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VIA EMAIL

Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0504
Attention: Douglas J. Scheidt, Esq., Associate Director and Chief Counsel

Re: Request for No-Action Assurance

Dear Mr. Scheidt:

We are writing on behalf of CenturyLink Investment Management Company ("Adviser"), a corporation organized under the laws of the State of Colorado. Adviser seeks assurance from the staff of the Division of Investment Management (the "Staff") that it will not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 203(a) of the Investment Advisers Act of 1940, as amended (the "Advisers Act"), if Adviser withdraws its registration with the Commission as an investment adviser under the Advisers Act.

Based on the Staff's prior positions, we do not believe that Adviser is in the business of "advising others."

Facts

Adviser is an indirect wholly-owned subsidiary of CenturyLink, Inc. ("CenturyLink"), a large telecommunications firm. Adviser is currently registered as an investment adviser with the Commission, however, it would like to withdraw its registration. We believe that Adviser would comply with the representations of the *Lockheed Martin Investment Management Co.* no action letter ("Lockheed Letter"),[1] described below, permitting registration withdrawal except for the fact that Adviser also advises a charitable foundation.

Adviser, incorporated in 1995, is the named fiduciary for the management and investment of assets held in trust under the employee benefit plans sponsored by

[1] *See Lockheed Martin Investment Management Co.*, SEC Staff No-Action Letter (Jun. 5, 2006).

CenturyLink (the "Plans").[2] The Plans are established solely for the benefit of current and previous employees of CenturyLink, its predecessors and affiliates, and comprise retirement and health and welfare employee benefit plans, including both qualified and non-qualified plans governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Adviser also provides investment advice to the CenturyLink – Clarke M. Williams Foundation (the "Foundation"). The Foundation is a charitable foundation organized as a Colorado non-profit corporation for charitable and educational purposes and its beneficiaries are charitable and educational organizations. The market value of the Foundation's assets managed by the Adviser as of August 31, 2016, was $14.1 million.[3] The Foundation is endowed by CenturyLink to support community initiatives that encourage CenturyLink employees to use their time, talents and resources to strengthen the communities in which they live and work and to contribute to endeavors that improve the well-being and overall quality of life for people throughout CenturyLink's communities. The Foundation was formed in 1985 and merged with the CenturyTel – Clarke M. Williams Charitable Foundation (the "CenturyTel Foundation") in 2012, with the Foundation as the surviving entity.[4] The Foundation and the CenturyTel Foundation had each been established by a CenturyLink predecessor company (Mountain Bell Holdings, Inc. ("Mountain Bell") in the case of the Foundation[5] and CenturyTel, Inc. ("CenturyTel") in the case of the CenturyTel Foundation). The Foundation was previously advised by the Adviser. Adviser exists to provide investment management services to the Plans and the Foundation. Adviser does not provide or offer investment management services to any entities other than the Plans and the Foundation. Adviser provides investment advisory services to employee benefit plans of the type that, if the investment advice to the Plans were Adviser's sole activity, Adviser would comply with the representations of the Lockheed Letter permitting withdrawal of one's registration as an investment adviser.

Adviser was established for the purpose of providing investment management services to the Plans and the Foundation, and Adviser has been operated for this purpose. Adviser has entered into advisory contracts with the Foundation and is the named investment fiduciary with respect to the Plans. CenturyLink receives a reimbursement of Adviser related expenses out of Plan assets consistent with restrictions imposed by ERISA and the CenturyLink Employee Benefits Committee "Guideline For The Payment Of Plan-Related Administration Expenses From Plan Assets In Trusts." Adviser expenses are not allocated to smaller health care "VEBA" trusts, but rather paid by CenturyLink.

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[2] The Plans have approximately $16.8 billion in assets as of September 30, 2016.

[3] The Foundation is excluded from the definition of investment company under the Investment Company Act of 1940, as amended (the "1940 Act") pursuant to Section 3(c)(10)(A) of the Act.

[4] Prior to the merger, the Foundation was known as the Qwest Foundation. The Foundation's name was changed to its current name in connection with the merger.

[5] At the time of the merger in 2012, the Foundation's sole voting member was Qwest Communications International Inc. ("Qwest"), a successor company of Mountain Bell and predecessor of CenturyLink.

Additionally, CenturyLink receives a reimbursement of Adviser related expenses associated with managing/overseeing the assets of the Foundation, similar to the reimbursements it receives from the Plans.[6] CenturyLink receives no other reimbursements of investment management or advisory costs or fees from the Plans or Foundation. The Adviser does not itself receive any direct or indirect compensation or reimbursements from the Plans or Foundation.

