

CFTC Letter No. 00-45

March 31, 2000

Exemption

Division of Trading and Markets

Dear:

This is in response to your letter received March 10, 2000. You request on behalf of Y ("Y"), the commodity pool operator ("CPO"), that YY ("YY"), the pool, be granted an exemption from the disclosure, reporting and certain record-keeping requirements of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11),¹ in connection with the operation of an offshore commodity pool.

Based upon the representations made in your correspondence dated March 10, 2000, we understand the facts to be as follows: (1) Y, is registered as a CPO with the Commodity Futures Trading Commission (the "Commission"); (2) YY is, and will remain, organized and operated outside of the United States; (3) YY will not hold meetings or conduct administrative activities in the United States; (4) no shareholder or participant in the pool is or will be a United States Citizen or resident; (5) YY will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; (6) Y, YY or any person affiliated herewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participation from United States persons; (7) Y will maintain the original books and records of the commodity pool at the main office of YY, located outside of the United States; (8) The original books and records of YY will be held by W, Managing Director of Z, the administrator, located at EE, Tel: (X) X, facsimile: (X) X; (9) Y desires to maintain such books and records outside the United States in furtherance of compliance with Internal Revenue Service ("IRS") requirements for relief from United States federal income taxation; (10) Y will maintain duplicate books and records of YY in the United States ; and (9) Y will, within 72 hours after the request of a representative from the Commission, the United States Department of Justice or the National Futures Association ("NFA"), present the original books and records to such a representative at a place located in the United States that is specified by the representative.

Based upon the foregoing representations, the Division of Trading & Markets (the "Division") does not believe that granting your request would be contrary to the public interest or the purpose of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11). Accordingly, under the authority delegated to it by Rule 140.98(a)(1), the Division hereby grants Y an exemption from the disclosure, reporting, and recordkeeping requirements of Rules 4.21, 4.22, and 4.23(a)(10) and (a)(11).

This exemption is, however, subject to the following conditions: (1) Y must notify the Division if the location of any books and records required by Rule 4.23(a) changes from that represented to us; (2) Y remains responsible for ensuring that all books and records required by Rule 4.23(a) 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 Commission regulations; (3) within forty-eight hours after a request by a representative of the foregoing, Y will obtain the books and records from Y's office and provide them for inspection at Y's main business office if the representative chooses to inspect them there;² and (4) Y discloses in each Disclosure Document for the Fund that copies of the books and record required to be kept by the fund are kept at Y's office in the United States. This exemption is further subject to the condition that Y remains fully responsible for compliance with Rule 4.23(a).

This letter, and the exemption granted herein, are based upon the representations made in your correspondence. Any different, changed, or omitted material facts or circumstances might render this exemption void. You must notify us immediately if your activities change in any material way from those represented to us.

This letter does not excuse Y from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse Y from compliance with any otherwise applicable requirement contained in the Act or the Commission's regulations issued thereunder. For example, Y remains subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the books and records required under Rule 4.23(a) at Y's office in the United States. Y 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 regulations and all otherwise applicable provisions of Part 4.

If you have any questions concerning this correspondence, please contact me at (202) 418-5463 or Bill Yowell at (202) 418-5454.

Very truly yours,

Kevin Walek
Assistant Director

cc: Daniel A. Driscoll, Vice President-Compliance
National Futures Association

1 Commission rules referred to in this letter are found at 17 C.F.R. Ch. 1 (1999).

2 The books and records also are subject to inspection pursuant to Rule 1.31 at Y's main business office in the United States 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 productions of records.