U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

DIVISION OF
TRADING & MARKETS

96-18

February 28, 1996

Re: Facsimile Transmission of Confirmation Statements
-- Request for Relief from Rule 1.33(b)

Dear :

This is in response to your letter dated January 4, 1996, to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff. You request that "X", a registered futures commission merchant ("FCM"), be permitted to fulfill its obligations under Commission Rule 1.33(b)[1/] by sending institutional customers who have facsimile machines daily confirmation statements via facsimile transmission.

Based upon your representations, we understand the relevant facts to be as follows. "X", a wholly-owned subsidiary of "Y", has a client base of five affiliate companies and twelve customer accounts. Six of the customer accounts are omnibus accounts. Four of the affiliates and nine of the customers are international; one of the affiliates and three of the customers are domestic. All seventeen entities are "institutional customers," as defined by the Federal Reserve Board,[2/] and use daily

---

1/ Rule 1.33(b) requires an FCM to furnish each customer a written confirmation of each commodity interest transaction executed by it for the customer not later than the next business day after the transaction.

Commission rules referred to herein are found at 17 C.F.R. Ch. I (1995).

2/ "Institutional customer" is defined as: (1) a bank, savings and loan association, insurance company, registered investment company or entity with a net worth exceeding $1,000,000; (2) an employee benefit plan with assets exceeding $1,000,000 or whose investment decisions are made by a bank, insurance company or

(continued...)

facsi-mile transmission of confirmation statements for their internal balancing and recordkeeping. "X" mails hard copy confirmation statements to these customers and transmits statements through its computer system to the customers, who receive statements over their facsimile machines.

In your letter, you state that sending hard copies of confirmation statements via the postal service involves delays of at least a week for international customers and is "an unnecessary duplication of effort" for all of your customers. You request that the Division grant relief permitting the daily facsimile transmission of confirmation statements by "X" to fulfill its requirements under Rule 1.33(b). Additionally, you suggest that "X's" customers could provide written affirmation that facsimile transmission is acceptable as the sole method of delivery for confirmation statements.

Having reviewed your representations, the Division has determined to grant your request.[3/] The Division will not recommend that the Commission take any enforcement action against "X" under Commission Rule 1.33(b) based solely upon its providing its institutional customers with confirmation statements via facsimile transmission only, without mailing such statements in hard copy form.[4/] This relief is conditioned upon several

---

2/ (...continued)
registered investment adviser; (3) a person whose net worth exceeds $1,000,000; (4) a securities, investment or banking professional; or (5) an entity whose equity owners are institutional customers. 12 C.F.R. § 225.2(g) (1995). This definition is akin to those of the Commission for a "qualified eligible participant" in a commodity pool, a "qualified eligible client" of a commodity trading advisor, an "eligible swap participant" and an "eligible participant" in a Section 4(c) contract market transaction. See Commission Rules 4.7(a)(1), 4.7(b)(1) and 35.1(b)(2); see also Commission Rule 36.1(c)(2), 60 Fed. Reg. 51323, 51343 (October 2, 1995), to be codified at 17 C.F.R. § 36.1(c)(2).

3/ The Division has granted similar relief in the past. See, e.g., Division of Trading and Markets Interpretative Letter No. 95-11 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,323 (February 9, 1995).

4/ More than a year ago, the Securities and Exchange Commission announced its intention to permit broker-dealers to deliver confirmations to customers via facsimile transmission. See Confirmation of Transactions, Exchange Act Release No. 34-34962
(continued...)

factors: (1) "X's" current clients receiving confirmation statements solely by facsimile transmission must continue to meet the criteria for "institutional customers" established by the Federal Reserve Board; (2) "X's" current clients and any future clients meeting the criteria in the institutional customer definition and wishing to avail themselves of the relief referred to herein must provide written revocable consent to "X", a hard copy agreement, to receive delivery of daily confirmation statements solely by facsimile transmission; (3) "X" must continue to furnish monthly account statements in hard copy form; and (4) "X" must maintain the confirmation statements in accordance with the standards set forth in Commission Rule 1.31.[5/]

The relief issued by this letter does not excuse "X" from compliance with any other applicable requirements contained in the Commodity Exchange Act or the Commission's rules thereunder. This letter is based upon 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 require us to reach a different conclusion. In this regard, we request that you notify us immediately in the event that the circumstances material to your request differ from those represented to us.

If you have any questions concerning this correspondence, please contact me or Susan C. Ervin, the Division's Chief Counsel, at (202) 418-5450.

Very truly yours,

Andrea M. Corcoran
Director

4/ (...continued)
[1994-1995 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 85,455, at 85,938 n.28 (November 9, 1994).

5/ See Commission Rules 1.33(e) and 1.35 (FCM recordkeeping requirements).