

CFTC Letter No. 99-40**August 5, 1999****Exemption****Division of Trading & Markets**

Re: Request for Exemption from Rule 4.23(a).

Dear :

This is in response to your letter dated May 19, 1999, to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your facsimile dated May 27, 1999 and telephone conversations with Division staff, concerning S , a registered commodity pool operator (CPO), and its operation of commodity pools to which T acts as Trading Manager and provides administrative services (the Pools). By your correspondence, you request an exemption from the requirement that the books and records set forth in Rule 4.23(a)¹ must be maintained at S s main business office in accordance with Rule 1.31 so that these books and records may be maintained at T s main business office².

Based upon the representations you have made in your correspondence, we understand the facts to be as follows. S s main business office is located in Massachusetts³ Pursuant to the Trading Manager Agreement for each Pool, among other things T prepares such books and records and provides such administrative and compliance services as are required by law or regulation in connection with the operation of the Pools.⁴ T s main business office is located in New York.⁵ T is itself a registered CPO. It also is a registered commodity trading advisor.

In support of your request you explain that:

T was the CPO of the Pools until March 1, 1999. T withdrew as general partner and CPO to divest itself of control of the Pools in order to comply with certain regulations affecting bank holding companies. Those regulations do not prohibit T from performing the functions it has undertaken as Trading Manager of the Pools.

In further support of your request, you represent that T is an affiliate of the Pools' futures commission merchant and selling agent U, which puts T in a unique position enabling it to most efficiently collect and maintain subscription and redemption documents, as well as trading records, for the Pools.

Based upon the foregoing representations, the Division does not believe that granting your request would be contrary to the public interest or the purpose of Rule 4.23(a).

Accordingly, under the authority delegated to it by Rule 140.98(a)(1), the Division hereby grants S an exemption from the books and records location requirement of Rule 4.23(a) such that it may maintain the books and records required under that rule at the main

business office of T. This exemption is, however, subject to the following conditions: (1)

S notify the Division if the location of any of the books and records required by Rule 4.23(a) changes from that as represented to us; (2) S remains responsible for ensuring that all books and records required by Rule 4.23(a) 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, S will obtain the books and records from the main business office of T in New York and provide them for inspection at S's main business office in Massachusetts if

the representative chooses to inspect them there⁶; and (4) S discloses in each Disclosure Document for a Pool that all books and records required to be kept for the Pool are kept at

T's main business office in New York. This exemption is further subject to the condition that S remains fully responsible for compliance with Rule 4.23(a).

This letter, and the exemption granted herein, are based upon the representations you 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 the operations or activities of S, including the location of S's books and records, change in any material way from those as represented to us.

This letter does not excuse S from compliance with any other aspect of the Commission's recordkeeping requirements, nor does it excuse S from compliance with any otherwise applicable requirement contained in the Commodity Exchange Act (Act⁷) or the Commission's regulations issued thereunder. For example, S remains subject to Rule 1.31 and the Commission maintains its right under that rule to inspect the books and records required under Rule 4.23(a) at the offices of T in New York. S also remains subject to all antifraud provisions of the Act and the Commission's regulations, the reporting requirements for traders set forth in Parts 15, 18 and 19 of the regulations and all otherwise applicable provisions of Part 4.

If you have any questions concerning this correspondence, please contact Barbara S. Gold, Assistant Chief Counsel, at (202) 418-5450.

Sincerely,

I. Michael Greenberger

Director

¹ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

² You represent both S and T in connection with making the request.

³ The full address is _____, Massachusetts.

⁴ These activities, which are subject to the overall control and direction of S, include: preparing required books and records and reports to limited partners, government agencies and regulators; and assistance with subscriptions, redemptions and limited partner communications.

⁵ The full address is _____, New York.

⁶ The books and records also are subject to inspection pursuant to Rule 1.31 at T'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.

⁷ 7 U.S.C. §1 *et seq.* (1994).