



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC letter No. 07-14
July 18, 2007
Interpretation
Division of Clearing and Intermediary Oversight

Re: Request for Interpretive Letter Regarding Regulation 1.33

Dear :

This is in response to your letter dated April 27, 2007, to the Division of Clearing and Intermediary Oversight (“Division”), in which you request, on behalf of (the “Company”), a registered futures commission merchant (“FCM”), an Interpretive or No Action Letter regarding Commission Regulation 1.33,¹ which requires an FCM to send to its customers certain account statements and written records relating to the customers’ accounts (the “Account Statements”)². Specifically, you request that the Company be considered in compliance with the requirement that an FCM transmit to its customers the Account Statements specified in Regulation 1.33 where the customer has been provided electronic access *via* a password-protected website to the information required to be transmitted.

Based upon the representations made in your letter, we understand the relevant facts to be as follows. The Company is a registered FCM, that currently offers its customers the option of receiving their statements via electronic mail (“email”). The statements provided electronically contain all the data required by Commission Regulation 1.33.

The Company intends to alter the current method of providing its customers with account information by providing each customer opting to receive statements *via* email with a unique username and password. Whenever a new Account Statement is generated by the Company, the customer would receive an email notification, which includes a link in the email document that would direct the customer to a password-protected portion of its website. The customer would then enter his or her username and password, and would be able to view the most-recent Account

¹ Commission regulations referred to in this letter are found at 17 C.F.R. Ch. I (2007).

² The Account Statements will include monthly and confirmation statements that contain the information specified in Commission Regulation 1.33.

Statement. The revised system would also provide customers easier access to archived versions of their previous Account Statements.³ In the method proposed by the Company, customers that opt for the new method will receive the same information that would be included in a paper statement or in the emailed statement provided using the Company's current distribution method.

The Commission adopted, as part of an overhaul of several regulations relating to intermediaries of commodity interest transactions, a new paragraph (g) of Regulation 1.33 governing electronic transmission of account statements. The Commission's intention in adopting these several regulations in general was to streamline and eliminate unnecessary regulation for regulated entities, in keeping with one of the purposes of the Commodity Futures Modernization Act.⁴ The Commission's intention in adopting new paragraph (g) of Regulation 1.33 specifically was to codify its previous June 1997 Advisory⁵ relating to the electronic transmission of account statements.⁶

To preserve flexibility and accommodate advances in technology, the text of Commission Regulation 1.33(g) does not specify which kinds of "electronic media" are available as means of distributing customer Account Statements. The June 1997 Advisory made clear, however, that electronic media encompassed facsimiles, electronic mail, internet world wide websites and computer networks.⁷

³ In addition to the most-recent statement, customers accessing their account statements through the new system, after entering their username and password, will have the ability to access all previous statements generated for their account. They will not need to open up prior emails to view prior account statements, as is required by the current method.

⁴ Pub. L. No. 106-554, 114 Stat. 2763, §2(2) (December 21, 2000).

⁵ 62 Fed. Reg. 31507 (June 10, 1997). The Advisory required that customers consent to the delivery method and that the consent be based on "sufficient information about the about the manner and costs of delivery to constitute informed consent." The factors considered in determining informed consent are "(1) [t]he electronic medium or source through which the Statements will be delivered; (2) the period during which the consent will be effective (which can be until further notice); (3) the information that will be delivered using such means (a customer might, for example, request that only daily confirmations and purchase-and-sale statements be delivered electronically and still wish to receive a monthly statement by mail); (4) the costs, if any, that will be charged to the customer specific to electronic delivery of the Statements; and (5) the customer's right to revoke at any time the consent to receive statements solely by means of electronic medium."

⁶ 66 Fed. Reg. 53510, 53514 (October 23, 2001).

⁷ 62 Fed. Reg. 31507, at 31508.

The revised notification method will provide customers with an email each time a new statement is generated. With respect to whether the revised method is unduly burdensome, because customers will have to click a link to a website and enter their usernames and passwords to have full access to their statements, it is slightly more burdensome than the current method, which provides the data in the account statement in the text of the email. The extra layer of security afforded to customers by requiring a password to view the Account Statement, however, mitigates this burden. Easier access to prior Account Statements is also a mitigating factor. It also appears to be a reasonable precaution for the integrity and security of statements transmitted electronically.⁸

Based on the foregoing, the Division has determined that the Company's planned revision of the program providing for electronic transmission of Account Statements is consistent with Regulation 1.33(g), subject to the conditions that the Company: (1) receive a written statement from the customer acknowledging and agreeing to the foregoing arrangement; and (2) promptly furnish to the customer, upon its request, paper versions of the customer's Account Statements.

The views expressed in this letter are based on the representations you have made to us and is subject to the conditions stated above, and represent the views of the Division of Clearing and Intermediary Oversight. They do not necessarily represent the views of the Commission or any other staff unit of the Commission. Division's opinion does not excuse the Company from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event the facts presented change in any way from those represented to us.

If you have any questions concerning this correspondence, please contact Deputy Director, Lawrence B. Patent at (202) 418-5439, or Special Counsel, Peter Sanchez at (202) 418-5237.

Very truly yours,

Ananda Radhakrishnan
Director

⁸ *Id.* at 31510.