

**CFTC Letter No. 01-12**  
**March 14, 2001**  
**Exemption**  
**Division of Trading and Markets**

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

Dear:

This is in response to your February 16, 2001 request ("February Letter") to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"). In a letter dated September 11, 2000, you requested on behalf of YY ("YY"), as commodity pool operator ("CPO") for Y ("Y"), an exemption from the provision of Rule 4.23 requiring each CPO to keep the books and records required under this rule at the CPO's main business office. This relief was granted in a letter dated February 9, 2001. In the February Letter, you seek on behalf of YY the same relief from Rule 4.23 in connection with the required books and records of Z ("Z"), another non-U.S. commodity pool within the Y structure. You propose that the required books and records for this additional named pool, Z, be kept at the offices of V ("V"), the Administrator for this pool.<sup>[1]</sup> V's offices are located on W.

In the February Letter, you represent that Z is a Netherlands Antilles partnership. YY serves as commodity pool operator for Z under an umbrella agreement with Y. V, by contractual agreement, acts as Administrator to Z and is responsible for the day-to-day administrative and accounting operations of the pool, including maintaining the associated books and records on behalf of YY.

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 V addressed to YY demonstrating V's agreement to make Z's books and records available and subject to inspection at either YY's or V offices as requested by the Commission, the NFA, 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, V'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 YY an exemption with respect to its operation of Z from the provision of Rule 4.23 requiring YY to keep the books and records required under this rule at its main business office, and thus, permits YY to maintain these books and records at

V's office in W.

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

1. YY 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. YY shall notify the Division of any changes in laws that would affect or impede production of such books and records;
3. YY 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, YY shall obtain the books and records and provide them to such representative at the place specified by the representative within the United States;
5. YY shall disclose in each Disclosure Document for Z that all books and records required by Rule 4.23(a) are kept at V's office in W; and
6. YY shall notify the CFTC immediately in the event the operations or activities of YY 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 is 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 YY from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse YY 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

cc: Daniel Driscoll  
Executive Vice President  
National Futures Association

[\[1\]](#) Prior to YY's registration as a CPO, V maintained all original books and records for Z, as well as for Y, at V's office in W.