

**CFTC Letter No. 03-01**  
**December 23, 2002**  
**Interpretation**  
**Division of Clearing and Intermediary Oversight**

Re: Section 4m(1)

Dear :

This is in response to your letter dated December 9, 2002 to the Division of Clearing and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), as supplemented by your e-mail message dated December 12, 2002 and by telephone conversations with Division staff. By your correspondence, you request on behalf of “X”<sup>[1]</sup> relief from one of the conditions specified in a no-action letter previously issued by the Division to “X” (“Staff Letter 02-89”).<sup>[2]</sup>

In Staff Letter 02-89 the Division took commodity pool operator (“CPO”) and commodity trading advisor (“CTA”) registration no-action positions with respect to “X’s” operation of certain insurance company separate accounts. One of the conditions of that relief, and the condition at issue in your request, was that any advisor chosen by “X” to serve as a CTA with respect to the separate accounts “will be, and will remain, registered as a CTA.”

“X” now wishes to enter into an advisory agreement with “Y”, pursuant to which “Y” would function as a CTA with respect to the separate accounts. However, by letter dated November 22, 2002, the Division took a CTA registration no-action position with respect to “Y” in connection with the contemplated advising of “X” separate accounts.<sup>[3]</sup> Thus, absent the requested relief, “X” may not engage “Y” to serve as a CTA.

In this regard, the Division believes that the basis of its November 22, 2002 letter to “Y” is also a basis upon which to grant the instant request – *i.e.*, that: (1) “Y” is currently registered with the Commission (albeit in another category, as an introducing broker); (2) in connection with its registration, each of “Y’s” principals are listed as such and each of its associated persons are registered as such; and (3) since “X”, the separate accounts and the investors in the separate accounts are all QEPs, “Y” 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.

Accordingly, the Division believes 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. Thus, the Division will not deem the failure of “Y” to register as a CTA in connection with advising the “X” separate accounts to have voided the no-action positions taken in Staff Letter 02-89. This determination is made on the

condition that “Y” maintains its current registration with the Commission.

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>[4]</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 is 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” or “Y” change in any material respect from those as represented to us. Further, this letter represents the position of this Division only and does not necessarily represent the views 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> You represent that “X” is wholly owned by “Z”. As an attorney in the Variable Products Unit of “Z”, you are making this request on behalf of “X”. Your December 9, 2002 letter is on the letterhead of “V” (legal name: “W”, also wholly-owned by “Z” because your office is located in Boston, the home office of “V”).

<sup>[2]</sup> [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,126 (May 16, 2002).

<sup>[3]</sup> CFTC Staff Letter 02-114, available at the Commission’s website: <http://www.cftc.gov/tm/letters/02letters/tm02-114.htm>

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