

CFTC Letter No. 98-30**April 27, 1998****Division of Trading & Markets****Re: Rules 4.23 and 4.33 Request for Relief from Books and Records Location Requirement**

Dear :

This is in response to your letter dated November 13, 1997, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by a facsimile dated April 23, 1998 and telephone conversations with Division staff. By your correspondence, you request that the Division exempt "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), from the requirements of Rules 4.23 and 4.33¹ that a CPO and CTA, respectively, maintain certain books and records at its main business office in accordance with Rule 1.31.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. "X's" main business office is located in "F". "X" anticipates receiving certain operational support from "Y", including daily accounting functions and the issuance of all required monthly reports, for all pools operated and all accounts managed by "X". "Y's" main business office is located in "G". "X" and "T" are both wholly-owned subsidiaries of "Z", a holding company located in "F". "Y" was organized as a legal entity separate from "X" for purposes of efficiency and convenience. "X" seeks relief from the location requirements of Rules 4.23 and 4.33 in order that it may maintain its books and records at the offices of "Y" in "G". In support of your request, you submitted a letter dated December 8, 1997, from "A", Vice President of "Y", whereby "Y" states that it is aware of your exemption request and agrees to maintain the books and records required of "X" under the Commission's regulations. In addition, by a facsimile dated April 23, 1998, from "A" at "Y", "Y" further stated that it understands that all books and records maintained by "Y" on behalf of "X" are subject to inspection pursuant to Rule 1.31 at "Y's" office in "G" in accordance with all the provisions of Rule 1.31; and furthermore, "Y" agrees to provide access to such books and records pursuant to the guidelines as set forth in Rule 1.31, upon the request of an authorized representative of the Commission or any other agency authorized to review such books and records.

Based upon the foregoing and pursuant to the authority delegated by Rule 140.93(a)(1), the Division believes that exempting "X" from the requirements of Rules 4.23 and 4.33 such that "X" may maintain its books and records at "Y's" main business office, as described above, would not be contrary to the public interest or the purposes of Rules 4.23 and 4.33. This exemption is,

however, subject to the conditions that: (1) "X" notify the Division if the location of any original books and records changes from that as represented to us; (2) "X" remains responsible for ensuring that all books and records required by Rule 4.23 and 4.33 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 seventy-two hours after a request by a representative of the foregoing, "X" will obtain the original books and records from "Y's" office in "G" and provide them for inspection at "X's" main business office in "F" if the representative chooses to inspect them there;² and (4) "X" discloses in its CPO and CTA Disclosure Documents that all Commission required books and records are kept at "Y's" office in "G". This exemption is further subject to the condition that "X" remains fully responsible for compliance with Rules 4.23 and 4.33.

This letter, and the exemption granted herein, are based upon the representations you have made to us 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 "X", including the location of "X's" books and records, change in any material way from those as represented to us.

This letter merely exempts "X" from the requirements that its 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 otherwise applicable requirements contained in the Commodity Exchange Act ("Act")³ or the Commission's regulations issued thereunder. For example, "X" remains subject to Commission Rule 1.31 and the Commission maintains its right under that rule to inspect the required books and records of "X" at "Y's" offices in "G". "X" also remains subject to all antifraud provisions of the Act and Commission 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 Charles T. O'Brien, an attorney on my staff, at (202) 418-5450.

Sincerely,

I. Michael Greenberger

Director

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

² The books and records are also subject to inspection pursuant to Rule 1.31 at "Y's" office in "G" 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.

3 7 U.S.C. § 1 *et seq.* (1994).

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