U.S. COMMODITY FUTURES TRADING COMMISSION
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DIVISION OF
TRADING & MARKETS

May 6, 1996

Re: Rule 3.10: Request for Relief from Listing of Members of the Board of a Farmers Cooperative as Principals of Introducing Broker

Dear :

This is in response to your letter dated March 19, 1996 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff, in which you request relief on behalf of "X", a grain and farm supply cooperative and a registered introducing broker ("IB"), from the requirement that members of "X's" board of directors be listed as principals on "X's" Form 7-R and file a Form 8-R and fingerprint card. You represent that the members of "X's" board of directors are not employees of and do not take part in the daily operations of the cooperative.

Based upon your letter, as supplemented, we understand the pertinent facts to be as follows. "X" is a local grain and farm supply cooperative and has been in operation for over seventy years. The National Futures Association's ("NFA") registration database indicates that since January 17, 1985, "X" has been a registered IB guaranteed by "Y", a registered futures commission merchant. In addition to you, two other "X" employees, "A" and "B", are registered as associated persons ("APs") of "X". You, as general manager, have responsibility for supervising the day-to-day operations of "X", including "X's" IB operations. "B" is "X's" assistant general manager and as such has supervisory responsibilities similar to yours. Both you and "B" are listed as principals of "X".

"X" provides IB services to its members only. These members are agricultural producers and use "X's" IB service to place trades for hedging purposes. As part of the customer agreement, members affirm that their futures trading will be for hedging purposes only and provide you with information concerning their total acreage planted and estimated annual production to help you assure that their futures trades are in fact for hedging purposes only. "X's"

IB services account for a small part of its overall business activity.[1/]

"X" is organized as a corporation owned by its members. Each member owns one voting share of "X". Distributions are made to members based on the volume of business that each member does with "X". Members of the board of directors are elected by members of the cooperative. As a rule, board members receive no compensation and do not take part in the daily operation of the cooperative. These directors generally establish broad policies to be followed by the cooperative and attend monthly meetings. In this regard, "X" does not believe that its board members should be listed as principals and required to file a Form 8-R and finger-print card because the directors are not actively involved in the cooperative's daily affairs.

Commission Rule 3.10(a)(2)(ii)[2/] requires each applicant for registration to file a Form 8-R and fingerprint card for each natural person principal of the applicant. Rule 3.1 defines principal, in relevant part, as "[a]ny person including, but not limited to a sole proprietor, general partner, officer, director . . . or person occupying a similar status or performing a similar function." Members of the board of directors of a Commission registrant fall squarely within the definition of principal. Accordingly, we find no grounds for granting the members of the board of directors relief from being listed on "X's" Form 7-R and filing a Form 8-R and fingerprint card.[3/] We note, however, that if the IB operations of "X" were consolidated into a separate entity wholly owned by "X", members of "X's" board of directors would not be required to file a Form 8-R or fingerprint card, if, as appears to be the case, no such director has more than a ten percent ownership interest in "X".[4/]

1/ Based on information provided by "B", it appears that commissions earned from trades introduced by "X" on behalf of its members account for well under one percent of "X's" total gross revenues.

2/ Commission rules referred to herein are found in 17 C.F.R. Ch. I (1995).

3/ Natural persons who are only required to be listed as principals of Commission registrants but are not otherwise required to be registered as APs of such registrant are not required to take the Series 3 examination.

4/ Rule 3.10(a)(2)(ii) requires only that:

(continued...)

We recognize that "X" is currently not in compliance with Commission Rule 3.10 in connection with the listing of its principals. However, the Division will not recommend that the Commission take enforcement action against "X" for a violation of Rule 3.10 if "X" complies with Rule 3.10, as outlined above, within sixty days of the date of this letter. This relief is extended solely to allow "X" a limited period of time to bring itself into compliance with Commission Rule 3.10. It does not excuse "X" or its relevant employees from compliance with any other applicable requirements contained in the Act or the Commission's rules promulgated thereunder. For example, such persons remain subject to the antifraud provisions of Sections 4b of the Act,[5/] and to all other applicable Commission Rules.

This letter is based on the representations provided to us. Any different, changed or omitted facts or circumstances may require us to reach a different conclusions. Further, this letter represents the views of this Division only and does not necessarily represent the views of the Commission or any other office or division of the Commission. If you have any questions concerning this correspondence please contact me or Thomas E. Joseph, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel

4/ (...continued)

> In the case of an applicant with a principal that is not a natural person, the applicant's Form 7-R must also be accompanied by a Form 8-R completed . . . and executed by each natural person who is the holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock or has contributed ten percent or more of the capital of the entity that is the non-natural person principal listed on the [applicant's] Form 7-R.

The Commission would require, however, that the names of the members of "X's" board of directors be attached to the Form 7-R of such separate entity and each annual update thereto.

5/ 7 U.S.C. §§ 6b (1994).