



DIVISION OF  
TRADING AND MARKETS

COMMODITY FUTURES TRADING COMMISSION  
2033 K STREET, N.W., WASHINGTON, D.C. 20581

87-9

December 2, 1987.

Re: Request for No-Action Regarding the Risk Disclosure and Discretionary Authorization Requirements in the Foreign Futures and Options Rules

Dear

This is in response to your letter to the Division of Trading and Markets ("Division") dated September 30, 1987, in which you requested that the Division adopt a no-action position regarding the risk disclosure requirement in rule 30.6 1/ and the discretionary authorization requirement in the amendments to current rule 166.2 2/ in connection with the Commodity Futures Trading Commission's ("Commission") foreign futures and options rules. Specifically, on behalf of the \_\_\_\_\_ you have requested that the requirements specified therein be applied prospectively to clients of futures commission merchants ("FCMs") and introducing brokers ("IBs") solicited on or after the effective date of such rules on January 4, 1988.

In your letter, you have stated your understanding that:

Rule 30.6 prohibits the opening by an FCM or IB of a foreign futures or foreign options account for a foreign futures or foreign options customer unless the

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1/ 52 Fed. Reg. 28980, 28999 (Aug. 5, 1987).

2/ Rule 166.2, 17 C.F.R. §166.2 (1987), as amended by 52 Fed. Reg. 28980 at 29003.

FCM or IB first delivers to the customer either in the customer account agreement or on a separate form, the prescribed risk disclosures. For non-discretionary accounts, no acknowledgement of risk disclosure is required. For discretionary accounts, the FCM must receive a signed acknowledgement of risk disclosure which can be contained in the general customer account agreement. Also, the FCM must receive an express grant of authority to engage in foreign futures and foreign options transactions. This may be contained in the discretionary authority so long as foreign futures and foreign options are expressly included in the granting language. Rule 166.2. Finally, if a customer wishes to engage in foreign options transactions, disclosure pursuant to rule 33.7 must [also] be made and a signed and dated acknowledgement received from the customer.

In connection with the foregoing, you have requested that the Division adopt a no-action position so that:

FCMs and IBs will be deemed to have satisfied these requirements as to all customers with accounts opened before the effective date of the rules (January 4, 1988) if a mailing of the foreign futures and foreign options disclosure statement is effected by the FCMs and IBs along with monthly statements to those customers who must, under regulation 1.33(a), receive a monthly statement for such month.

The Division has considered your request and has determined that it will not recommend that the Commission take enforcement action with respect to an FCM's or IB's failure to comply with the specific requirements of rule 30.6 and the amendments to Commission rule 166.2 with respect to clients solicited prior to January 4, 1988. This no-action position, however, is subject to the following terms and conditions. First, for a period of four consecutive months from January to April 1988, FCMs must include the risk disclosure statement in rule 30.6(a) in the monthly account statements which they are required to provide customers under rule 1.33(a) 3/ for transactions in such clients' accounts for the months of December through March, 1988. 4/

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3/ 17 C.F.R. §1.33(a) (1987).

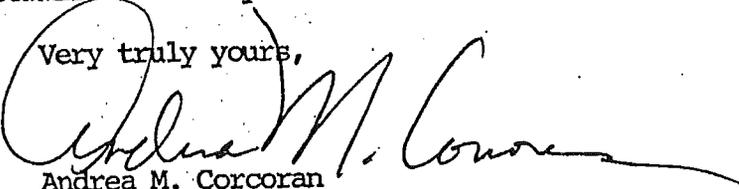
4/ Since Commission rule 1.33(a) requires that an account statement be sent no less frequently than once every three months, a requirement that the disclosure statement in rule 30.6 be included with such monthly account statement for a period of four consecutive months would ensure that

Moreover, this no-action position is limited to an FCM's and IB's obligation to comply with the specific requirement in rule 30.6 to provide all customers with the risk disclosure language prior to opening a foreign futures or options account and in no way diminishes or qualifies such registrants' other obligations, for example, their obligations under the antifraud provision in section 4b of the Commodity Exchange Act to disclose all material facts or their responsibilities under Commission rule 1.55(d), 17 C.F.R. §1.55(d) (1987), which remains applicable to such registrants.

Second, with respect to those customers solicited prior to January 4, 1988, and who have granted general discretionary authority to an FCM or IB in accordance with rule 166.2, such FCM or IB need not amend such document to include express authorization to engage in foreign futures and foreign options transactions as required in the amendments to rule 166.2. As previously noted herein with respect to the risk disclosure language in rule 30.6(a), however, the Division's no-action position in respect of the amendments to rule 166.2 is limited to an FCM's or IB's obligation to comply with the specific requirement to amend the authorization language and in no way affects an FCM's or IB's obligation to otherwise obtain the customer's consent with respect to such transactions or its liabilities for engaging in unauthorized transactions. Moreover, if any customer solicited prior to January 4, 1988, either requests new account documentation or if circumstances otherwise warrant new account documentation for such customer, FCMs and IBs are required to modify appropriately the discretionary authorization at that time to incorporate expressly such authority with respect to foreign futures and options transactions.

The no-action positions adopted herein are subject to the conditions imposed herein by the Division and in no way affect an FCM's or IB's obligations with respect to foreign futures and options customers solicited on or after January 4, 1988. Moreover, the Division intends to monitor this area and to respond to facts and circumstances, as appropriate. In addition, the positions adopted herein are solely those of this Division and do not necessarily represent those of the Commission or any other unit of its staff.

Very truly yours,

  
Andrea M. Corcoran  
Director

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(Footnote continued)

customers solicited prior to January 4, 1988, would receive at least one copy of the disclosure statement.