

CFTC Letter No. 03-03
December 24, 2002
Interpretation
Division of Clearing and Intermediary Oversight

Re: Request for Commodity Pool Operator Registration Relief

Dear :

This is in response to your letter dated September 16, 2002, to the Division of Clearing and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by the e-mail messages of "A", your Vice President, Investments and head trader, dated October 22, October 23, November 21, and November 26, 2002 and by telephone conversations with Division staff. By your correspondence, you request relief from the requirement to register as a commodity pool operator ("CPO") or commodity trading advisor ("CTA") under Section 4m(1) of the Commodity Exchange Act (the "Act")^[1] with respect to the "Manager", the manager and adviser of the "LLC".

Based upon the representations made in your correspondence, we understand the facts to be as follows.

The LLC

The LLC was formed July 1, 2002, solely to serve the investment purposes of its members. The LLC has two members: (1) "V", a not-for-profit membership advocacy organization for farmers in the State of "U" (the "W");^[2] and (2) "X", a "U" property and casualty insurance company (the "Insurance Company").^[3] "V" is owned by its members in the State of "U". It engages in legal and legislative advocacy on behalf of its members, and provides environmental and education programs and other benefits for its members, such as group discounts on farm and home-related goods and services. The Insurance Company, in turn, is owned by its policyholders, who are all members of the "W" (although not all members of "W" are policyholders of the Insurance Company). "W" and the Insurance Company have the same boards of directors. Essentially then, the members of the LLC are owned and controlled by the same persons.

The LLC was formed to provide a more efficient means of investing the capital of its members than direct trading by each of its members. The LLC engages in all aspects of capital investment, including commodity interest trading.

The Manager

Under the terms of the LLC's operating agreement, complete and exclusive power and responsibility for

investment and investment management decisions, and for managing and administering the affairs of the LLC, are vested with the Manager.^[4] The Manager is a wholly-owned subsidiary of “W”. The Manager is registered with the State of “U” as an investment adviser. The Manager’s sole activity is managing the investment assets of its parent, “W”, and the LLC.

Analysis

Commission Rule 4.10(d)(1)^[5] defines the term commodity “pool” as “any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.” If “W” were to commit directly to commodity interest trading the assets it has contributed to the LLC, “W” would not be a commodity pool, inasmuch as it was formed for the purpose of providing programs, products and services to its members, and in fact, it functions in that fashion. Likewise, if the Insurance Company were to commit directly to commodity interest trading the assets it has contributed to the LLC, it would not be a commodity pool inasmuch as it was formed as, and functions as, a property and casualty insurance company. But as an “investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests,” among other things, the Division believes that the LLC is a commodity pool.

Nevertheless, because: (1) the LLC’s members and the Manager are so closely related; (2) the Manager is a state-regulated investment adviser; (3) the funds traded by the LLC are surplus capital of its members; and (4) as a limited liability entity, the LLC provides its members a measure of protection from trading losses, the Division believes that relief from CPO and CTA registration is appropriate.

Conclusion

Accordingly, based upon the representations contained in your correspondence, the Division believes that granting the Manager relief from CPO and CTA registration is not contrary to the public interest, and the purposes of the Act and the Commission’s rules thereunder. Accordingly, the Division will not recommend that the Commission commence any enforcement action against the Manager based solely upon its failure to register as a CPO or as a CTA under Section 4m(1) of the Act in connection with the operation of the LLC.

The no-action positions taken in this letter do not excuse the Manager from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, the Manager remains subject to all of the antifraud provisions of the Act,^[6] to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s rules, and to all applicable provisions of Part 4. Moreover, this letter is applicable to the Manager solely in connection with the activities described in your correspondence.

This letter is based upon the representations made to us. Any different, changed or omitted facts or circumstances might render the positions taken herein void. You must notify the Division immediately

in the event that the operations or activities of the LLC, “W”, the Insurance Company or the Manager change in any material respect from those as represented to us. Further, the no-action positions taken in this letter represent the positions of this Division only and do not necessarily represent the positions 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,

Lawrence B. Patent
Deputy Director
Compliance and Registration Section

^[1] 7 U.S.C. §6m(1) (2000).

^[2] “W” describes its mission as being to serve its members in “U” through programs, products and services that enhance the business and profession of farming, increase members' net income, provide superior value in the marketplace, and improve the quality of life in “U”.

^[3] “W” initially contributed \$6 million to the LLC and the Insurance Company initially contributed \$100,000. In the future, “W” will contribute the proceeds of the sale of a life insurance company formerly owned by “W” to the LLC.

^[4] The operating agreement also states that the members (“W” and the Insurance Company) shall take no part in the LLC’s management or control, and shall have no right or authority to act for the LLC.

^[5] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2002).

^[6] *See, e.g.*, 7 U.S.C. §§ 6b and 6o (2000).