Adviser does not provide or offer investment management services to any entities other than the Plans and the Foundation. The assets of the Plans are primarily managed directly by third-party investment managers which Adviser selects, monitors and, as it deems appropriate, terminates. For the defined contribution plans ("Defined Contribution Plans"), Adviser selects, monitors and, as it deems appropriate, changes the investment options offered to participants in those plans. Adviser does not and will not provide investment advice to individual plan participants of the Defined Contribution Plans.

CenturyLink does not beneficially own the assets of the Foundation, as the Foundation owns its own assets,[7] CenturyLink ultimately directs the disposition of those assets as the sole voting member of the Foundation.[8] As the sole voting member of the Foundation, CenturyLink has rights with respect to the management of the Foundation, including electing its Board of Directors (the "Board"), which in turn is responsible for transacting the business of the Foundation and for electing the officers of the Foundation.[9] Adviser does not and will not provide investment advice to Plan participants or beneficiaries, Foundation beneficiaries or any third party. Additionally, neither CenturyLink nor Adviser has received or will receive any investment directive from any Plan participants or beneficiaries or Foundation beneficiaries or any third party.

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[6] Specifically, the investment management agreement in place between the Adviser and the Foundation provides that the Adviser has the authority to do the following: "to approve payments to be made from the [Foundation] for any expenses incurred by [the Adviser] or its affiliates in the management, investment and administration of the [Foundation] and the [Foundation] Assets including, without limitation, the fees of any external counsel, accountants or other professional advisors engaged for or on behalf of [the Foundation] and any expenses incurred by [the Adviser] or its affiliates in connection with the performance of [the Adviser's] rights, duties and obligations hereunder."

[7] CenturyLink does not own any interest in the Foundation. Generally, Colorado nonprofit corporations do not issue any stock. In this particular case, the Foundation did not issue any stock or other interest representing ownership, and its articles of incorporation specifically provide that the Foundation "shall have no capital stock." Additionally, the Bylaws of the Foundation, specifically provide that "the Member [CenturyLink] shall have no ownership rights or beneficial interests of any kind in the property of the [Foundation]." While the Foundation's Bylaws can be altered, amended, or repealed by the Board or the Member at any time (in the event of any conflict between the two, the Member's decision would control), CenturyLink, as the Member, will not amend the Bylaws to change this provision.

[8] CenturyLink is designated as the sole voting member in the Foundation's articles of incorporation.

[9] Specifically, as provided for in the Foundation's Bylaws, all corporate powers are exercised by or under the authority of, and the business and affairs of the Foundation are managed by the Board, including the election or removal of officers. As to the Foundation's assets, the Bylaws provide that the property of the Foundation may be assigned, conveyed or encumbered by such officers of the Foundation as may be authorized to do so by the Board, and such authorized persons shall have the power to execute and deliver any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Foundation shall be authorized only in the manner prescribed by applicable statute.

Adviser does not and will not hold itself out to the public as an investment adviser. Adviser is not listed in any phone book under "investment advisory services" or on the world wide web as an investment adviser, does not attend investment management conferences as a provider of investment advisory services and does not engage in any advertising or conduct any marketing activities with respect to its investment advisory activities.

Adviser has never provided or offered to provide any investment advice to individuals, including individual Plan participants, or to the general public. Adviser does not provide, and will not provide in the future, investment advisory services to any third party.

Discussion

Section 202(a)(11) of the Advisers Act defines "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." This definition includes three essential elements. An "investment adviser" generally includes any person that: (1) for compensation, (2) is engaged in the business of (3) providing advice to others or issuing reports or analyses regarding securities. A person must satisfy all three elements to fall within the definition of "investment adviser."

We do not believe Adviser satisfies the third prong of this test as it is not providing investment advice to "others" regarding securities. Rather, Adviser provides investment management services solely to the Plans, which are employee benefit plans and trusts of CenturyLink and its affiliates, and the Foundation, which is a charitable foundation organized as a Colorado non-profit corporation of which CenturyLink is the sole voting member and, since the merger of the Foundation and CenturyTel Foundation in 2012, the sole contributor to the Foundation.[10] The Foundation is, in effect, the charitable giving arm of CenturyLink.

