

**CFTC Letter No. 02-43****April 4, 2002****Interpretation****Division of Trading and Markets**Re: Rule 3.1(a)(1) – Definition of a Principal Concerning a Person Who Has Limited Check-Signing Privileges

Dear :

This is in response to your letter dated February 11, 2002, 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 confirmation on behalf of “X” and “Y” an interpretation that a person who is listed as a principal of each of “X” and “Y” need not remain so listed in light of the nature of the person’s employment duties and functions.<sup>[1]</sup>

Based upon the representations contained in your correspondence, we understand the facts to be as follows. “A” is currently registered with the Commission as an associated person (“AP”) of each of the Companies, in addition to being listed as a principal of each of the Companies. You represent that “A” has no ownership interest in either company and that she does not have any business decision-making authority. She does not supervise any person who is registered (or required to be registered) with the Commission. Although she does have check-signing authority, you describe it as limited in the following manner.

Each of the Companies has two bank accounts, a holding account and a checking account. In each case, ninety-nine percent of the company’s assets are held in the holding account, and only enough money to pay current bills is transferred to the checking account. “A” does not have access to the holding account for either company, nor is she authorized to transfer money between accounts. She is authorized only to sign checks drawn on the checking account. Accordingly, you do not believe that her duties should require her to be listed as a principal, and you seek to terminate her status as a principal of each of the Companies.

Effective October 23, 2001, the definition of “principal” in Commission Rule 3.1(a) was amended to read, in relevant part, as follows:

1. If the entity is organized as a . . . corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; . . . and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

2. (i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or (ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; [\[2\]](#)

The rule was amended in response to changes in management structures over the last 20 years and requests from firms for greater specificity as to which officers should be listed as principals.

From your description of the functions and duties of “A”, she is neither a “director, the president, chief executive officer, chief operating officer, chief financial officer, [or] any person in charge of a principal business unit, division or function subject to regulation by the Commission,” nor does she appear to occupy a similar status, perform similar functions or have the power to exercise a controlling influence over the Commission-regulated activities of either of the Companies. [\[3\]](#) Moreover, you have stated that she has no ownership interest. Accordingly, the Division believes that “A’s” authority to sign checks drawn on the checking accounts of the Companies should not, by itself, require that she be listed as a principal of the Companies, and the Companies may file Forms 8-T to terminate her as a listed principal. [\[4\]](#)

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. This letter does not excuse the Companies or “A” from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. The views expressed herein are those of the Division of Trading and Markets only, and do not necessarily represent the views of the Commission or any other unit of the Commission’s staff.

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

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[\[1\]](#) “X” and “Y” are referred to from time to time herein, collectively as the “Companies.”

[\[2\]](#) *Rules Relating to Intermediaries of Commodity Interest Transactions*, 66 Fed. Reg. 53510, at 53518

(October 23, 2001).

[3] The Commission noted that what constitutes “a controlling influence” should be determined generally on a case-by-case basis, but would include persons with policymaking or managerial authority. *Id.*, at 53511, n.9.

[4] Check signing authority is, however, one indicator of whether a person’s account is classified as proprietary. 17 C.F.R. §1.3(y)(2)(v)(D)(2001).