

CFTC Letter No. 00-60**April 28, 2000****Exemption****Division of Trading & Markets**

Re: Request for Relief from Books and Records Location
Requirement of Rules 4.23 and 4.33.

Dear :

This is in response to your letter dated October 6, 1999 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by the letter of your counsel, "A" dated March 23, 2000 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 4.33 that a registered CPO or CTA, respectively, must maintain certain books and records at its main business office in accordance with Rule 1.31.¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X's" main business office is located in "Z".² However, all operational and accounting functions are performed for "X" at its administrative office in "Z".³ You request that "X" be exempted from the location requirements of Rules 4.23 and 4.33, so that it may maintain the records required by the rules at its administrative office. In support of your request, you represent that "X" will disclose in its Disclosure Documents the location of all books and records required to be kept by the rules.

Based upon the foregoing, it appears that granting your request would not be contrary to the public interest or the purposes of Rules 4.23 and 4.33. Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division exempts "X" from the location requirements of Rules 4.23 and 4.33 so that "X" may maintain the records at its administrative office as described above. This exemption is, however, subject to the conditions that: (1) "X" will notify the Division if the location of any original books and records changes from that represented to us; (2) "X" remains responsible for ensuring that all books and records required by Rules 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 the Commission's regulations;⁴ and (3) within 48 hours after a request by a representative of the foregoing, "X" will obtain the original books and records from the administrative office and will provide them for inspection at "X's" main business

office in "Z" if the representative chooses to inspect them there. This exemption is further subject to the condition that "X" remains responsible for compliance with Rules 4.23 and 4.33.

This letter, and the exemption granted herein, are based upon the representations that have been made to us. Any different, changed, or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event that "X's" operations or activities, including the location of its books and records, change in any material way from those represented to us.

This letter exempts "X" from the requirement that certain 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 other otherwise applicable requirements contained in the Commodity Exchange Act ("Act")⁵ or the Commission's regulations issued thereunder. For example, "X" remains subject to Rule 1.31 and the Commission maintains its right to inspect the required books and records at "X's" main business office in "Z". Moreover, "X" 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 Commission's regulations and all otherwise applicable provisions of Part 4.

If you have any questions concerning this correspondence, please contact Andrew Shipe, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton
Acting Director

1 Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

2 Specifically, "X's" main business office is located in "Z" .

3 This administrative office is located in "Z".

4 The books and records also are subject to inspection pursuant to Rule 1.31 at "X's" main business office in "Z", 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.

5 7 U.S.C. §1 *et seq.* (1994).