CFTC letter No. 02-104
October 2, 2002
Interpretation
Division of Clearing and Intermediary Oversight

Re: Delivery of Monthly Statements to Foreign Currency Customers

Dear :

This is in response to your letter to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), received on August 27, 2002, as well as telephone conversations with Division staff. By your correspondence, you request an interpretation as to the permissibility of "X" registered futures commission merchant ("FCM"), providing, at the request of a customer or trading advisor, monthly account statements only to the customer's trading advisor.

Based upon your representations, we understand the facts to be as follows. "X's" activities as a registered FCM are limited to acting as a counterparty under Section 2(c)(2)(B)(ii) of the Commodity Exchange Act (the "Act")[1] for foreign currency transactions conducted on an off-exchange basis, i.e., where the contracts are not executed or traded on or subject to the rules of an organized exchange.[2] Customers of "X" open accounts for the sole purpose of entering into these off-exchange foreign currency transactions. "X" provides customers with monthly statements either in hard copy or via electronic media. In some cases, customers execute a power of attorney in favor of a trading advisor to permit the trading advisor to conduct trading on the customer's behalf. Some customers request that "X" provide the monthly statements directly to the trading advisor instead of the customer. In such a case, the customer may be informed of the performance of their account by the trading advisor and not by "X".

The Commission has not promulgated any rules regarding to the delivery of monthly statements specific to registered FCMs who solely enter into off-exchange foreign currency transactions. However, within the context of transactions executed on an organized exchange, the Commission has adopted Rule 1.33, which requires an FCM to promptly furnish each customer with a written monthly statement setting forth, among other things, a detailed accounting of all financial charges and credits to the customer's account.[3] Rule 1.33(d)(1) requires that the FCM *also* promptly furnish a written monthly statement to an account controller, such as a trading advisor who is directing trading in a customer's account. Rule 1.33(g)(1) provides that monthly statements may be furnished to a customer electronically, if the customer so consents, so long as prior to the electronic transmission of any statement, the FCM, among other things, discloses the electronic medium to be utilized, the duration of the period during which the consent will be effective, and that the consent may be revoked at any time. Further, Rule 1.33(g)(2) requires that, in the case of a customer that is not an "eligible contract participant," as defined in Section 1a(12) of the Act, the FCM must obtain the customer's signed consent. Accordingly, pursuant to Rule 1.33, generally an FCM must provide both the customer and the trading advisor with the appropriate monthly statements, whether in a hard copy or by electronic media.

While Rule 1.33 may serve as guidance, the requirements of the rule would not be applicable to a firm, such as "X", that limits the activities for which it is registered as an FCM to acting as a counterparty under Section 2(c)(2)(B)(ii) of the Act for off-exchange foreign currency transactions. Accordingly, it is the opinion of the Division that "X", to the extent that it is acting solely as a counterparty under Section 2 (c)(2)(B)(ii) of the Act for transactions involving off-exchange foreign currency, would not be prohibited under the Act or Commission rules from, at the request of the customer or trading advisor, providing monthly statements solely to the customer's trading advisor.

The Division also wishes to note, however, that "X" is subject to certain provisions of the Act, including the relevant antifraud provisions, in connection with transactions conducted under Section 2(c)(2)(B)(ii) of the Act.[4] Further, in the event that the activities of a trading advisor result in violations of the relevant sections of the Act or the rules thereunder, "X" may be liable for aiding and abetting such violations.[5] Accordingly, "X" may, as good business practice, wish to voluntarily comply with the requirements of Rule 1.33.

The positions taken herein are based upon the representations that have been made to the Division. Any different, changed, or omitted facts or conditions might require the Division to reach a different conclusion. Further, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Michael A. Piracci, an attorney on my staff, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe
Director

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[1] 7 U.S.C. § 1 *et seq*. (2000).

[2] Section 1a(27) of the Act.

[3] Commission Rules referred to herein are found at 17 C.F.R. Ch. 1 (2002).

[4] *See* Section 2(c)(2)(C) of the Act.

[5] *See* Section 13(a) of the Act.