

CFTC Letter No. 98-36**May 22, 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 the letter dated January 27, 1998, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission") from "A", the listed branch manager and a registered associated person ("AP")¹ of "X", a registered commodity trading advisor ("CTA"), as supplemented by your letters dated March 25, 1998 and April 6, 1998; by "A's" letters dated February 25, 1998 and April 30, 1998; and, by "A's" telephone conversations with Division staff. By this correspondence, "A" requests that the Division exempt "X" from the requirement in Rule 4.33² that a CTA maintain its books and records at its main business office.³ By letters dated March 25, 1998 and April 6, 1998 to the Division, you authorized "A" to make the request and you accepted full responsibility for all representations made by "A" in support of the request. Accordingly, for the purpose of this letter, we are treating the request as being made by "X".

Based upon the representations made to us, we understand the facts to be as follows. You are "X's" president and sole principal. Since 1995, you have performed all of "X's" commodity interest trading activities from "X's" main business office in "Y"⁴ and "A" has performed all of "X's" recordkeeping and administrative functions from "X's" branch office in "Z" (the "Branch Office").⁵ "X" wishes "A" to assume responsibility for "X's" accounting function within the year. "A" possesses eleven years of experience in the futures industry, including nine years of experience performing the administrative and/or accounting functions of companies, like "X," which specialize in providing trading advice on commodity interests based upon agricultural commodities. Because "X's" administrative functions are performed from the Branch Office, all of "X's" books and records are maintained there.

Based upon the foregoing representations and consistent with our prior practice in this area,⁶ 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 location of books and records requirement of Rule 4.33 to allow "X" to maintain the books and records required thereunder at the Branch Office. This exemption is, however, subject to the conditions that: (1) "X" notifies the Division if the location

of any 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 NFA, 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 the Branch Office and provide them for inspection at "X's" main business office in "Y" if the representative chooses to inspect them there;⁷ and (4) "X" discloses in its CTA Disclosure Document that all Commission required books and records are kept at the Branch Office.

This letter exempts "X" solely from the requirement in Rule 4.33 that it maintain the books and records specified in the rule at its main business office. The relief granted by this letter does not excuse "X" from compliance with any other provision 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")⁸ or in the Commission's regulations issued thereunder. For example, "X" remains subject to the books and records inspection provisions of Rule 1.31 and the Commission maintains its rights under that rule to inspect the required books and records of "X" at the Branch Office. "X" also remains subject to all antifraud provisions of the Act and Commission regulations, the reporting requirements for traders forth in Parts 15, 18, and 19 of the Commission's regulations and all other provisions of Part 4.

This letter, and the exemption granted herein, are based upon the representations "X" has made to us and are subject to compliance with the conditions set forth above. Any different, changed or omitted material facts or circumstances might render the exemption void. You must notify us immediately in the event the operations or activities of "X", including the location of the books and records required by Rule 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 violation 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 National Futures Association ("NFA") records indicate that "A's" status as an AP and branch manager of "X" became effective on September 5, 1995 and October 13, 1995, respectively.

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1997). We note that "A" originally requested relief from the books and records location requirements of both Rule 4.23 and Rule 4.33. By letter dated February 25, 1998, "A" withdrew the request for relief from Rule 4.23 stating that "X" is not operating as a CPO and, therefore, the request made for relief under this rule was in error.

³ As noted in "A's" January 27, 1998 letter, this request was made in response to a deficiency letter from the NFA dated January 14, 1998.

⁴ Specifically, this office is located at "Y".

⁵ Specifically, this office is located at "Z." "A's" administrative duties include, among other things, processing new management agreements, billing incentive and management fees, handling customer inquiries, and forwarding "X's" Disclosure Document to clients and prospective clients.

⁶ CFTC Interpretative Letter 98-08, to be published in Com. Fut. L. Rep. (CCH) (November 12, 1997).

⁷ The books and records are also subject to inspection pursuant to Rule 1.31 at "X's" office in "Z" in accordance with all of the provisions of Rule 1.31 including, without limitation, provisions relating to the time and manner of the production of records.

⁸ 7 U.S.C. §§ 1 et seq. (1994).