

**CFTC Letter No. 02-70****May 6, 2002****Intpretation****Division of Trading and Markets**Re: Request for Exemption from Rule 4.23

Dear:

This is in response to your letter dated March 1, 2002, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by an e-mail dated March 27, 2002, and telephone conversations with Division staff. By your correspondence, you request that "X", a registered commodity pool operator ("CPO"), be granted an exemption from the requirement set forth in Commission Rule 4.23<sup>[1]</sup> that a CPO 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" operates four commodity pools (the "Pools"). "X's" main business office is located in the U.S. Virgin Islands.<sup>[2]</sup> "Y", a registered CPO, performs various administrative and bookkeeping services for "X", in regard to the Pools, including the preparation of books, records, and reports required of "X" as a CPO. "Y's" main business office is located in Connecticut.<sup>[3]</sup> "A" is the sole owner of both "X" and "Y".<sup>[4]</sup> "Y" has consented to maintain "X's" books and records that are required by Rule 4.23.

Based upon the representations contained in your letter, as supplemented, the Division believes that granting the requested exemption would not be contrary to the public interest and the purpose of Rule 4.23.<sup>[5]</sup> Accordingly, by the authority delegated it under Rule 140.93(a)(1), the Division hereby exempts "X" from the books and records location requirement of Rule 4.23, such that it may maintain the books and records required under the rule 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 Rule 4.23 changes from that as represented to the Division; (2) "X" remains responsible for ensuring that all books and records required by Rule 4.23 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 Connecticut and provide them for inspection at "X's" main business office in the U.S. Virgin Islands;<sup>[6]</sup> and (4) "X" discloses in its CPO Disclosure Documents that all books and records required under Commission regulation 4.23 are kept at "Y's" office in Connecticut. This exemption is further subject to the condition that "X" remains fully responsible for compliance with Rule 4.23.

This letter, and the exemption granted herein, is based upon the representations that have been made to the Division and are subject to compliance with the conditions set forth above. 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.

This letter exempts "X" from the requirements that its books and records be maintained at its main business office. It 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 applicable requirements contained in the Commodity Exchange Act (the "Act")<sup>[7]</sup> or the Commission's regulations issued thereunder. For example, "X" remains subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the required books and records of "X" at "Y's" offices in Connecticut. Additionally, "X" also remains subject to all antifraud provisions of the Act and Commission 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.

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 full address of "X's" office in the U.S. Virgin Islands is \_\_\_\_\_.

<sup>[3]</sup> The full address of "Y's" main business office is \_\_\_\_\_.

<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, 1997).

<sup>[6]</sup> Pursuant to Rule 1.31, the books and records are also subject to inspection at "X's" main business office, in accordance with all provisions of Rule 1.31, including, but not limited to, the provisions relating to the time and manner for the production of such records.

[\[7\]](#) 7 U.S.C. § 1 *et seq.* (2000).