

**CFTC letter No. 03-09**  
**January 14, 2003**  
**Exemption**  
**Division of Clearing and Intermediary Oversight**

Re: “X” and “Y” -- Request for Exemption from Rule 4.7(b)(4)

Dear :

This is in response to your letter dated November 4, 2002, to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), as supplemented by your facsimile dated January 9, 2003, and telephone conversations with Division staff. By your correspondence, you request that “X” and “Y”, each a registered commodity pool operator (“CPO”), be granted an exemption from the requirements set forth in Commission Rule 4.7(b)(4),<sup>[1]</sup> that a CPO maintain certain books and records at its main business office and in accordance with Rule 1.31.

Based upon your representations, we understand the facts to be as follows. “X” and “Y” maintain their main business office in State A.<sup>[2]</sup> “Z”,<sup>[3]</sup> will perform various administrative and bookkeeping services for both “X” and “Y”, including the preparation of books, records and reports required of “X” and “Y” as CPOs. “Z’s” main business office is located in State B.<sup>[4]</sup> “Z” has consented to maintain “X’s” and “Y’s” books and records that are required by Rule 4.7(b)(4).

Based upon the representations contained in your letter, the Division believes that granting the requested exemption would not be contrary to the public interest and the purposes of Rule 4.7(b)(4).<sup>[5]</sup> Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts “X” and “Y” from the books and records location requirements of Rule 4.7(b)(4), such that they may maintain the books and records required under the rule at the main business office of “Z”. This relief is, however, subject to the conditions that: (1) “X” and “Y” notify the Division if the location of any of their respective books and records required by Rule 4.7(b)(4) changes from that as represented to the Division; (2) “X” and “Y” remain responsible for ensuring that all of their respective books and records required by Rule 4.7(b)(4) are maintained in accordance with Rule 1.31 and for assuring the availability of such records to the Commission, National Futures Association, or any other agency authorized to review such books and records in accordance with the Commodity Exchange Act (the “Act”)<sup>[6]</sup> and Commission regulations issued thereunder; (3) within forty-eight hours after a request by a representative of the foregoing, “X” and “Y” obtain their respective original books and records from “Z’s” office in State B and provide them for inspection at “X’s” and “Y’s” main business office in State A; and (4) “X” and “Y” disclose in any provided offering memoranda that all books and records required under Commission regulation 4.7(b)(4) are kept at “Z’s” office in State B. This exemption is further subject to the condition that “X” and “Y” remain fully responsible for compliance with Rule 4.7(b)(4).

This letter exempts “X” and “Y” from the requirements that their respective books and records be maintained at their main business office. It does not excuse “X” and “Y” from compliance with any other aspect of the Commission’s recordkeeping requirements, nor does it excuse “X” and “Y” from compliance with any other applicable requirements contained in the Act or the Commission’s regulations. For example, “X” and “Y” remain subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the required books and records of “X” and/or “Y” at “Z’s” main business office in State B. Additionally, “X” and “Y” remain subject to all antifraud provisions of the Act<sup>[7]</sup> and the Commission’s regulations, the reporting requirements for traders set forth in Parts 15, 18 and of the regulations, and to all other applicable provisions of Part 4 of the regulations.

This letter, and the exemption granted herein, is based upon the representations that have been made to the Division. Any different, changed, or omitted facts or conditions might render the exemption void. You must notify the Division immediately in the event the operations or activities of “X”, “Y” or “Z”, including the location of “X’s” or “Y’s” books and records, change in any material way from those represented to the Division. If you have any questions concerning this correspondence, please contact Peter B. Sanchez, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe  
Director

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<sup>[1]</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

<sup>[2]</sup> The full address of the main office for both “Y” and “X” is \_\_\_\_\_.

<sup>[3]</sup> You represent “X”, “Y” and “Z” in connection with making the request for exemption. “X”, “Y” and “Z” are affiliates.

<sup>[4]</sup> The full address of “Z’s” main business office is \_\_\_\_\_.

<sup>[5]</sup> See, CFTC Interpretative Letter No. 00-88, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,247 (Sep. 11, 2000).

<sup>[6]</sup> 7 U.S.C. § 1 *et seq.* (2000).

[\[7\]](#) *See, e.g.*, Sections 4o and 4b of the Act, 7 U.S.C. §§6o and 6b (2000).