CFTC Letter No. 98-72

September 29, 1998
Division of Trading & Markets

Re: Request for a No-Action Position Concerning Registration as an Introducing Broker under Section 4d of the Act

Dear:

This is in response to your letter dated July 23, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), which responded to the Division's June 12, 1998 letter denying a request by "X" for a no-action position with regard to certain registration requirements under the Commodity Exchange Act ("Act"). You are requesting that the Division reconsider its denial based upon the additional arguments presented in your letter.

Specifically, you point out that "X" currently provides futures hedging services to approximately only 31 grain elevators and not 200 as stated in the Division's June 12, 1998 letter. Further, you state that "X" is fully aware of its supervisory responsibilities for any branch office established under the terms of the requested no-action position and that the Division's concerns about proper supervision of "X's" branch offices would be equally applicable to any branch office opened by a Commission registrant pursuant to current Commission rules. You emphasize that if the no-action request were granted, associated persons ("APs") at "X" branch offices would enter all trades through an AP at "X's" main office, strengthening "X's" supervision of branch office activities. You also argue that the Division's denial of "X's" request constituted an unwarranted hardship in that the Division had previously granted similar relief to an "X" competitor, and "X" is now at a competitive disadvantage. You note that grain elevators, when placing futures trades for hedging purposes on behalf of their farmer-members, may now choose to deal with this "X" competitor pursuant to the previously issued no-action letter rather than with "X". ²

The Division has carefully considered your request. However, we continue to have concerns about the ability of any Commission registrant properly to supervise APs and to assure the compliance with Commission regulations by APs who operate away from the registrant's principal place of business and are not themselves employees of the registrant. Given these concerns, the Division continues to believe that it would be contrary to the public interest and to the purposes of the registration requirements to grant the requested no-action position and, thus, declines to reconsider its previous position on this matter. If you have any questions on this matter, please contact me or Thomas E. Joseph, an attorney on my staff, at (202) 418-5430.

Very truly yours,

I. Michael Greenberger

Director

¹ 7 U.S.C. § 1 et seq. (1994).

- ² Only grain elevator cooperatives that have an ownership interest in the recipient of the cited no-action letter could rely on the position set forth in that letter.
- ³ We note that in the case of APs operating from a branch office of a Commission registrant, the APs would be employees of the registrant and would not be employees of an unrelated entity. In the situation presented by "X", "X's" branch office APs would be employed by the grain elevators and not by "X". In addition, if the requested no-action relief were granted, "X" would pay commissions not to its APs at the branch offices but to the grain elevators where the branch offices would be established.
- ⁴ Issuance of a letter granting a no-action position is entirely within the discretion of the Division. *See* 63 Fed. Reg. 3285, 3286 (Jan. 22, 1998)(proposed rules governing requests for exemptive, no-action and interpretative letters). Further, any no-action letter is effective only with respect to those persons to whom such letter is issued. *Id*.