

CFTC Letter No. 01-06**February 9, 2001****Exemption****Division of Trading & Markets**

Re: Rule 4.23 - Request for Relief from Books and Records Location Requirement

Dear :

This is in response to your letter of September 11, 2000 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). You request on behalf of commodity pool operator "V" an exemption from the provision of Rule 4.23 requiring each commodity pool operator ("CPO") to keep the books and records required under this rule at the CPO's main business office. You propose instead that, with respect to "V's" operation of certain non-U.S. commodity pools, the required books and records be kept at the offices of "W", the Managing Director and Administrator for the particular pools. "W's" offices are located on, Netherlands Antilles.

In your letter, you represent that "V", a U.S. investment advisor, serves as commodity pool operator for Netherlands Antilles pools, "X" and "Y" (collectively referred to as "Z"). "W", by contractual agreement, acts as Administrator to "Z" and is responsible for the day-to-day administrative and accounting operations of the pools, including maintaining the associated "Z" books and records on behalf of "V". Prior to "V's" registration as a CPO, "W" maintained all original books and records for "Z" at "W's" office in

In support of your request that the books and records be kept offshore with an Administrator organized under and subject to the laws of the Netherlands Antilles, you provided:

- 1) a letter from "W" addressed to "V" demonstrating "W's" agreement to make "Z's" books and records available and subject to inspection at either "V's" or "W" offices as requested by the Commission, the National Futures Association, or other agency likewise entitled under Commission rules within 48 hours of such request for documents; and
- 2) an opinion letter of Netherlands Antilles counsel confirming, subject to reasonable qualifications, "W's" ability under rule of Netherlands Antilles law to comply with these obligations.

Based upon the foregoing representations, the Division does not believe that granting your request would be contrary to the public interest or the purpose of Rule 4.23. Accordingly, under the authority delegated to it by Rule 140.98(a)(1), the Division hereby grants "V" an exemption from the provision of Rule 4.23 requiring "V" to keep the books and records required under this rule at its main business office, and thus, permits "V" to maintain these books and records at "W's" office in Netherlands Antilles.

This exemption is, however, subject to the following conditions:

- 1) "V" shall notify the Division if the location of any of the books and records required by Rule 4.23 changes from that represented to us;
- 2) "V" shall notify the Division of any changes in laws that would affect or impede production of such books and records;
- 3) "V" shall remain responsible for ensuring that, except as otherwise provided in this letter, all books and records required by Rule 4.23 are maintained in accordance with Rule 1.31 and for assuring the availability of such books and records to the Commission, the National Futures Association, or any other agency authorized to review such books and records in accordance with Commission regulations;
- 4) Within 48 hours after the request of a representative from the Commission, the U.S. Department of Justice, or the National Futures Association, "V" shall obtain the books and records and provide them to such representative at the place specified by the representative within the United States;
- 5) "V" shall disclose in each Disclosure Document for "Z" that all books and records required by Rule 4.23(a) are kept at "W's" office in Netherlands Antilles; and
- 6) "V" shall notify the CFTC immediately in the event the operations or activities of "V" change in any material way from those represented to us.

This letter, and the exemption provided herein, is based upon the representations that 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. Further, this letter does not excuse "V" from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse "V" from compliance with any other applicable requirement or prohibition contained in the Act or the Commission's regulations issued thereunder.

If you have any questions concerning this correspondence, please contact Kevin P. Walek, Assistant Director on my staff, at (202) 418-5463.

Very truly yours,

Robert B.
Wasserman
Associate Director