

CFTC Letter No. 00-97**September 24, 2000****No-Action****Division of Trading & Markets**

Re: Section 4m(1) of the Act: -- Request for Extension of Previously-Issued Relief from CPO and CTA Registration for Certain State-Regulated Insurance Companies and a State-Regulated Trust Company.

Dear :

This is in response to your letter dated September 8, 2000, to the Division of Trading and Markets (the "Division") of the Commodity Futures Trading Commission (the "Commission"), as supplemented by telephone conversations with Division staff. By your correspondence, you request extension of no-action positions the Division took by letter dated June 24, 1997 (Staff Letter 97-53)¹ to include your client "L".

Based upon the representations contained in your correspondence, we understand the pertinent facts to be as follows. In Staff Letter 97-53, the Division stated that it would not recommend that the Commission take any enforcement action against "J" and "M" (referred to collectively in the letter as "N") or "O", or against "P" when acting as a co-trustee with "O", for failure to register as a commodity pool operator ("CPO") or commodity trading advisor ("CTA") pursuant to Section 4m(1) of the Commodity Exchange Act (the "Act")² in connection with the proposed offering and operation of an estate planning device designed jointly by "N", "O" and "Q", a registered CPO ("Q"). Specifically, this device involves variable life insurance policies and variable joint and last survivor insurance policies (the "Contracts") offered to certain trusts (the "Trusts") established by persons who are "qualified eligible persons as defined in Commission Rule 4.7."³ All or part of the premiums paid on account of the Contracts and placed in a separate account of "N" (the "Separate Account") could be invested in limited liability trading vehicles, including commodity pools.

Now, "L" would like to be able to perform the same functions as "N" in the context of the transactions contemplated by Staff Letter 97-53, including issuance of the Contracts in accordance with state insurance laws, and establishing a Separate Account into which the premiums paid on account of the Contracts will be placed, comprising one or more subaccounts, including an LP Subaccount for investment of the premiums, all as more fully described in Staff Letter 97-53.

As represented to the Division, the Contracts were to have been offered by "N" on a private placement

basis pursuant to Section 4(2) of the Securities Act of 1933⁴ or pursuant to Regulation D thereunder⁵ through “R”,⁶ a registered broker-dealer which has entered into a selling agreement with “S”, a registered broker-dealer affiliate of “N”. You now propose that “L” will write the Contracts, and that “T” and/or “U”, each a registered broker-dealer affiliate of “L”, will function for “L” *in lieu* of “S”.

With the exception of the addition of “L” as an additional issuer of the Contracts and “T” and/or “U” as an additional selling agent (and the combination of “R” and “V”) you represent that all the material facts and identified parties of Staff Letter 97-53 will remain the same. The structure and operation of the Trusts and the permissible investment activities involving the Separate Account and the various Sub-Accounts are set forth in Staff Letter 97-53 and will not be repeated here. You further represent that each of the other identified parties continues to maintain all required registrations.

Based upon your representations, the Division believes that your request for an extension of relief from CPO and CTA registration requirements to “L” has merit.⁷ Accordingly, subject to the conditions set forth below, the Division will not recommend that the Commission take any enforcement action against “L” for failure to register as a CPO or CTA pursuant to Section 4m(1) of the Act in connection with the proposed offering and operation of the Contracts. This position is subject to compliance with the conditions set forth in Staff Letter 97-53, and to the further conditions that:

1. “L” and/or “Q” will deliver to each Trust, before the Trust invests in the LP Subaccount, an offering memorandum for the Separate Account that describes possible investments that may be made by the LP Subaccount and the material risks of such investments; and
2. “L” provides the Division with written notice of the name or other designation under which each of the Separate Account and the LP Subaccount are carried on the books of “L” within ten days after the selection of such names or other designations.

Further, this relief is being granted in part upon the understanding that in participating in the proposed program “L” is subject to liability under applicable insurance and/or securities law provisions.

This letter does not excuse “L” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, it remains subject to the antifraud provisions of the Act, to the reporting requirements for traders set forth in Parts 15, 18 and 19 of the Commission’s rules, and to all otherwise applicable provisions of Part 4. Also, this letter is applicable to “L” solely in connection with the activities described above and it does not in any way affect the positions or conditions of Staff Letter 97-53.

This letter is based upon the representations made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event that the operations or activities of “L” change in any respect from those as represented to us. Further, the no-action position taken in this letter represents the views of this

Division only and does not necessarily represent the views of the Commission or of any other office or division of the Commission. Finally, the Division is expressing no opinion with respect to the application or effect of relevant tax, securities or insurance law provisions or requirements.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, an attorney on my staff, at (202) 418-5445..

Very truly yours

John C. Lawton
Acting Director

1 CFTC Staff Letter 97-53 [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,093 (June 24, 1997).

2 7 U.S.C. § 6m(1) (1994).

3 On August 4, 2000 the Commission published amendments to Rule 4.7 which, among other things, consolidated the former qualified eligible participant and qualified eligible client definitions into a single "qualified eligible person" concept. 65 Fed. Reg. 47848 (August 4, 2000). All other Commission rules referred to herein are found at 17 C.F.R. Ch. I et seq. (2000).

Because neither the Separate Account nor the LP Subaccount will be operated pursuant to the criteria of Rule 4.5(c), an exclusion from the CPO definition pursuant to Rule 4.5 will not be available to "N" and it will likewise be unavailable to "L".

4 15 U.S.C. § 77d(2) (1994).

5 17 C.F.R. § 230.501 et seq. (1996).

6 "R" is the parent and sole owner of "W". "Q" and "O" are wholly-owned subsidiaries of "W". At the date of this letter, "X" has signed a definitive agreement with "R" for the combination of "R" and "V".

7 See CFTC Staff Letter 97-12, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,985 (March 7, 1997).