

CFTC Letter No. 97-19**March 27, 1997****Division of Trading & Markets**

Re: Rules 4.23 and 4.33 -- Request for Relief from Books and Records Location Requirement

Dear :

This is in response to your letter dated February 25, 1997, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by telephone conversations with Division staff. By your correspondence, you request that the Division exempt X , a registered commodity pool operator (CPO) and commodity trading advisor (CTA), from the requirements of Rules 4.23(a) and (b) and 4.33(a) and (b)¹ that a CPO and CTA, respectively, maintain certain books and records at its main business office in accordance with Rule 1.31.

Based upon the representations made in your correspondence, we understand the pertinent facts to be as follows. X s main business is located in New York. X anticipates receiving certain operational support from Y , including daily accounting services, trade processing and customer account reconciliation, for all pools operated and all accounts managed by X . Y s main business office is located in Illinois. X and Y are both subsidiaries of Z , a registered futures commission merchant. Y was organized as a legal entity separate from X for purposes of efficiency and convenience. X seeks relief from the location requirements of Rules 4.23 and 4.33 in order that it may maintain its books and records at the offices of Y in Illinois. In support of your request, you enclosed with your letter a letter dated March 10, 1997, from A , Vice President of Y , whereby Y states that it is aware of your exemption request and agrees to maintain the books and records required of X under the Commission s regulations.

Based upon the foregoing, pursuant to the authority delegated by Rule 140.93(a)(1) and subject to the conditions specified herein, the Division hereby exempts X from the requirements of Rules 4.23(a) and (b) and 4.33(a) and (b) such that X may maintain its books and records at Y's main business office, as described above. This exemption is, however, subject to the conditions that: (1) X notify the Division if the location of any such records changes from that as represented to us; (2) X remains responsible for the maintenance of all required books and records 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 Commission regulations; (3) within forty-eight hours after a request by a Commission representative, X will obtain the original books and records from Y's office in Illinois and provide them for inspection at X's office in New York; and (4) X discloses in its CPO and CTA Disclosure Documents that all Commission required books and records are kept at Y's office in Illinois. This exemption is further subject to the condition that X remains fully responsible for compliance with Rules 4.23 and 4.33.

This letter is based upon the representations you have made to us and is subject to compliance with the conditions stated above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the operations and activities of X, including the location of X's books and records, change in any way from those as represented to us.

This letter does not excuse X from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the Act²) or the Commission's regulations issued thereunder. For example, X remains subject to the antifraud provisions of Section 4o of the Act,³ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and all otherwise applicable provisions of Part 4. If you have any questions concerning this correspondence please contact me, or Charles O'Brien of my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin

Chief Counsel

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

² 7 U.S.C. § 1 et seq. (1994).

³ 7 U.S.C. § 6o (1994).