

**CFTC letter No. 02-114**  
**November 22, 2002**  
**Interpretation**  
**Division of Clearing and Intermediary Oversight**

Re: Section 4m(1) – Request for Relief from CTA Registration

Dear :

This is in response to your letter dated September 9, 2002 to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), as supplemented by your e-mail messages dated October 23 and November 20, 2002 and by telephone conversations with Division staff. By your correspondence, you request on behalf of “X” relief from the requirement to register as a commodity trading advisor (“CTA”) under Section 4m(1) of the Commodity Exchange Act (the “Act”)<sup>[1]</sup>

Based upon the representations made in your correspondence, we understand the facts to be as follows. “X” is registered with the Commission as an introducing broker (“IB”) and is registered with the Securities and Exchange Commission as a broker-dealer and as an investment adviser.

“X” is in the process of entering into an advisory agreement with “Y”, whereby “X” will recommend, but not select, suitable fund-of-funds investments for various “Y” separate accounts. “Y” the separate accounts, and each of the participants in the separate accounts are “qualified eligible persons” as that term is defined in Rule 4.7 (“QEPs”). Each fund-of-funds will own interests in numerous underlying investment vehicles (ranging from 20 to 75 in number). Each underlying investment vehicle that trades commodity interests will be operated by a person registered with the Commission as a commodity pool operator.

In support of your request, you claim that no regulatory purpose would be served by “X” registering as a CTA in light of the facts that: (1) in connection with “X’s” IB registration, each of “X’s” principals are listed as such and each of “X’s” associated persons are registered as such with the Commission; and (2) since “Y”, the separate accounts and the investors in the separate accounts are all QEPs, “X” could file a Notice of Claim for Exemption under Rule 4.7 – which would relieve it of the disclosure and recordkeeping requirements otherwise applicable to registered CTAs.

Based upon your representations, it appears that granting the requested relief would not be contrary to the public interest or the purposes of the Act and the Commission’s rules issued thereunder.<sup>[2]</sup> Accordingly, the Division will not recommend that the Commission commence any enforcement action under Section 4m(1) of the Act against “X” for failure to register as a CTA in connection with the

activities described above. This position is, however, subject to the condition that “X” remain registered with the Commission as an IB.

The no-action position taken in this letter does not excuse “X” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, “X” remains subject to all antifraud provisions of the Act<sup>[3]</sup> and the Commission’s regulations, the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s regulations, and to all applicable provisions of Part 4. Moreover, this letter is applicable to “X” solely in connection with the activities described in your correspondence.

This letter, and the no-action position taken herein, are based upon the representations that have been made to the Division. Any different, changed or omitted facts or circumstances might render the position taken herein void. You must notify the Division immediately in the event that the operations or activities of “X” change in any respect from those as represented to us. Further, the no-action position taken in this letter represents the position of this Division only and does not necessarily represent the position of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours

Jane Kang Thorpe  
Director

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<sup>[1]</sup> 7 U.S.C. §6m(1) (2000). While you initially requested an exemption from CTA registration under Commission Rule 4.14(a)(6), you subsequently amended your request to seek relief from Section 4m(1) pursuant to discussions with Commission staff. Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

<sup>[2]</sup> See, e.g., CFTC Staff Letter No. 91-4, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. ¶25,050 (April 25, 1991).

<sup>[3]</sup> See, e.g., Sections 4b and 4o, 7 U.S.C. §§ 6b and 6o (2000).