

CLIENT MEMORANDUM

Insurance Company General Account Investment Vehicles Are Not Commodity Pools

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AUTHORS

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The CFTC's Division of Swap Dealer and Intermediary Oversight has issued an interpretative letter to the American Council of Life Insurers confirming that certain investment vehicles owned by insurance companies are outside of the definition of "commodity pool" under the Commodity Exchange Act and the CFTC regulations thereunder.¹ Specifically, the staff stated that an investment vehicle is not a commodity pool if all of its contributions derive, either directly or indirectly, from the general account assets² of affiliated insurance companies.

In the ordinary course of its operations, the general account of a life insurance company may directly or indirectly invest in, among other things, funds or separately managed accounts advised by third party investment managers that trade or otherwise hold commodity interests. In order to limit liability and realize lower overall costs in managing and investing

¹ See CFTC Staff Letter No. 14-113 (Sept. 8, 2014), available [here](#).

² CFTC Rule 75.2(p) defines "general account" as "all of the assets of an insurance company except those allocated to one or more separate accounts." A "separate account" is defined by CFTC Rule 75.2(bb) as "an account established and maintained by an insurance company in connection with one or more insurance contracts to hold assets that are legally segregated from the insurance company's other assets, 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."

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assets, an insurance company may wish to create an entity that commingles the general account assets of its insurance company affiliates. Letter 14-113 confirms that such a vehicle is not a commodity pool.

The CFTC and its staff have not historically considered an operating company to be a commodity pool. In 1985, the CFTC stated that the general account of an insurance company holding commodity interests is not a commodity pool.³ On the other hand, an insurance company separate account engaging in commodity interest transactions could constitute a commodity pool. Thus, the CFTC specifically excluded insurance company *separate accounts* from being commodity pools, provided the conditions of CFTC Rule 4.5 are satisfied.

Notwithstanding the CFTC's position regarding insurance company general accounts, some insurance companies had filed for relief under a popular exemption from commodity pool operator registration with respect to their commingled general account vehicles. After the repeal of this exemption,⁴ the ACLI sought interpretative relief from the CFTC to confirm that, similar to an insurance company's general account, a vehicle comprised only of general account assets would not be deemed a commodity pool.

Reliance on Letter 14-113 requires that contributions to a general account vehicle be received only from life insurance companies under common control. In addition, a contribution must come from an insurance company's general account; assets held in an insurance company separate account may not be used to fund contributions.

If you have any questions concerning the foregoing or would like additional information, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Jonathan C. Burwick (212-728-8108, jburwick@willkie.com), Brian M. Hall (212-728-8978, bhall@willkie.com) or the Willkie attorney with whom you regularly work.

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³ See Commodity Pool Operators: Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"; Other Regulatory Requirements, 50 Fed. Reg. 15,868 (Apr. 23, 1985).

⁴ See Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 77 Fed. Reg. 11,252 (Feb. 24, 2012).