

CFTC Letter No. 99-35**August 16, 1999****Exemption****Division of Trading & Markets**

Re: Request for Relief from Books and Records Location Requirements of Rules 4.23 and 4.33

Dear :

This is in response to your letter dated March 5, 1999, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by telephone conversations between you and Division staff. By your correspondence, you request that the Division exempt the Club , a registered commodity pool operator (CPO) and commodity trading advisor (CTA), from the requirements of Rules 4.23 and 4.33 that a CPO and CTA, respectively, must maintain certain books and records at its main business office in accordance with Rule 1.31.¹

Based upon the representations made in your correspondence, we understand the facts to be as follows. The Club s main business office is located in NY. However, X , located in OK,² provides certain operational support to the Club, including performing monthly accounting functions for the Club and its pools, and maintaining Disclosure Documents. The Club seeks relief from Rules 4.23 and 4.33 in order that it may maintain its books and records at X s offices in OK.³

Based upon the foregoing and pursuant to the authority granted by Rule 140.93(a)(1), the Division believes that exempting the Club from the requirements of Rules 4.23 and 4.33 such that the Club may maintain its books and records at X s offices, as described above, would not be contrary to the public interest or the purposes of Rules 4.23 and 4.33. This exemption is, however, subject to the conditions that: (1) the Club will notify the Division if the location of any original books and records changes from that represented to us; (2) the Club remains responsible for ensuring that all books and records required by Rules 4.23 and 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;⁴ (3) within 48 hours after a request by a representative of the foregoing, the Club will obtain the original books and

records from X and provide them for inspection at the Club's main business office in Flushing, NY if the representative chooses to inspect them there; and (4) the Club must disclose in its CPO and CTA Disclosure Documents that all Commission required books and records are kept at X's office in OK. This exemption is further subject to the condition that the Club remains responsible for compliance with Rules 4.23 and 4.33.

This letter, and the exemption granted herein, are based upon the representations you and A have made to us and are subject to compliance with the 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 Club's operations or activities, including the location of the Club's books and records, change in any material way from those represented to us.

This letter exempts the Club from the requirements that its books and records be maintained at its main business office. The relief granted by this letter does not excuse the Club from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse the Club from compliance with any other otherwise applicable requirements contained in the Commodity Exchange Act (Act⁵) or the regulations issued thereunder. For example, the Club remains subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the required books and records of the Club at X's offices in OK. The Club also remains subject to all antifraud provisions of the Act and Commission regulations, the reporting requirements for traders set forth in Parts 15, 18, and 19 of the Commission's regulations and all otherwise applicable provisions of Part 4.

If you have any questions concerning this correspondence, please contact Gregory S. Collett, 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 (1999).

² X's address is in OK.

³ By letter dated May 5, 1999, A, the President of X, acknowledged your request. He also represented that the Club's books and records will be maintained by X, and that those books and records will be made available upon demand to any authorized representative of the Commission, the National Futures

Association, the United States Department of Justice, or any other agency authorized to review such books and records.

⁴ The books and records also are subject to inspection pursuant to Rule 1.31 at the Club's main business office in New York in accordance with all of the provisions of Rule 1.31, including, but not limited to, the provisions relating to the time and manner for the production of records.

⁵ 7 U.S.C. § 1 *et seq.* (1994)