

**CFTC Letter No. 02-20**  
**February 27, 2002**  
**Exemption**  
**Division of Trading and Markets**

Re: Request for Exemption from Rules 4.23 and 4.33

Dear:

This is in response to your letter dated January 31, 2002, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by e-mails dated February 7, 2002, and telephone conversations with Division staff. By your correspondence, you request that "X", a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), be granted an exemption from the requirement set forth in Commission Rules 4.23 and 4.33<sup>[1]</sup> that a CPO and CTA, respectively, maintain certain books and records at its main business office and in accordance with Commission Rule 1.31.

Based upon your representations, we understand the facts to be as follows. "X" serves as the trading manager, general partner, and/or sponsor of numerous commodity pools (the "X" Pools). "X" has recently relocated its main business office from Virginia to U.S. Virgin Islands.<sup>[2]</sup> As part of the relocation of "X's" main business office, "X" has entered into a service agreement with "Y", a registered CPO and CTA located in Virginia.<sup>[3]</sup> "A" and "B" jointly own both "X" and "Y".<sup>[4]</sup> Pursuant to the service agreement, "Y" will, in regard to the "X" Pools, prepare and maintain the books and records required of "X" as a CPO and a CTA and assist with subscriptions, redemptions, and the preparation and distribution of statements and reports.

Based upon the representations contained in your letter, the Division believes that granting the requested exemption would not be contrary to the public interest and the purposes of Rules 4.23 and 4.33.<sup>[5]</sup> Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" from the books and records location requirement of Rules 4.23 and 4.33, such that it may maintain the books and records required under the rules at the main business office of "Y". This relief is, however, subject to the conditions that: (1) "X" notify the Division if the location of any of the books and records required by Rules 4.23 and 4.33 changes from that as represented to the Division; (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 the availability of such records to the Commission, NFA, or any other agency authorized to review such books and records in accordance with the Act and Commission regulations; (3) within forty-eight hours after a request by a representative of the foregoing, "X" will obtain the original books and records from "Y's" office in Virginia and provide them for inspection at "X's" main business office in the U.S. Virgin Islands; and (4) "X" discloses in its CPO and CTA Disclosure Documents that all books and records required under Commission regulations 4.23 and

4.33 are kept at “Y’s” office in Virginia. This exemption is further subject to the condition that “X” remains fully responsible for compliance with Rules 4.23 and 4.33.

The exemption granted by this letter does not excuse “X” from compliance with any other applicable requirements contained in the Act or the Commission's regulations issued thereunder. For example, “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 regulations and to all other applicable provisions of Part 4.

This letter, and the exemption granted herein, is based upon the representations that have been made to the Division. Any different, changed, or omitted facts or conditions might render the exemption void. You must notify the Division immediately in the event the operations or activities of “X” or “Y”, including the location of “X’s” books and records, change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

John C. Lawton  
Acting Director

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<sup>[1]</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (2001).

<sup>[2]</sup> The address of “X’s” former office in Virginia was \_\_\_\_\_. The full address of “X’s” office in the U.S. Virgin Islands is \_\_\_\_\_.

<sup>[3]</sup> “Y” was formerly “Z”. “Y’s” main business office is located at the same address as “X’s” former office.

<sup>[4]</sup> You represent both “X” and “Y” in connection with making the request for exemption.

<sup>[5]</sup> See, CFTC Interpretative Letter No. 99-40, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,760 (Aug. 5, 1999); CFTC Interpretative Letter No. 97-19, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,011 (Mar. 27, 2001).