

CFTC Letter No. 98-27**March 24, 1998****Division of Trading & Markets**

Re: Rule 4.33 Request for Relief from the Books and Records Location Requirement of Rule 4.33.

Dear :

This is in response to your letter dated January 27, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by your letters dated February 9, 26 and 27 and March 3, 1998 and by telephone conversations with Division staff, wherein you request that the Division exempt "X", a registered commodity trading advisor ("CTA"), from the requirement in Rule 4.33¹ that a CTA maintain its books and records at its main business office.²

Based upon the representations made in your correspondence, we understand the facts to be as follows. "X's" main business office is located in "A".³ However, since its inception in July of 1996, "X's" books and records have been maintained at the "B" office of its immediate parent, "Y".⁴ The books and records of "Y" and its nine subsidiaries, including "X", are kept in its "B" office. You assert that it is cost effective and more efficient for "X" to maintain its books and records at the same location. In support of your request, you have provided a letter dated March 3, 1998 from "Y" which states that "Y" is aware of "X's" exemption request and agrees to maintain the books and records required of "X" in accordance with the Commission's regulations.

Based upon the foregoing representations and consistent with our prior practice in this area,⁵ it appears that granting the relief requested would not be contrary to the public interest or to the purposes of Rule 4.33. Accordingly, by the authority delegated to it under Rule 140.93(a)(1), the Division hereby exempts "X" from the requirement of Rule 4.33 to allow "X" to maintain the books and records required thereunder at "Y's" office in "B". 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 ensuring that all books and records required by Rule 4.33 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 Commission regulations; (3) within forty-eight hours after a request by a representative of the foregoing, "X" will obtain the original books and records from "Y's" office in "B" and provide them for inspection at "X's" main

business office in "A" if the representative chooses to inspect them there;⁶ and (4) "X" discloses in its CTA Disclosure Document that all Commission required books and records are kept at "Y's" office in "B".

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 requirements contained in the Commodity Exchange Act (the "Act")⁷ or in 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" office in "B". "X" also remains subject to the antifraud provisions of Section 4o of the Act,⁸ the reporting requirements for traders forth in Parts 15, 18, and 19 of the Commission's regulations and to all provisions of Part 4.

The exemption granted by this letter, is based upon the representations you have made to us and is subject to compliance with the conditions set forth above. Any different, changed or omitted facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activity of "X", including the location of the books and records required by Rules 4.33, change in any material way from those represented to us. Moreover, the exemption provided herein is prospective only. By this letter, the Division is not excusing, or in any way limiting, the Commission's ability to proceed against "X" for any past violations of the Act or the Commission's regulations issued thereunder.

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

Very truly yours,

I. Michael Greenberger

Director

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

² As noted in your correspondence dated January 27, 1998, this request was made in response to receipt of a National Futures Association deficiency notice dated January 12, 1998. We further note that you originally requested relief from the books and records location requirements of both Rule 4.23 and Rule 4.33, but withdrew your request for relief from Rule 4.23 by letter dated February 27, 1998. As you stated in your letter, "X" is neither registered nor required to be registered as a CPO because it is not

operating as a CPO. Therefore, the request for relief from Rule 4.23 was in error.

³ This office is located in "A".

⁴ This office is located in "B".

⁵ CFTC Interpretative Letter 97-19 [Current Transfer Binder] Com. Fut. L. Rep. (CCH) ¶ 27,011 (March 27, 1997).

⁶ As stated above, the books and records are also subject to inspection pursuant to Rule 1.31 at "Y's" office in "B".

⁷ 7 U.S.C. §§ 1 et seq. (1994).

⁸ 7 U.S.C. § 60 (1994).