

CFTC Letter No. 99-57**November 15, 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 28, 1999 to the Division of Trading and Markets (Division) of the Commodity Futures Trading Commission (Commission), as supplemented by your letter dated June 28, 1999 and telephone conversations with Division staff, concerning R , registered commodity pool operator (CPO), and its operation of the Fund ¹, for which S provides administrative services. By your correspondence, you request an exemption from the requirement of Rule 4.23(a) that R must maintain the books and records specified in that rule at its main business office, such that these books and records may be maintained at S s office².

Based upon the representations that you have made in your correspondence, we understand the facts to be as follows. R s main business office is located in ³V Pursuant to a delegation agreement between S and R , S will provide certain accounting, administration, and investor services (Services) to R . Accordingly, R requests that the books and records specified in Rule 4.23(a) may be maintained at S s office, which also is located in ⁴V.

In support of your request, you represent that, by having S perform these Services: (1) R will save time and expense; (2) the likelihood of recordkeeping errors will be reduced; and (3) investors in the Fund will incur no additional cost.

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 R an exemption from the books and records location requirement of Rule 4.23(a) such that R may maintain the books and records required under that rule at S s office in V . This exemption is, however, subject to the following conditions: (1) R must notify the Division if the location of any of the books and records required by Rule 4.23(a) changes

from that represented to us; (2) R 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, R will obtain the books and records from S s office and provide them for inspection at R s main business office if the representative chooses to inspect them there;⁵ and (4) R discloses in each Disclosure Document for the Fund that all books and records required to be kept by the Fund are kept at S s office in V . This exemption is further subject to the condition that R remains fully responsible for compliance with Rule 4.23 (a).⁶

This letter, and the exemption provided herein, are based upon the representations that 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 R , including the location of R s books and records, change in any material way from those represented to us.

This letter does not excuse R from compliance with any other aspect of the Commission s recordkeeping requirements, nor does it excuse R from compliance with any otherwise applicable requirement contained in the Act or the Commission s regulations issued thereunder. For example, R 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 R s office. R 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 Gregory S. Collett, an attorney on my staff, at (202) 418-5450.

Very truly yours,

John C. Lawton

Acting Director

¹ You initially submitted this request on behalf of T in relation to its operation of U). On June 1, 1999, T changed its name to R , and U was renamed the Fund.

² Commission rules referred to herein are found at 17 C.F.R. Ch. I (1999).

³ The full address is _____.

⁴ The full address is _____.

⁵ The books and records also are subject to inspection pursuant to Rule 1.31 at S's office 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.

⁶ You also request confirmation of your view that S will not become a CPO of the Fund solely by virtue of performing the Services for the Fund. In this regard, you represent that R will remain responsible for compliance with all requirements of the Commodity Exchange Act (the Act), 7 U.S.C. §1 *et seq.* (1994), and Commission regulations promulgated thereunder applicable to CPOs, including proper performance of the Services by S. The Services, whose performance R has delegated to S, include: (a) maintaining the Fund's books and records; (b) producing year-end financial statements and tax statements for review by R and the Fund's auditor; (c) producing performance data; (d) on request from investors, notifying them of daily estimated net asset values and answering inquiries regarding account statements and other accounting matters; and (e) processing subscriptions and redemptions approved by R. R will have sole responsibility to: (a) determine the form and content of Disclosure Documents; (b) solicit prospective investors; (c) engage and terminate all fund service providers, including S; and (d) select, hire, and fire any CTA which may be retained by the Fund. Based upon the representations made in your correspondence, it appears that S will be providing administrative assistance to, and acting as an agent of, R in providing the Services to the Fund. Accordingly, we confirm that S's performance of the Services for the Fund will not cause S to become a CPO of the Fund. *See, e.g.*, CFTC Staff Letter No. 98-04, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,251 (February 21, 1997) (confirming that a firm providing administrative services to two CPOs would be an agent and fiduciary of the CPOs, but would not itself be a CPO).