

CFTC Letter No. 97-66**July 9, 1997****Division of Trading & Markets**

Re: Rules 4.7(a)(2)(iv) and (b)(2)(ii) - Request for Relief from Books and Records Location Requirements

Dear :

This is in response to your letter dated April 4, 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 U , a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"), in connection with its operation of V¹ from the requirements in Rules 4.7(a)(2)(iv) and (b)(2)(ii)² 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. V is a Delaware limited liability company. U 's main business office is currently located in Chicago, Illinois. In December, 1996, U moved its main business office from Niagra Falls, New York to Chicago, Illinois. Pursuant to an exemption granted by the Division by letter dated October 21, 1996, the books and records of V have been maintained by W at W s main business office.

U also operates the X³ an offshore fund organized in the Cayman Islands and open to investment solely by non-United States persons.⁴ All administrative services for X , including maintenance of X s books and records, are performed by Y , at Y s main business office in Dublin, Ireland.

Prior to making a determination as to where you intended to permanently reside, and prior to the relocation of U s offices from Niagra Falls to Chicago, you decided to select a permanent location for the administration of V⁵ Having already established a relationship with Y for the administration of X , you concluded that it would be efficient to have the same administrator maintain the books and records for both U funds, X and V . Upon the relocation of U s office to Chicago, then, the books and records for V were transferred to Y s office in Ireland so that both V and X would be administered by the same organization.⁶

In light of the foregoing, you request that U be exempted from the provisions of Rules 4.7(a)(2)(iv) and (b)(2)(ii) that would require it to maintain, at its Chicago, Illinois office, all books and records prepared in connection with its activities as the CPO and CTA for V, and that instead U be allowed to maintain all of these books and records at Y's main business office in Dublin, Ireland. In support of this request, you: (1) enclose with your letter a letter from Y whereby Y states that it is aware of U's exemption request and agrees to maintain U's original books and records concerning V; (2) represent that V is subject to taxation pursuant to the United States Internal Revenue Code and that it intends to file federal tax returns in compliance with all applicable Internal Revenue Service regulations; (3) represent that audits of V's books and records will be conducted by a United States domiciled auditor who is a member of AICPA Securities and Exchange practice section or equivalent professional standard; (4) represent that V will cooperate in any information sharing arrangements between Ireland and the U.S. as requested by the Commission; and (5) represent that the original books and records of V will be made available to Commission, National Futures Association and Department of Justice representatives at a place specified by any such representative within seventy-two hours after the request is made.

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 U from the requirements of Rules 4.7(a)(2)(iv) and (b)(2)(ii) applicable to V to the extent that U may maintain its original books and records at Y's main business office, as described above. This exemption is, however, subject to the conditions that U: (1) maintains copies of V's original books and records at U's Chicago, Illinois office; and (2) remains responsible for the maintenance of all required books and records, and for assuring their availability to the Commission, the National Futures Association and any other agency authorized to inspect such books and records, in accordance with Commission regulations.

This letter is based upon the representations you have made to us, is subject to compliance with the conditions stated above, and is applicable to U solely in connection with its service as the CPO and CTA of V. 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 or activities of U or V, including the location of U's books and records, change in any way from those as represented to us. Further, this relief is prospective only. Nothing herein should be construed as limiting in any way the Commission's ability to institute enforcement proceedings or other action against U for any past violation of the Act or Commission regulations.⁷

We note that this letter relieves U from the location of books and records requirements contained in Rules 4.7(a)(2)(iv) and (b)(2)(ii) and does not excuse U from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the Act)⁸ or the Commission's regulations issued thereunder. For example, U remains subject to the antifraud provisions of Section 40 of the Act,⁹ the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations, and to 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 U filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) on behalf of V on August 27, 1996. Pursuant to this exemption, interests in V may be sold only to qualified eligible participants (QEPs). In addition, U filed a Notice of Claim for Exemption pursuant to Rule 4.7(b) on June 22, 1995.

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1996).

³ U filed a Notice of Claim for Exemption pursuant to Rule 4.7(a) on behalf of X on August 19, 1996. Pursuant to this exemption, interests in X may be sold only to QEPs.

⁴ For this purpose, the definition of United States person is identical to the definition of that term as set forth in Rule 4.7(a).

⁵ In this regard, you explain that you, as the sole principal of U , lived in E from 1994 until January 1997. You had been considering relocating U s office to Seattle, Washington, New York, New York, Vancouver, British Columbia, Chicago, Illinois or a location in Europe. Prior to your decision on which location to select as the new home for U , you felt it was necessary to select a permanent home from which V could be administered. The international financial center in Dublin, Ireland was selected.

⁶ By notice dated May 5, 1997, U filed a request under Commission Advisory 18-96 to maintain the books and records of X at the main business office of Y .

⁷ This statement is equally applicable to U in connection with its operation of V and X .

⁸ 7 U.S.C. § 1 *et seq.* (1994).

⁹ 7 U.S.C. § 6o (1994).