

**CFTC Letter No. 97-62****July 15, 1997****Division of Trading & Markets**

Re: Rule 4.21 -- Request for Relief from Disclosure Document Delivery Requirement Where  
General Partner of Pool is General Partner of the Pool's Limited Partners

Rule 4.23(a) -- Request for Relief Concerning Location of Original Books and Records

Dear :

This is in response to your letter dated May 12, 1997, to the Division of Trading and Markets ( Division ) of the Commodity Futures Trading Commission ( Commission ), as supplemented by telephone conversations with Division staff, in which you request on behalf of U , a registered commodity pool operator ( CPO ), that the Division exempt U from the requirement in Commission Rule 4.21<sup>1</sup> that U provide a Disclosure Document to the participants of V and W , commodity pools for which U serves as the general partner and CPO thereof. Additionally, you request that the Division exempt U from the requirement in Rule 4.23(a) concerning the location of the original books and records of V .

Based upon the representations made in your letter, as supplemented, we understand the relevant facts to be as follows. As noted above, U is registered with the Commission as a CPO. In response to recently adopted amendments to the Investment Company Act of 1940 (the ICA ), which permit an investment fund investing primarily in securities to have more than 100 investors under certain circumstances, certain funds for which U acts as the general partner and CPO are undergoing a reorganization. In this regard, V has been formed as a master fund for two commodity pool "feeder funds" for which U serves as the general partner and CPO. These two commodity pools are the X and Y . X and Y will be the only investors<sup>2</sup> in W will invest all of its assets in V . X will invest a substantial portion of its assets in V , but also will engage in other investment activities either directly or through investment in other funds, including W<sup>3</sup>.

W was formed in 1993 to invest primarily in equity securities. Pursuant to the reorganization, existing W investors will be offered the opportunity to exchange their interests in W for interests in ~~X~~<sup>4</sup> Those investors who choose not to avail themselves of this opportunity will remain W investors, but will not be entitled to make additional investments in W . Additionally, W will not accept any new investors. After completion of the reorganization, X will be the largest investor in W and will be the only W investor entitled to make additional investments.

In further support of your request for relief from Rule 4.21 on behalf of U , you represent that U will include all relevant disclosures regarding V in the Disclosure Documents for X and Y and will include all relevant disclosures regarding W in the Disclosure Document for ~~X~~<sup>5</sup> .

As you are aware, Commission Rule 4.21 generally requires that, prior to soliciting, accepting or receiving funds

or other property from a prospective pool participant, a CPO deliver to such prospective pool participant a Disclosure Document that contains specified information. Thus, absent the relief requested herein, U, as the CPO of V, would be required to deliver a Disclosure Document to itself as the CPO of and acting on behalf of the participants in X and Y. Similarly, as the CPO of W, U would be required to deliver a Disclosure Document to itself as the CPO of and acting on behalf of the participants in X.

Based upon the representations contained in your letter, as supplemented, the Division believes that an exemption from Rule 4.21 is appropriate. Specifically, we note that: (1) U is the general partner and serves as the CPO of each of V, X, Y and W; (2) the only investors in V will be Y and X; and (3) the only investors in X and certain existing investors in W. Accordingly, pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts U from Rule 4.21 to the extent that it would be required to provide itself, as the CPO of X and Y, a Disclosure Document for V and to the extent it would be required to provide itself, as the CPO of X, with a Disclosure Document for W. This relief is, however, subject to the condition that U remains the general partner and registered CPO of V, X, Y and W.

You also have requested that the Division grant relief to U from Rule 4.23(a) to the extent that it requires U to keep the original books and records of V at U's main business office in New York. The Division has determined that, based upon the representations made to us, it is appropriate to grant an exemption from the requirement of Rule 4.23(a) regarding the location where original books and records must be kept. This determination is based primarily upon your representations that: (1) while V's original books and records will be kept at V's main business office in Bermuda, duplicates of V's books and records regarding the trading activities of V will be kept by U at its main business office in New York; and (2) V must maintain its original books and records offshore to comply with Internal Revenue Service requirements for relief from United States income taxation. Based upon the foregoing and pursuant to the authority delegated by Rule 140.93(a)(1), the Division hereby exempts U from Rule 4.23(a) to the extent it requires that V's original books and records be kept at U's main business office, provided that, within 72 hours after a request from a Commission representative is made, U will make the original books and records of V available at a place located in the United States and specified by the Commission representative.

The exemptions granted by this letter are based upon the representations provided to us and are subject to the conditions stated above. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the operations of V, X, Y or W change in any way from those represented to us. Further, this letter is applicable to solely in connection with its acting as the CPO of V and W.

We note that this letter does not excuse U from compliance with any applicable requirements contained in the Commodity Exchange Act, as amended (the Act), or in the Commission's regulations issued thereunder. For example, it remains subject to the antifraud provisions of Section 406 of the Act, 7 U.S.C. 60 (1994), to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission's regulations and to all other applicable provisions of Part 4, including Rule 4.22 and the substantive provisions of Rule 4.23(a).

If you have any questions concerning this correspondence, please contact me or Lawrence T. Eckert, an attorney on my staff, at (202) 418-5450.

Very  
truly  
yours,

Susan C. Ervin

Chief Counsel

<sup>1</sup> Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1996).

<sup>2</sup> Existing investors in X who are not qualified purchasers as defined under the ICA will be required to exchange their interests in X for interests in Y. The remaining investors in X will include certain persons who qualify as qualified purchasers under the ICA but may not qualify as qualified eligible participants ( QEPs ) under Rule 4.7(a). Similarly, investors in Y may not qualify as QEPs.

<sup>3</sup> W currently is operated by U pursuant to Rule 4.7(a). Commission records indicate that a notice of claim for exemption was filed for W pursuant to Rule 4.7(a) on October 25, 1993. As noted above, certain investors in X may not be QEPs. Accordingly, after the reorganization it will not be possible for U to continue to operate W pursuant to Rule 4.7(a).

<sup>4</sup> All existing W investors are qualified purchasers under the ICA.

<sup>5</sup> You also note that U will not charge any advisory or management fees to V .

<sup>6</sup> 7 U.S.C. § 1 et seq. (1994).