

CFTC Letter No. 00-19**February 18, 2000****Exemption****Division of Trading & Markets**

Re: Rule 4.33 - XX. regarding Y

Request for Relief from Books and Records Location
Requirement

Dear X:

This is in response to your letter to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") dated August 10, 1999 received by this Division by facsimile on February 17, 2000. Your August 10, 1999 letter was submitted in response to the Division's March 12, 1999 letter requesting additional information. Although you submitted information which indicates that the letter was received by Commission staff, the information was not received by Division staff until receipt of this facsimile.

By your letter, you request relief from Rule 4.33 to permit the books and records of Y to be kept in the United States at the main business office of YY.

Based upon the representations made in your letter, we understand the pertinent facts to be as follows. XX is registered as a commodity trading advisor ("CTA") and is a member of the National Futures Association ("NFA"). XX is also a 4.7 exempt CTA.¹ XX' main business address is located at XXX. On January 1, 1999, XX entered into an agreement with YY to direct trading for Y ("Y"). Y is a single advisor, 4.7 exempt fund for which YY serves as CPO.² YY is registered as a CPO and CTA and is a member of the NFA. The main business office of YY is located at X.

In support of your request, you represent that XX wishes to maintain all records required to be maintained pursuant to Rule 4.7 with regard to Y at YY's X office. You note that in light of the fact that Y is a single advisor fund, all records that would be maintained by XX would likely be the same records that will be maintained by the CPO. In addition, you represent that the only client that XX anticipates managing is Y, which is operated by YY. Both XX, as CTA, and Y have filed Rule 4.7 notices of claim of exemption and the relief

requested is only for those records required to be kept pursuant to Rule 4.7. The only investors in Y will be "qualified eligible clients" for which YY either acts as CPO or CTA. XX will not solicit any other client business. The only CTA that YY will retain for Y is XX. No associated persons of XX will be located at YY's main business office. XX is aware that they remain fully responsible for compliance with the recordkeeping requirements of the Commission.

YY indicates that it is aware of your exemption request and agrees to maintain the books and records required by XX under the Commission's regulations; acknowledges all books and records maintained on behalf of XX are subject to inspection pursuant to Rule 1.31 at YY's X office in accordance with all the provisions of Rule 1.31; and 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 representations made in your letter, pursuant to the authority delegated by Rule 140.93(a)(1) and subject to the conditions specified herein, the Division believes that granting the request on behalf of XX is neither contrary to the public interest nor to the purposes of Rule 4.7. Accordingly, XX is hereby exempted from the requirement in Rule 4.7(b)(2)(ii) and Rule 4.33, (the CTA recordkeeping section to which Rule 4.7 refers), concerning the location of the original books and records in connection with the operation of Y to the extent that XX may maintain its books and records at YY's main business office. This exemption is, however, subject to the conditions that: (1) XX notify the Division if the location of any such books and records changes from that as represented to us (YY address); and (2) XX remains responsible for the maintenance of all required books and records 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.

This exemption is based on the representations made to us and is subject to compliance with the conditions stated above. Any different, changed or omitted material facts or circumstances might render this exemption void. In this connection, we request that you notify us immediately in the event the operations or activities of XX or Y change in any way from those as represented to us, including the location of the books and records.

We note that this letter relieves XX solely from certain of the requirements of Rule 4.7 as set forth above, and does not excuse XX from any other applicable requirements contained in the Commodity Exchange Act (the "Act"), 7 U.S.C. § 1 (1998), or in the Commission's rules thereunder. For example, XX remains subject to the antifraud provision of Section 40 of the Act, 7 U.S.C. §60 (1998), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's rules, and to all other provisions of Part 4 of the Commission's rules.

If you have any questions concerning this letter, please contact me at (202) 418-5463 or Z. Patricia Ross, Futures Trading Specialist, at (202) 418-5469.

Sincerely,

Kevin P. Walek

Assistant Director

cc: Daniel Driscoll

National Futures Association

1 Commission records indicate that XX. filed a Rule 4.7 Notice of Claim for Exemption on February 23, 1999 dated December 31, 1998.

2 Commission records indicate that YY filed a Rule 4.7 Notice of claim for Exemption with respect to Y on December 18, 1998 dated December 14, 1998.