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[10] Prior to the merger, the CenturyTel Foundation accepted donations from outside sources although the vast majority of assets came from CenturyTel or predecessor companies. While the bylaws of the Foundation do permit the Foundation to accept any designated contribution, grant, bequest or devise consistent with its general tax-exempt purposes, as set forth in its articles of incorporation, the Foundation or its predecessors (specifically, the CenturyTel Foundation) have only rarely done so. Between 1997 and 2006 there were several small third-party contributions to the CenturyTel Foundation. The donations were primarily made in memory of the founder of CenturyTel following his death. There have been no third party donations after 2006 or since the merger of the Foundation and CenturyTel Foundation in 2012. More specifically, over the time period between 1997 and 2012, the CenturyTel Foundation received 85% (i.e., $1.1 million) of its contributions from CenturyTel and 15% (i.e., $194,000) of its contributions from third parties. The CenturyTel Foundation was not advised by an affiliated investment adviser or any adviser. The Foundation (formerly the Qwest Foundation) was previously advised by the Adviser (under the Adviser's prior name), and was created in 1985 with an initial funding of $8 million from a predecessor company of Qwest, Bell Holdings. From 1989 through 2007, Qwest or its predecessor companies contributed another $15 million to the Foundation. There have been no contributions by third parties to the Foundation prior to or since the merger with the CenturyTel Foundation in 2012. Over their history, contributions to the Foundation and the CenturyTel Foundation totaled

The Staff has granted no-action relief and the Commission has granted exemptive relief in analogous situations. In *Zenkyoren Asset Management of America Inc.*, Zenkyoren Asset Management of America Inc. ("ZAMA") was a wholly owned subsidiary of National Mutual Insurance Federation of Agricultural Cooperatives ("NMIFAC"), a Japanese insurance federation.[11] ZAMA asserted that it was established and has been operated for the sole purpose of providing investment advisory services to four foreign funds in which NMIFAC was the only investor. ZAMA did not hold itself out to the public as an investment adviser, provided investment advice only to the NMIFAC via the four foreign funds and the four foreign funds (which only included NMIFAC's assets) were established and operated solely for the benefit of NMIFAC in order to enable NMIFAC to pool and invest its premium proceeds in order to meet short, medium and long term claim obligations and other operating costs of its insurance business. ZAMA sought and received assurance that the Staff would not recommend an enforcement action under Section 203(a) of the Advisers Act if ZAMA did not register with the Commission as an investment adviser under the Advisers Act after the elimination of the "private adviser" exemption in Section 203(b)(3) of the Advisers Act on which it had previously relied.

In the Lockheed Letter, Lockheed Martin Investment Management Company ("LMIMCo"), a wholly-owned subsidiary of Lockheed Martin Corporation ("Lockheed"), was a registered investment adviser that did not hold itself out to the public as an investment adviser. LMIMCo's sole purpose was to provide investment advisory services to various employee benefit plans and trusts of Lockheed and certain of its affiliates.[12] LMIMCo asserted that it was not in the business of providing investment advice to others concerning securities. LMIMCo sought and received assurance that the Staff would not recommend an enforcement action under Section 203(a) of the Advisers Act as a result of LMIMCo withdrawing its registration as an investment adviser under the Advisers Act.

In an earlier letter, *BankAmerica Capital Corp.*, BankAmerica Capital Corporation ("BCC") rendered venture capital investment advice to its parent and certain wholly-owned subsidiaries of the parent (together, the "Affiliates") and acted as investment adviser to a private venture capital fund structured as a limited partnership.[13] The private venture capital fund's limited partners consisted of a restricted number of sophisticated individual and institutional investors of substantial net worth, including one or more of the Affiliates.

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approximately $24 million which included only $194,000 in third party contributions, as noted above, or less than 1% of total contributions, all of which had been made to the CenturyTel Foundation. Following the merger of the two foundations in 2012, the Foundation had approximately $16 million in assets. There have been no contributions to the Foundation by any party since the merger. CenturyLink recently caused the Bylaws of the Foundation to be amended to state that the Foundation "shall not accept any donated funds, money, designated contribution, grant, bequest or devise from any source other than CenturyLink, Inc. and its subsidiaries and affiliates" CenturyLink will not change this provision.

[11] *See Zenkyoren Asset Management of America Inc.*, SEC Staff No-Action Letter (Jun. 30, 2011).

[12] Among other things, LMIMCo monitored Lockheed common stock held by a third party trustee of a non-qualified trust and directed the trustee to make certain decisions with respect to the trust. The presence of the third party trustee was not an impediment to LMIMCo's obtaining no-action relief.

[13] *See BankAmerica Capital Corp.*, SEC Staff No-Action Letter (Apr. 27, 1978).

