

CFTC Letter No. 01-80
October 11, 2001
Exemption
Division of Trading and Markets

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

Dear:

This is in response to your September 21, 2001 request to the Division of Trading and Markets (“Division”) of the Commodity Futures Trading Commission (“Commission”). You request on behalf of your client Y (“Y”), a registered commodity pool operator (“CPO”), that the Division grant Y an exemption from the requirement of Commission Rule 4.23(a) that books and records with respect to Y’s operation of YY a non-U.S. commodity pool (the “Fund”), be maintained at Y’s main business office. The required books and records of the Fund would instead be maintained at the offices of Z (“Z”), a Delaware business trust that serves as Administrator of the Fund.^[1]

Based upon the representations you have made in your correspondence, we understand the facts to be as follows. Y currently acts as trading manager of the Fund, an investment company incorporated under the laws of the Bahamas that began operations in 1999.^[2] Z acts as Administrator of the Fund, and is responsible for all of its day-to-day administrative and accounting operations including, among other things, keeping the accounts of the Fund and such financial books and records as are required by law or otherwise for the proper conduct of the financial affairs of the Fund, furnishing monthly reports of Net Asset Value per share to Shareholders, and performing all other matters necessary in connection with the administration of the Fund. Z will provide administrative services to Y including maintenance of all of the books and records required by the Commission. You represent that it would be costly and inefficient for Z to provide Y with the original books and records required by the Commission. Y requests that it be permitted to maintain the books and records required by Commission Rule 4.23(a) with respect to the Fund at the office of Z.

In support of your request that the books and records be kept with the Administrator, you provided a statement from Z to Y in which Z states that it will maintain at its offices, for the Fund on behalf of Y, the original books and records identified by Y as those required of a commodity pool operator by the rules of the Commission. Z agrees to make the Fund’s books and records available and subject to inspection at the offices of Z, as requested by the Commission, the NFA, or other agency likewise entitled under Commission rules. Maintenance of the books and records of the Fund will remain the responsibility of Y, as required by Commission rules; however, the books and records will be prepared and maintained by Z, a service provider with the facilities to collect, prepare and maintain those records efficiently.

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 Y an exemption with respect to its operation of YY from the provision of Rule 4.23 requiring Y to keep the books and records required under this rule at its main business office, and permits Z to instead maintain these books and records at Z's office.

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

1. Y 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. Y 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;
3. Within 48 hours after the request of a representative from the Commission, the U.S. Department of Justice, or the National Futures Association, Y shall obtain the books and records from the offices of Z in R and provide them for inspection at Y's main business office if the representative chooses to inspect them there;^[3]
4. Y shall disclose in each Disclosure Document for the Fund that all books and records required by Rule 4.23(a) are kept at Z's offices at the above mentioned address;
5. Y shall notify the Commission immediately in the event the operations or activities of Y change in any material way from those represented to us; and
6. Y remains fully responsible for compliance with Rule 4.23(a). Y also 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 regulations and all otherwise applicable provisions of Part 4.

This letter and the exemption provided herein are 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 Y from compliance with any other aspect of the Commission's record keeping requirements, nor does it excuse Y 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 me or Z. Patricia Ross on my staff, at (202) 418-5469.

Very truly yours,

Kevin P. Walek

Assistant Director
(202) 418-5463

cc: Jane Pfeiffer, Compliance
National Futures Association

[1] The offices of Z are located at R.

[2] Y is a company formed by the former trading manager of the Fund and the Fund's sub-advisor for the sole purpose of operating and advising the Fund.

[3] The books and records also are subject to inspection pursuant to Rule 1.31 at Y's main business office in W 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.