, as described above. This exemption is, however, subject to the conditions that: (1) "X" will notify the Division if the location of any original books and records changes from that represented to us; (2) "X" remains responsible for ensuring that all books and records required by Rule 4.23 are maintained in accordance with Rule 1.31 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 the Commission's regulations;⁴ and (3) within 48 hours after a request by a representative of the foregoing, "X" will obtain the original books and records from the "Z" branch

office and will provide them for inspection at "X's" main business office in "Y" if the representative chooses to inspect them there. This exemption is further subject to the condition that "X" remains responsible for compliance with Rule 4.23.

This letter, and the exemption issued herein, are based upon the representations that have been 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 that "X's" operations or activities, including the location of its books and records, change in any material way from those represented to us.

This letter exempts "X" from the requirements that certain books and records be maintained at its main business office. The relief granted by this letter does not excuse "X" from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse "X" from compliance with any other otherwise applicable requirements contained in the Commodity Exchange Act ("Act")⁵ or the Commission's regulations issued thereunder. For example, "X" remains subject to Rule 1.31 and the Commission maintains its right to inspect the required books and records of "X" at "X's" main business office in "Y". Moreover, "X" remains subject to all antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and all otherwise applicable provisions of Part 4.

If you have any questions concerning this correspondence, please contact Andrew Shipe, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

2 Specifically, "X's" main office is located at "Y".

3 The branch office is located at "Z".

4 The books and records also are subject to inspection pursuant to Rule 1.31 at "X's" main business office in "Y", in accordance with all of the provisions of Rule 1.31, including but not limited to the provisions relating to the time and manner for the production of records.

5 7 U.S.C. §1 *et seq.* (1994).