

CFTC Letter No. 01-30

April 2, 2001

Exemption

Division of Trading and Markets

Re: YY Request for Exemption from Rule 4.23

Dear:

This is in response to your letter dated September 25, 2000 that was received by the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”) on March 9, 2001. By your correspondence, you request on behalf of your client YY (“YY”), a registered commodity pool operator (“CPO”), that the Division grant YY an exemption or appropriate no-action relief from the requirement of the books and records location of Commission Rule 4.23(a). You request that the Commission permit YY to maintain its books and records, with respect to commodity pools (“Pools”) for which Z (Z) acts as commodity trading advisor, at the main business offices of ZZ (“ZZ”).^[1]

Based upon the representations you have made in your correspondence, we understand the facts to be as follows. YY’s main business office is located in Boston, Massachusetts.^[2] ZZ performs certain administrative and bookkeeping services for YY with respect to such Pools at , , . ZZ has a designated group of employees whose primary responsibility is to perform these and other similar administrative and bookkeeping services on behalf of ZZ, certain of its affiliates, including maintaining the books and records required by Commission Rule 4.23(a). In further support of your request, you represent that it is cost effective and more efficient for such administrative and bookkeeping services to be performed for YY at the same location. YY requests that it be permitted to maintain the books and records required by Commission Rule 4.23(a) with respect to Pools for which Z acts as commodity trading advisor at the offices of ZZ located in , .

Based upon the foregoing representations, the Division does not believe that granting the request would be contrary to the public interest or the purpose of Rule 4.23(a). Accordingly, under the authority delegated to it by Rule 140.98(a)(1), the Division hereby grants YY an exemption from the books and records location requirement of Rule 4.23(a) such that it may maintain the books and records required under that rule at the main business office of ZZ. This exemption is, however, subject to the following conditions: (1) YY must notify the Division if the location of any of the books and records required by Rule 4.23(a) changes from the specified ZZ offices in ; (2) YY 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, YY will obtain the books and records from the main

business office of ZZ in , and provide them for inspection at YY's main business office in , if the representative chooses to inspect them there^[3]; and (4) YY must disclose in each Disclosure Document for a Pool that all books and records required to be kept for the Pool are kept at ZZ's main business office in , . This exemption is further subject to the condition that YY remains fully responsible for compliance with Rule 4.23(a).

This letter, and the exemption granted herein, are based upon the representations you have made to use and are subject to compliance with the conditions stated above. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event the operations or activities of YY, including the location of YY's books and records, change in any material way from those as represented to us.

This letter does not excuse YY from compliance with any other aspects of the Commission's recordkeeping requirements, nor does it excuse YY from compliance with any otherwise applicable requirement contained in the Commodity Exchange Act ("Act") or the Commission's regulations issued thereunder. For example, YY 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)(a) at the offices of ZZ in , . YY also 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 or Z. Patricia Ross, Futures Trading Specialist on my staff, at (202) 418-5469.

Very truly yours,

Kevin P. Walek
Assistant Director

cc: Jane Pfieffer, Compliance
National Futures Association

^[1] You represent both YY and ZZ in connection with making the request.

^[2] The full address is , , , .

^[3] The books and records also are subject to inspection pursuant to Rule 1.31 at ZZ's main business office in , 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.

