



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-29
No-Action
March 18, 2014
Division of Swap Dealer and Intermediary Oversight

Re: CFTC Staff Letter No. 00-10 – Request for Confirmation of Relief

Dear :

This is in response to your letter dated May 20, 2013 (“Correspondence”), to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”), by which you sought confirmation that the relief Commission staff previously had provided by CFTC Staff Letter No. 00-10 (“Prior Letter”) would continue to obtain if certain changes were made to the criteria upon which staff had issued the Prior Letter (“Amendments”).¹

Specifically, by the Prior Letter, Commission staff stated that it would not recommend that the Commission commence an enforcement action for failure to register as a commodity pool operator (“CPO”) under Section 4m(1) of the Commodity Exchange Act (“Act”)² against the “A” (“University”), or any of its agents and employees, if the University offered, as part of its curriculum, a course that would allow University students to trade commodity interests through participation in a trading club (“Trading Club”) offered in conjunction with enrollment in a University course (“Course”). In taking this position, Commission staff stated:

[G]ranting your request would not be contrary to the public interest or the purposes of Section 4m(1) of the Act. In this regard, we note the educational purpose of the Trading Club and your representations that: (1) the Trading Club will be promoted and sponsored by the University and the [Cooperative Extension Service]; (2) losses in excess of the pooled funds will be the responsibility of the [Social Sciences Unit]; (3) enrollment in the

¹ CFTC Staff Letters are available on the Commission’s Web site, www.cftc.gov.

² 7 U.S.C. §6m(1) (2012). The Act is accessible through the Commission’s Web site.

Course is voluntary and is not a mandatory prerequisite for graduation or obtaining a degree; and (4) operation of the Trading Club is consistent with the mission and objectives of the [Cooperative State Research, Education, and Extension Service of the United States Department of Agriculture].³

The no-action position was, however, subject to compliance with certain conditions concerning the operation of the Trading Club.

By the Correspondence, you explain that “[o]ver the past 12 years, the University has operated the Trading Club, resulting in significant benefit to its students, and there is interest in expanding the Trading Club in an effort to celebrate broadened interest in this educational learning experience.” You accordingly have written to confirm that the CPO registration no-action position taken in the Prior Letter will continue to apply if the University amends certain conditions applicable to the operations of the Trading Club, as detailed in the Correspondence. Briefly stated, the Amendments would: (1) increase the number and maximum size of Trading Clubs offered each semester; (2) expand student eligibility for enrollment in a Course, subject to instructor consent; (3) expand to three hours from two the number of credits a Course is worth; (4) increase the reserve loss fund in recognition of the Trading Club’s expansion;⁴ (5) establish minimum instructor criteria (*e.g.*, a minimum of five years prior experience with commodity futures and/or option markets and employment by the University)⁵ and a protocol should some change in employment status occur with a particular instructor; and (6) to increase to \$600.00 from \$300.00 the maximum amount that each participant who elects to participate in a Trading Club may contribute.⁶ In support of your request, you represent that no Trading Club has previously traded or in the future will trade in swaps or forex contracts.

³ In support of the registration no-action position provided by the Prior Letter, you represent that inasmuch as the objective of the Trading Club was –

to promote ‘informed decision-making by producers, families, communities and other customers’ through the advancement of knowledge and education about the futures markets, the operation of the Trading Club meets the objectives and mission of the [Cooperative Extension Service].

⁴ In this regard, you represent that “There has never been a draw on this reserve,” and you explain that, inasmuch as the University no longer has a Social Sciences Unit as referred to in the Prior Letter, the University itself would be responsible for losses in excess of pooled funds.

⁵ You further represent that “[t]he University is responsible for all employee activities.”

Based upon the foregoing, the Division believes that the Amendments would be consistent with the Prior Letter and should not affect or otherwise disturb the position taken therein. Accordingly, the Division will not recommend that the Commission commence an enforcement action against the University, or any of its agents and employees, for failure to register as a CPO under Section 4m(1) of the Act if the University adopts and puts into place the Amendments as discussed above and as detailed in the Correspondence.

This letter, and the confirmation the Division is providing herein, does not excuse the University, its agents and employees from compliance with any otherwise applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, each remains subject to all applicable antifraud provisions and reporting requirements for traders, and to all provisions of Part 4 applicable to persons who are CPOs, regardless of registration status.⁷ Moreover, this letter is applicable to the University and its agents and employees solely in connection with the operation of a Trading Club.

This letter, and the no-action position provided herein, are based upon the representations you have made to us. Any different, changed or omitted material facts or circumstances might render this letter void. You must notify us immediately in the event the activities of the University or its agents or employees change in any material way from those represented to us.

If you have any questions concerning this correspondence, please contact Barbara S. Gold, Associate Director, at (202) 418-6700.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight

⁶ You explain that this increase is necessary given the contemplated reduction of participants in a Trading Club and the need to account for general inflation and changes in margin requirements subsequent to the issuance of the Prior Letter.

⁷ See Regulations 4.20 and 4.41, which respectively concern certain operational and advertising requirements applicable to all persons who come within the CPO definition.