BCC relied on the "private adviser" exemption in Section 203(b)(3) of the Advisers Act. BCC contended that the Affiliates should not be counted as "clients" of BCC for purposes of Section 203(b)(3) and argued that, in the context of the statutory definition, it was not acting as an investment adviser within the meaning of Section 202(a)(11) of the Advisers Act with respect to the Affiliates because BCC was not "advising others." BCC sought and received confirmation from the Staff that it would not recommend an enforcement action against BCC if, so long as the venture capital fund had fewer than fifteen limited partners, BCC acted as investment adviser to the venture capital fund and the Affiliates without registering as an investment adviser under the Advisers Act, provided that BCC proceeded in reliance on the opinion of counsel that the private adviser exemption was available to BCC.

In *CSX Financial Management Inc.*, CSX Financial Management Inc. ("CSX Financial"), an indirect wholly-owned subsidiary of CSX Corporation ("CSX"), was a registered investment adviser and existed solely to provide investment advisory services to CSX and certain of its subsidiaries.[14] CSX Financial did not hold itself out to the public as an investment adviser. CSX Financial submitted that its advisory services to CSX and its subsidiaries should not be considered services to "others" regarding securities. CSX Financial requested and received an order under Section 202(a)(11)(F) (now Section 202(a)(11)(H)) of the Advisers Act declaring CSX Financial to be a person not within the intent of Section 202(a)(11) of the Advisers Act.

Further, we do not believe that there is any public policy basis for deeming Adviser to be in the business of providing investment advice to others. Adviser is an indirect wholly-owned subsidiary of CenturyLink that was established and has been operated for the sole purpose of providing investment advisory services to the Plans and the Foundation, of which CenturyLink is the sole voting member and, since 2012, its sole contributor.[15] Additionally, the Foundation's corporate powers are exercised by or under the authority of, and its business affairs are managed by, its Board who are elected by CenturyLink as the Foundation's sole voting member. Adviser does not hold itself out to the public as an investment adviser, and provides investment advice only to the Plans and the Foundation. The Plans were established and are operated solely for the benefit of CenturyLink and its employees, and the Foundation and its predecessors were established solely for the benefit of CenturyLink (or its predecessors) and its charitable giving priorities.

Finally, we note that the Advisers Act was not intended to regulate charitable organizations. For instance, Section 203(b)(4) of the Advisers Act provides an exemption from the definition of investment adviser for "any investment adviser that is a charitable organization … or volunteer of such a charitable organization acting within the scope of

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[14] *See CSX Financial Management, Inc.*, File No. 803-134, Release Nos. 1A-1805 (Jun. 23, 1999) (notice) and 1A-1808 (Jul. 20, 1999) (order).

[15] Prior to 2012, the CenturyTel Foundation did accept some outside donations from individuals. Those donations were primarily small donations made in memory of the founder of CenturyTel following his death. Since 2012, no additional outside donations have been accepted.

such person's employment or duties with such organization… ." Additionally, Rule 202(a)(11)(G)-1(d)(4)(v) under the Advisers Act (the "Family Offices Rule") defines a family client to include "[a]ny non-profit organization, charitable foundation, charitable trust (including charitable lead trusts and charitable remainder trusts whose only current beneficiaries are other family clients and charitable or non-profit organizations), or other charitable organization, in each case for which all the funding such foundation, trust or organization holds came exclusively from one or more other family clients." We believe that these two factors are indicative of the principle that the Advisers Act was not designed or intended to regulate charitable organizations. Additionally, in the adopting release to the Family Offices Rule, in explaining the rationale to limit family clients to only those foundations and other charitable organizations that were funded exclusively by family clients, the release states that:

> . . . a non-profit or charitable organization that currently holds non-family funding lacks the characteristics necessary to be viewed as a member of a family unit. Permitting such organizations to be advised by a family office would be inconsistent with the exclusion's underlying rationale that recognizes that the Advisers Act is not designed to regulate families managing their own wealth.[16]

Similarly, we would argue that the Advisers Act is not designed to regulate a Company's management of its own assets, including those assets in a foundation created, funded and controlled by the Company.

Conclusion

Based on the above, we do not believe that the Adviser is in the business of "advising others." On behalf of the Adviser, we hereby request that the Staff give its assurance that it will not recommend that the Commission take enforcement action under Section 203(a) of the Advisers Act against the Adviser if the Adviser withdraws its registration with the Commission as an investment adviser under the Advisers Act.

Sincerely,

David J. Baum

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[16] See Family Offices Adopting Release, Rel. No. IA-3220, pp. 20-21.