



COMMODITY FUTURES TRADING COMMISSION

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93-36

DIVISION OF
TRADING AND MARKETS

April 20, 1993

[Requestor's name
and address]

Re: [B] -- Request for no-action relief
in connection with bulk transfer of
customer accounts

Dear [Name of Requestor]:

This is in response to your letter dated April 8, 1993, to the Division of Trading and Markets (the "Division"), wherein you request regulatory relief on behalf of [B], a registered futures commission merchant ("FCM"), in connection with a bulk transfer of customer accounts from [A], a registered FCM, to [B].

Based upon the representations made in your letter, we understand the facts to be as follows. [A] is discontinuing its futures business and plans to transfer approximately 100 of its customer accounts to [B] as of the close of business April 15, 1993. By letter dated March 30, 1993 and transmitted by overnight courier service, a copy of which you have provided us, [A] advised all affected customers of the proposed transfer and requested that each such customer register any dissent to the proposed transfer to [B] with [A].^{1/} Customers were informed that a failure to respond to [A]'s letter by the close of business on April 14, 1993 would be construed as consent by the customer to the terms of the account transfer proposal. Customers were also informed by the letter that they were not required to accept the proposal to transfer their accounts but instead could instruct [A] to either liquidate their accounts or transfer their accounts to firms other than [B].

You represent that due to the short period of time between the decision to move to [B] and the actual transfer and the number of affected customers, it is impractical for [B] to obtain customer account documentation, including acknowledgments of the receipt of risk disclosure statements required by Commission rules, prior to the transfer of accounts on April 15. [B] anticipates, however, that it will be able to make the required disclosures and obtain the required acknowledgments of receipt from the customers transferred from [A] by May 28, 1993.

^{1/} While [A]'s agreements with many of its customers include prospective consent to the transfer or assignment of the account to another FCM, many do not contain such provisions. Most of the accounts affected by the transfer are those of commercial hedgers and sophisticated traders.

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Based upon the representations made to us and subject to the conditions set forth below, the Division has determined that it will not recommend that the Commission commence enforcement action against [B] in connection with the bulk transfer of customer accounts from [A] based solely on [B]'s failure to provide, and obtain the acknowledgment of the receipt of, the risk disclosure statements required by Rules 1.55, 30.6, 33.7 and 190.10 and other customer agreements prior to accepting the accounts of customers transferring from [A].^{2/} This position is conditioned upon [B]'s receipt of the signed acknowledgments of receipt and understanding of disclosure statements required by Commission Rules 1.55, 30.6, 33.7, and 190.10 or photocopies (or comparable evidence) of prior acknowledgments of such receipt and understanding of the required disclosures no later than May 28, 1993.^{3/} This temporary no-action position will terminate as of May 28, 1993. This position may also terminate in the event of changed circumstances, including, for example, the receipt of negative reports in connection with this transfer.

The position adopted herein is based upon the representations made to us. Any different, changed or omitted facts or circumstances might require us to reach a different conclusion. In this connection, we request that you notify us immediately in the event the operations and activities of [B] or [A] change in any way from those as represented to us. Moreover, this position is that of the Division only and does not necessarily represent the views of the Commission or any other office or division of the Commission.

If you have any questions concerning this correspondence, please feel free to contact me or George G. Wilder, an attorney on my staff, at (202) 254-8955.

Very truly yours,

Susan C. Ervin
Chief Counsel

GGW/gw

^{2/} Commission rules referred to herein are found at 17 C.F.R. Ch. I (1992).

^{3/} See 58 Fed. Reg. 17495 (April 5, 1993) (adopting Commission Rule 1.65(a)(3), effective July 1, 1993).