



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer
and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 12-72
No-Action
December 21, 2012
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from CPO and CTA Registration

Dear Mr. :

This is in response to your letter to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission" or "CFTC") dated October 11, 2012, as supplemented by a letter of "A" of your firm dated December 5, 2012 and by telephone conversations with Division staff (collectively, the "Correspondence"). By the Correspondence, you request on behalf of "B" relief from the requirements to register with the Commission as a commodity pool operator ("CPO") and as a commodity trading advisor ("CTA") pursuant to Section 4m(1) of the Commodity Exchange Act (the "Act")¹ in connection with the operation of, and providing advice to, a pension plan group trust. In particular, you request relief comparable to that provided by Commission Regulations 4.5 and 4.6,² notwithstanding that a pension plan group trust is not a "qualifying entity" under Regulation 4.5.

Based upon the representations set forth in the Correspondence, we understand the relevant facts to be as follows. "B" is an investment adviser registered as such with the Securities and Exchange Commission ("SEC"), and is the sponsor and investment manager for the "Group Trust". The Group Trust is formed and operated exclusively to invest assets of trusts ("Participating Trusts") that form part of certain defined benefit pension plans.³ Each

¹ 7 U.S.C. §1, *et seq.* (2006). The Act may be accessed through the Commission's Web site at www.cftc.gov.

² Commission Regulations are found at 17 C.F.R. Ch. I (2012) and may also be accessed through the Commission's Web site.

³ "C" serves as a directed trustee of the Group Trust, responsible for such administrative matters as acting as the custodian of Group Trust assets, maintaining accounting and financial records, and assisting in preparing periodic reports.

Participating Trust is excluded from the “pool” definition under Regulation 4.5(a)(4)(i), (ii), or (iii).⁴ “B” is designated by each Participating Trust as a named fiduciary with respect to assets invested by the Participating Trust in the Group Trust.

The Group Trust consists of multiple separate investment funds (“Sub-Trusts”) established from time to time pursuant to separate declarations. Each such Sub-Trust, though managed and treated as a separate sub-trust with distinct assets and liabilities that are invested in accordance with the Sub-Trust’s investment objectives and policies, does not have a separate legal existence apart from the Group Trust. “B” may appoint one or more investment managers (“Managers”) to manage each Sub-Trust. Those Managers who are authorized to engage in commodity interest trading will be registered with the Commission as CTAs.

Each of the Participating Trusts has entered into an investment management agreement with “B”, and “B” is the Participating Trust’s discretionary investment manager. “B” allocates assets of a Participating Trust among one or more Sub-Trusts in accordance with the Participating Trust’s investment policy statement.

Although the Plans that participate in the Group Trust are all within the categories of plans which are excluded under Regulation 4.5 from the “pool” definition, there is no express provision in the regulation for a pension plan group trust. Nevertheless, the Division has on a number of occasions, as you note in the Correspondence, granted CPO and CTA registration relief in situations involving pension plan group trusts.⁵

Accordingly, consistent with prior practice, the Division will not recommend that the Commission commence an enforcement action against “B”, based solely upon “B”’s failure to register as a CPO or as a CTA in connection with operating or advising the Group Trust.

This letter is applicable to “B” solely in connection with operating and advising the Group Trust. It does not excuse “B” from compliance with any other applicable requirements

⁴ These regulations concern, respectively, certain non-contributory pension plans, contributory defined benefit plans, and government plans. The Commission determined to exclude these plans from the “pool” definition because, respectively, if there is no contribution there is no “pool participant;” the results of commodity interest trading will not affect a benefit that is defined; and out of sovereign deference. *See* 50 Fed. Reg. 15868, 15873 (Apr. 23, 1985).

⁵ You cite to, *inter alia*, CFTC Staff Letter 01-08 [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,471 (August 11, 2000); CFTC Staff Letter 97-94 [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,198 (November 21, 1997); CFTC Staff Letter 94-52 [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,116 (June 2, 1994); and CFTC Staff Letter 93-91 [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,857 (September 7, 1993). Each of these involved a group trust where each plan participating in the group trust was either excluded from the “pool” definition under Regulation 4.5(a)(4)(i), (ii), or (iii), or was a “qualifying entity” under Regulation 4.5(b)(4), with respect to the operation of which its operator could claim an exclusion from the “commodity pool operator” definition.

contained in the Act or in the Commission's regulations issued thereunder. For example, "B" remains subject to all antifraud provisions, to all reporting requirements for traders, and to all applicable provisions of Part 4.

This letter is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter and the no-action position taken herein void. You must notify the Division immediately in the event that the operations of "B" or the Group Trust change in any material way from those represented to us. Further, this letter and the position taken herein represent the views of this Division only, and do 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) 418-6700.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight