



COMMODITY FUTURES TRADING COMMISSION

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DIVISION OF
TRADING AND MARKETS

95-11

February 9, 1995

Re: Transmission of Confirmation, Monthly and Purchase-and-Sale Statements -- Rules 1.33 and 1.46

Dear :

This is in response to your letter dated January 11, 1995, submitted on behalf of "X", a registered futures commission merchant (FCM), as supplemented by telephone conversations among Division staff, you and "A" of "Y", a registered commodity trading advisor (CTA) and commodity pool operator (CPO), regarding transmission of confirmation, monthly and purchase-and-sale statements to customers and account controllers under Commission Rules 1.33 and 1.46.^{1/} You have requested relief from the requirements under Rules 1.33 and 1.46 to send account controllers such as "Y" hard copies of confirmation, monthly and purchase-and-sale statements, when such information is sent to the account controller via electronic transmission.

Based upon your representations, we understand the facts to be as follows. "X" sends hard copy confirmation, monthly and purchase-and-sale statements to customers and, where controlled

^{1/} Paragraphs (a) and (b) of Commission Rule 1.33 require an FCM to furnish each customer a written confirmation of each transaction executed by it for the customer not later than the next business day after the transaction and to promptly furnish in writing to each customer a monthly statement showing account activity. Paragraph (d)(1) of that rule requires that the information required by paragraphs (a) and (b) of the rule also be promptly furnished in writing to an account controller, such as a CTA directing trading for a customer's account. Commission Rules 1.46(a) and 1.33(d)(3) require the prompt furnishing of a purchase-and-sale statement showing the financial result of closed-out transactions to the customer and account controller, respectively.

Commission rules referred to herein are found at 17 C.F.R. Ch. I (1994).

accounts are involved, "X" also sends hard copies of such statements to the person or entity exercising control over the account. In certain instances, the account controller receives the statements via electronic transmission, in addition to the hard copies. "Y" has requested that "X" discontinue sending hard copies of statements and continue to send statements via electronic transmission.

The Division has previously considered the issue of electronic transmission of customer confirmation statements.^{2/} That letter was written shortly after the Commission amended Rule 1.31 to allow for production of computer-generated records on optical disk to be immediately substituted for hard copy computer reports.^{3/} The Division's June 2, 1993 letter indicated that the Commission was continuing to review the issue of electronic transmission of records, and the Division declined at that time to grant relief that would permit an FCM to provide confirmation statements via electronic means rather than by mailing such statements in hard copy form.

The Division has now reconsidered this issue and has determined to provide limited relief in this area. Accordingly, the Division will not recommend that the Commission take any enforcement action against "X" under Commission Rule 1.33(d) based solely upon its providing "Y", in the latter's capacity as account controller, confirmation and purchase-and-sale statements via electronic transmission only without mailing such statements in hard copy form. This relief is conditioned upon "X" continuing to furnish a monthly written account statement in hard copy form to "Y" as account controller. This relief is further conditioned upon "Y" maintaining the confirmation and purchase-and-sale statements received from "X" via electronic transmission in accordance with the standards for optical storage systems set forth in Commission Rule 1.31(d).^{4/}

Please note also that any relief granted herein does not apply to confirmation, monthly and purchase-and-sale statements

^{2/} CFTC Interpretative Letter 93-53, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,757 (June 2, 1993).

^{3/} 58 Fed. Reg. 27458 (May 10, 1993).

^{4/} See Commission Rule 4.32(a)(6) (CTA recordkeeping requirements).

issued to customers, which must continue to be provided in hard copy form.^{5/}

The relief issued by this letter does not excuse "X" or "Y" from compliance with any other applicable requirements contained in the Commodity Exchange Act or the Commission's rules thereunder. This letter is based on the representations you have made to us and is subject to compliance with the conditions stated above. Any different, changed or omitted facts or circumstances might cause us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the facts change in any way from those represented to us.

If you have any questions regarding this letter, please contact me or Lawrence B. Patent, Associate Chief Counsel, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

^{5/} For example, where "Y" is acting as a CPO, it must receive statements in hard copy form as the representative of the customer, i.e., the commodity pool, whether or not it is also directing trading for the commodity pool.