

CFTC letter No. 04-30

October 22, 2004

Exemption

Division of Clearing and Intermediary Oversight

Re: Rule 4.23 – Request for Relief from the

Books and Records Location Requirement

Dear :

This is in response to your letter dated October 13, 2004, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By that correspondence, you requested relief on behalf of “X”, an applicant for registration as a commodity pool operator (“CPO”), from the requirement of Rule 4.23 that a CPO maintain certain of its books and records at its main business office and in accordance with Rule 1.31.^[1]

Based upon the representations contained in the correspondence, we understand the facts to be as follows. You and “A” are co-owners of “X”. “X’s” main business address is in ____ (the “Y” office), at “A’s” home office. Certain of “X’s” business activities, however, including accounting, tax, and compliance activities, are performed at your home office in ____ (the “Z” office), 36 miles from the “Y” office. You requested relief from the books and records location requirement of Rule 4.23 in order that “X” may maintain certain of its records, including original bank statements, legal, and tax related documents, at the “Z” office.^[2] You intend to maintain other books and records, including those relating to “X’s” trading activities, at the “Y” office.

Based upon the foregoing, it appears that granting your request would not be contrary to the public interest or the purposes of Rule 4.23. Accordingly, by the authority delegated under Rule 140.93(a)(1), the Division exempts “X” from the requirements of Rule 4.23 such that “X” may maintain certain of its books and records at the “Z” office. This exemption is, however, subject to the following conditions: (1) “X” will notify the Division if the location of any original books and records changes from that represented to us; (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 their availability to the Commission, the National Futures Association, or any other agency authorized to review such books and records in accordance with the Commission’s regulations;^[3] (3) within 48 hours after a request by a representative of the foregoing, “X” will obtain the original books and records from the “Z” office and will provide them for inspection at its main business address if the representative chooses to inspect them there; and (4) “X” discloses in its CPO Disclosure Document that certain of its books and records required under Commission Rule 4.23 are kept at its “Z” office. This exemption is further subject to the condition that other than with respect to the rule’s location requirement, “X” remains fully responsible for compliance

with Rule 4.23.

This letter, and the relief 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 that the operations or activities of “X”, including the location of its books and records, change in any material way from those represented to us.

This letter exempts “X” solely from the requirement that its books and records be maintained at its main business address. 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 Act 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 its main business address. Additionally, “X” 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 R. Stephen Painter Jr., an attorney on my staff, at (202) 418-5416.

Very truly yours,

James L. Carley
Director

^[1] The provisions of the Commodity Exchange Act and the Commission’s rules cited herein may be accessed at http://www.access.gpo.gov/uscode/title7/chapter1_.html and <http://www.gpoaccess.gov/ecfr/>, respectively.

^[2] Rule 4.23 provides that “[e]ach [CPO] registered or required to be registered under the Act must make and keep . . . books and records in an accurate, current and orderly manner at its main business office[.]”

^[3] The books and records are subject to inspection in accordance with all the provisions of Rule 1.31, including, but not limited to, the provisions relating to the time and manner for the production of records.