

**MEMO# 28391**

September 23, 2014

# **CFTC Staff Issues Interpretive Letter Regarding Insurance Companies Investing General Account Assets**

[28391]

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TO: REGISTERED FUND CPO ADVISORY COMMITTEE  
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 4-14 RE: CFTC STAFF ISSUES  
INTERPRETIVE LETTER REGARDING INSURANCE COMPANIES INVESTING GENERAL ACCOUNT  
ASSETS

On September 8, the Division of Swap Dealer and Intermediary Oversight (“DSIO”) of the Commodity Futures Trading Commission (“CFTC”) issued an interpretive letter [\[1\]](#) to the American Council of Life Insurers (“ACLI”) in which DSIO stated that a “General Account Entity,” [\[2\]](#) that is formed by state-regulated life insurance company affiliates by combining their general account assets, and invests directly or indirectly in commodity interests, is not within the definition of “commodity pool” under the Commodity Exchange Act (“CEA”). The letter is summarized briefly below.

## **Background**

Insurance companies operating separate accounts are excluded from the definition of “commodity pool operator” (“CPO”) by CFTC regulation 4.5(a)(2) and (b)(2). [\[3\]](#) DSIO explains that the CFTC has clarified that “the holding of commodity interests in an insurance company’s [general account] should not make the insurance company a commodity pool” and that an insurance company needs to rely on regulation 4.5 only with respect to its separate accounts, and not its general account. [\[4\]](#) The Interpretive Letter explains that, with respect to the operation of General Account Entities, some insurance companies relied on CFTC Regulation 4.13(a)(4) until it was rescinded in 2012. [\[5\]](#)

## **Interpretive Relief**

ACLI sought relief from DSIO so that life insurance companies under common ownership could contribute general account assets to a single vehicle, the General Account Entity, which may invest directly or indirectly in commodity interests, in order to achieve greater operational and accounting efficiency and lower costs without the vehicle being deemed a

commodity pool, and without the insurance company being required to register as a CPO. DSIO took the position that the General Account Entities were outside the definition of “commodity pool” under Section 1a(10) of the CEA and CFTC Regulation 4.10(d). [6] In doing so, DSIO noted as significant representations by ACLI that:

- Only affiliated life insurance companies under common control by the same parent company will contribute their general account assets to a given General Account Entity.
- Despite being contributed by multiple entities, the general account assets invested in a General Account Entity ultimately are owned by the parent of the contributing affiliates, and it is the parent corporation, through its multiple subsidiaries, that bears the risk of the General Account Entity investments, including investments in commodity interests.
- A General Account Entity will not accept contributions from an investor that is not an insurance company controlled by the same parent insurance company and under no circumstances would assets held in an insurance company separate account be used to fund contributions to a General Account Entity.

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#### **endnotes**

[1] CFTC Letter No. 14-113 (Sept. 8, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-113.pdf> (“Interpretive Letter”).

[2] CFTC Regulation 75.2(p) defines a “general account” as all of the assets of an insurance company except those allocated to one or more separate accounts. The letter explains that a “General Account Entity,” for purposes of the letter, consolidates and manages the general account assets of multiple life insurance company subsidiaries belonging to the same parent company.

[3] Regulation 4.5(a)(2) and (b)(2) exclude from the definition of CPO an insurance company subject to state regulation with respect to a separate account it establishes, maintains, or offers pursuant to the laws of any state or territory of the United States, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account, without regard to other income, gains or losses of the insurance company.

[4] Interpretive Letter, *supra* note 1, at 5.

[5] See 77 Fed. Reg. 11,252 (Feb. 24, 2012).

[6] Section 1a(10) of the CEA, in relevant part, defines a “commodity pool” as any investment trust, syndicate, or similar form of enterprise operated for the purposes of trading in commodity interests, including any—(i) commodity for future delivery, security futures product, or swap; (ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (iii) commodity option authorized under section 4c; or

(iv) leverage transaction authorized under section 19. CFTC Regulation 4.10(d) defines a “pool” as any investment trust, syndicate, or similar form of enterprise operated for the purposes of trading commodity interests.

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