

## Commodity Futures Archive - Selected materials, CFTC Interpretative Letter No. 77-13 (Withdrawal from Registration of Advisor), ¶20,476, Commodity Futures Trading Commission, (Sep. 1, 1977)

¶20,476. Commodity Futures Trading Commission, Office of General Counsel. September 1, 1977. Letter in full text.

**Commodity Trading Advisor: Registration: Withdrawal by Futures Commission Merchant.**— A futures commission merchant may operate a managed account program without being registered as a commodity trading advisor and may further withdraw from registration as an advisor. According to the CFTC staff, the FCM would not be an advisor if it renders advice in connection with the managed account program solely incidental to its business as a FCM.

See ¶4375, "Definitions" division; and §7625, "Registration" division.

**Commodity Pool Operators: Discretionary Accounts: Registration of FCM as Pool Operator.**— A futures commission merchant operating a managed account program may be required to register as a commodity pool operator if the FCM regularly effects trades for the accounts of two or more customers with a degree of correlation that would demonstrate that the accounts were not being traded separately.

See ¶7760, "Registration" division.

Dear Mr.

This is in response to your letter of May 6, 1977, requesting our views on whether your client, GHI Co. ("Company"), may lawfully withdraw its registration as a commodity trading advisor. The Commission's public records reveal that the Company is presently registered as a futures commission merchant and as a commodity trading advisor.

From your letter we understand that the Company proposes to institute a managed account program for some of its customers. Each customer electing to participate in the program would authorize the Company to trade commodity futures contracts for the customer's account on a discretionary basis. The Company would charge customers commissions on specific transactions and possibly a management fee. Each customer account would be managed separately from the other customer accounts in the program and, although identical transactions may be made from time to time for two or more accounts, no transaction would be made in which more than a single customer would have an interest. You state that the Company does not now engage in any other activities requiring registration as a commodity trading advisor and that you have concluded that the Company would not be a commodity trading advisor if it operated the discretionary managed account program.<sup>1</sup>

Based on the facts set forth in your letter, as we understand them, we do not believe that the Company would be a commodity trading advisor if, while registered as a futures commission merchant, and solely incidental to such business, it renders commodity advisory services in connection with its program of managed discretionary commodity accounts. Accordingly, this Office will not recommend any enforcement action to the Commission if the Company withdraws its registration as a commodity trading advisor.<sup>2</sup> Because this position is based upon the facts and representations contained in your letter, it should be noted that any different, omitted, or changed facts or conditions might require a different conclusion.

Furthermore, you should be aware that a question might be raised whether the Company would be required to register as a commodity pool operator if, in operating the managed account program, the Company regularly effected trades for the accounts of two or more customers with a degree of correlation that would demonstrate that the accounts were not in fact being traded separately.

### Footnotes

- 1 In reaching your conclusion you rely in part on the exclusion from the definition of commodity trading advisor contained in Commission Regulation 32.3(c), 41 Fed. Reg. 51808, 51815 (November 24, 1976). Reliance on that exclusion is misplaced, since it concerns only persons registered as futures commission merchants who provide advisory services in connection with commodity option transactions.
- 2 Of course, withdrawal of the registration will not relieve the Company of any obligations it may have concerning any of its activities as a commodity trading advisor prior to the withdrawal.