

**CFTC Letter No. 98-23****March 24, 1998****Division of Trading & Markets**

Re: Request for Relief From the Books and Records Location Requirement of Rules 4.7(a)(2)(iv) and 4.7(b)(2)(ii)

Dear :

This is in response to your letter dated November 14, 1997 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letter dated December 9, 1997 and 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 in Rule 4.7(a)(2)(iv) and Rule 4.7(b)(2)(ii)<sup>1</sup> that CPOs and CTAs maintain at their main business offices the books and records for each Rule 4.7 exempt pool they operate or qualified eligible client they advise (collectively "Rule 4.7 Accounts").

Based upon the representations made in your correspondence, we understand the relevant facts to be as follows. "X's" main business office is in California. However, for several years now "X's" parent company, "Y" in New York, has been performing certain administrative and bookkeeping services with respect to "X's" Rule 4.7 Accounts. You assert that it is cost effective and more efficient for "X" also to maintain the original books and records of its Rule 4.7 Accounts at the same location. In support of your request, you have provided a letter dated December 9, 1997 from "A", Vice President of "Y", stating that "Y" is aware of "X's" exemption request and agrees to maintain the books and records required of "X" under the Commission's regulations.

Based upon the foregoing representations and subject to the conditions set forth below, the Division, under authority delegated to it by Rule 140.93(a)(1), hereby exempts "X" from the requirements of Rules 4.7(a)(2)(iv) and 4.7(b)(2)(ii) to allow "X" to maintain the books and records required thereunder at "Y's" offices in New York.<sup>2</sup> This exemption is, however, subject to the conditions that: (1) "X" notify the Division if the location of any original books and records changes from that 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<sup>3</sup> after a request by a representative of the foregoing, "X" will obtain the original books and records from "Y's" offices in New York and provide them for inspection at "X's" main business office in California if the representative chooses to inspect them there;<sup>4</sup> 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 New York. This exemption is further subject to the condition that "X" remains fully responsible for compliance with Rules 4.7(a)(2)(iv) and 4.7(b)(2)(ii).

This letter merely exempts "X" from the requirement that its books and records be maintained at its main business office. The relief granted by this letter 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 Commodity Exchange Act ("Act")<sup>5</sup> or the Commission's regulations issued thereunder. For example, "X" remains subject to Commission Rule 1.31 and the Commission maintains its rights under that rule to inspect the required books and records of "X" at "Y's" offices in New York. "X" also remains subject to the antifraud provisions of Section 4o<sup>6</sup> of the Act, 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.

This letter, and the exemption granted herein, are based both upon the representations you have made to us and any conditions stated above. Any different, changed or omitted material facts or circumstances might render this exemption void. You must notify us immediately in the event that the operations or activities of "X", including the location of the books and records for the Rule 4.7 Accounts, change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Monica S. Amparo, an attorney on my staff, at (202) 418-5450.

Very truly yours,

I. Michael Greenberger

Director

<sup>1</sup> Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997).

<sup>2</sup> Your letter also seeks exemptive relief for "X" from the books and records location requirement of Rules 4.23 and 4.33, applicable to CPOs and CTAs respectively, "[i]f "X" begins to provide services to non-Rule 4.7 clients." The Division declines at this time to grant an exemption for this hypothetical, future situation. You may contact us for guidance at such time as "X" specifically intends to provide services to non-Rule 4.7 Accounts and can provide the necessary factual information related thereto.

<sup>3</sup> By your correspondence you request seventy-two hours for "X" to obtain the original books and records from "Y's" offices in New York and provide them for inspection at "X's" main business office in California. Although you state that "granting such a request would not be inconsistent with the

provisions of CFTC Rules 4.23 and 4.33 which permit registered CPOs and CTAs whose main business offices are located outside the United States, to provide the requisite books and records . . . within seventy-two hours," we note that "X's" main business office is in the United States. Accordingly, as a condition for "X's" receipt of the requested exemptive relief, "X" must produce the subject books and records within 48 hours after a request by a representative of an agency authorized to review them.

<sup>4</sup> As stated above, the books and records are also subject to inspection pursuant to Rule 1.31 at "Y's" offices in New York.

<sup>5</sup> 7 U.S.C. § 1 et seq. (1994).

<sup>6</sup> 7 U.S.C. § 6o (1994).