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U.S. COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING & MARKETS

July 12, 1996

Re: Rule 3.34 -- Request for Clarification of Ethics Training Requirements for Registered APs Who Do Not Conduct Any Futures or Commodity Interest Business

Dear :

This is in response to your letter dated June 18, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. You request clarification of the ethics training requirements set forth in Commission Rule 3.34[1/] on behalf of twenty-two registered associated persons ("APs") employed by "X", a registered futures commission merchant and commodity trading advisor.

Based upon the representations contained in your letter, as supplemented, we understand the relevant facts to be as follows. The twenty-two APs ("22 APs") do not wish to complete ethics training because they do not conduct any futures or other commodity interest business.[2/] You represent that "X" has suspended the 22 APs' ability to do any business and has emphasized the importance of completing the required training. The firm would prefer that the 22 APs remain registered, without trading privileges, until they complete the required training. "X" requests guidance on any rules or written procedures describing the actions it should take.

1/ Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995), as amended by 60 Fed. Reg. 38146 (July 25, 1995).

2/ The APs are: "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U" and "V". "K" and "F", "G", "J", "O" and "V" are listed as branch managers as well.

Section 4p(b) of the Commodity Exchange Act ("Act")[3/] and Rule 3.34 impose certain ethics training requirements on all Commission registrants. Rule 3.34(d)(5) provides in pertinent part that APs granted registration after April 26, 1993 must attend four hours of initial ethics training within six months from the date registration is granted and one hour of training every three years thereafter. Pursuant to Rule 3.34(d)(4), those persons who were registered when Rule 3.34 became effective on April 26, 1993 were given until April 26, 1996 to attend an initial ethics training session of two hours, with one hour of training every three years thereafter.[4/] As the 22 APs did not attend an ethics training session that would satisfy the requirements of Rule 3.34 by April 26, 1996, they have been and continue to be in violation of Rule 3.34.

The Commission's general policy is to require a person registered in a particular capacity to comply with all of the regulations pertaining to that category of registrant, irrespective of whether such person actively engages in all activities permitted by virtue of his or her registration status.[5/] In adhering to the Congressional mandate for ethics training, the Division has not granted any exemptions from such training. If a person is registered, he or she is therefore subject to the ethics training requirement under Rule 3.34, regardless of his or her level of activity. Moreover, as the Commission stated when it enacted Rule 3.34, it is "part of the firm's supervisory obligation to assure that training has been attended by APs and failure of an AP to attend as required could subject both the AP and his sponsors to enforcement action."[6/]

In light of the foregoing, the 22 APs remain subject to the requirement that they attend an ethics training program that satisfies Rule 3.34 and "X" is obligated to assure that they do so. Since each day that passes without compliance with ethics

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3/ 7 U.S.C. § 6p(b) (1994).

4/ With the exception of "S", all of the 22 APs were granted registration before April 26, 1993 and were required to attend two hours of initial ethics training by April 26, 1996. "S" was required to attend four hours of such training by the same date since he became registered on October 26, 1995.

5/ CFTC Interpretative Letter No. 94-24, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,015 (March 14, 1994) (citing Premex, Inc. v. CFTC, 785 F.2d 1403, 1406 n.7 (9th Cir. 1986)).

6/ 58 Fed. Reg. 19575, 19587 (April 15, 1993).

training requirements could be considered an additional violation, the 22 APs must attend such training without delay. However, this will not absolve the 22 APs or "X" for any past violations of the Act or Commission regulations and the Commission may proceed against the 22 APs or "X" for any past violations of the Act or the Commission's regulations promulgated thereunder, if the Commission determines that such action is appropriate.

If you have any questions concerning this correspondence, please contact me or Natalie A. Markman, an attorney on my staff, at (202) 418-5450.

Very truly yours,

Susan C. Ervin
Chief Counsel