

CFTC Letter No. 99-60**December 10, 1999****Division of Trading & Markets**

Dear X:

On April 8, 1999, you initially filed for an exemption from presenting performance information for the period November 1995 through September 1997. By letters received on June 17, 1999, and October 12, 1999, you provided additional information in response to suggestions and requests for additional clarification from Division staff.

Based upon the representations made in your correspondence, as supplemented, we understand the relevant facts to be as follows. You were registered and managed client accounts as a sole proprietor doing business as XX.¹ You noted that you were given power of attorney to trade all accounts at your discretion with respective FCMs; however, another individual, Y maintained all of the trading records. You were unable to contact former customers, determine the total number of accounts you managed, or determine how long you managed those accounts because you had no records in your possession. You were able to monitor the results of your trading for customers because Y would fax you a monthly one-page composite performance update. You believe that you always knew what the composite trading performance was as you maintained daily arithmetic calculations on the proprietary account and everything else was traded in tandem. Although you indicated that a strict money management policy as stated in the disclosure document was closely followed at all time, you also noted that Y would occasionally override your trading decision in the W that had XX as one of its traders. Further, the registration information does not indicate any registration affiliation between X and Y

Commission Regulation 4.33 specifically states that each CTA registered under the Act must make and keep specified books and records in an accurate, current and orderly manner at its main business office and in accordance with §1.31 (emphasis added).² If a CTA enters into an arrangement with another entity to maintain its books and records in a different location other than its main business office, the CTA should file for relief. Our records do not indicate that you have ever filed a claim for relief from Regulation 4.33.

Based upon the foregoing representations, it is clear that you did not comply with the recordkeeping requirements of Regulation 4.33. Nor did you seek relief from those requirements. Moreover, the necessity for this request for exemption was engendered by your failure to comply with the Regulation. In light of these facts, the Division must deny your request for exemption.

This letter is based on the representation you have made to us. Any different, changed or omitted facts or conditions might cause us to reach a different conclusion. This letter represents the position of the Division of Trading and Markets only. It does not necessarily reflect the views of the Commission or any other office or division of the Commission. If you have any questions regarding this letter, please contact me or Z. Patricia Ross, Futures Trading Specialist on my staff, at (202) 418-5469.

Very
truly
yours,

Kevin
P.
Walek

Assistant Director

cc: Anthony Gialanella, Compliance

National Futures Association

¹ NFA s registration information (NFA #) indicate that your date of registration as a CTA became effective November 21, 199X and that registration record also indicates name changes in 1995 from XXX. to XX.

² Regulation 4.33 also requires that each commodity trading advisor registered under the Act must make and keep specified books and records. Those books and records which pertain to the clients and subscribers of the CTA must include (1) the name and address of each client and each subscriber; (2) an acknowledgement that the client has received a Disclosure Document for the trading program to which the CTA will direct his account or guide his trading; (3) all powers of attorney and other documents, or copies thereof, authorizing the CTA to direct the commodity interest account of a client or subscriber; (4) all other written agreements, or copies entered into by the CTA with a client or subscriber; (5) a list or other record of all commodity interest accounts of clients directed by the CTA and all transactions effected; (6) copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant; (7) and, the original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts or standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the CTA to any existing or prospective client or subscriber, showing the first date of distribution if not otherwise shown on the document.