

CFTC Letter No. 02-84
July 10, 2002
Interpretation
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 May 17, 2002, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"),^[1] as supplemented by telephone conversations with Division staff. By your correspondence, you request that "X" and "Y", both registered commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"), be granted an exemption from the requirements set forth in Commission Rules 4.23 and 4.33^[2] 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" and "Y" both maintain their corporate headquarters in Connecticut.^[3] "Y", a registered CPO and CTA, performs various administrative and bookkeeping services for both "X" and "Y", including the preparation of books, records, and reports required of "X" and "Y" as CPOs and CTAs.^[4] "Y's" main business office is located in New York.^[5] "Y" has consented to maintain "X's" and "Y's" books and records that are required by Rules 4.23 and 4.33.

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.^[6] Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" and "Y" from the books and records location requirements of Rules 4.23 and 4.33, such that they may maintain the books and records required under the rules at the main business office of "Z". This relief is, however, subject to the conditions that: (1) "X" and "Y" notify the Division if the location of any of their respective books and records required by Rules 4.23 and 4.33 changes from that as represented to the Division; (2) "X" and "Y" remain responsible for ensuring that all of their respective 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 Commodity Exchange Act (the "Act")^[7] and Commission regulations; (3) within forty-eight hours after a request by a representative of the foregoing, "X" and "Y" will obtain their respective original books and records from "Z's" office in New York and provide them for inspection at "X's" and "Y's" main business office in Connecticut; and (4) "X" and "Y" disclose in their respective CPO and CTA Disclosure Documents that all books and records required under

Commission regulations 4.23 and 4.33 are kept at “Z’s” office in New York. This exemption is further subject to the condition that “X” and “Y” remain fully responsible for compliance with Rules 4.23 and 4.33.

This letter exempts “X” and “Y” from the requirements that their respective books and records be maintained at their main business office. It does not excuse “X” or “Y” from compliance with any other aspect of the Commission’s recordkeeping requirements, nor does it excuse “X” or “Y” from compliance with any other applicable requirements contained in the Act or the Commission’s regulations issued thereunder. For example, “X” and “Y” remain subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the required books and records of “X” and/or “Y” at “Z’s” main business office in New York. Additionally, “X” and “Y” remain 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”, “Y”, or “Z”, including the location of “X’s” or “Y’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,

Jane Kang Thorpe
Director

^[1] As of July 1, 2002, a reorganization of Commission staff became effective. The responsibility for addressing requests for interpretative, no-action, and exemptive letters (including letters such as your May 17, 2002, letter) is now with the Division of Clearing and Intermediary Oversight. Accordingly, for purposes of this letter, the term “Division” includes the Division of Clearing and Intermediary Oversight and its predecessor, the Division of Trading and Markets, as the context requires.

^[2] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

^[3] The full address of the main office for both “X” and “Y” _____.

^[4] You represent “X”, “Y”, and “Z”, in connection with making the request for exemption. “X”, “Y”, and “Z” are commonly owned.

[5] The full address of “Z's” main business office is _____.

[6] *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).

[7] 7 U.S.C. § 1 *et seq.* (2000).