

CFTC Letter No. 99-18**March 23, 1999****Exemption****Division of Trading & Markets**

Re: Request for Exemption from Rule 155.3(c)(3)

Dear :

This is in response to your letter dated November 13, 1998 to the Division of Trading and Markets ("Division") of the Commodity Futures Trading Commission ("Commission"), as supplemented by telephone conversations with Division staff.¹ By your correspondence, you request on behalf of "X", a registered futures commission merchant ("FCM"), that the Commission grant an exemption from Rule 155.3(c)(3), which requires an FCM that handles the account of an associated person ("AP") of another FCM or introducing broker ("IB") to send to the other FCM or IB certain account statements and written records relating to the AP's account.² Your letter specifically requests an exemption from that part of Rule 155.3(c)(3) concerning order tickets.

Based upon the representations made in your correspondence, we understand the facts to be as follows. "A", President and an AP of "X", wishes to trade through "Y", a registered FCM. Based on a long-standing relationship, "Y" will offer "A" a discount on its normal price to execute trades. Furthermore, "A" solicits neither customer accounts nor customer orders, and he is not part of "X's" order process. You also state that you will review his account statements.

You believe that relief is appropriate because, among other things, "A": (1) wishes to keep his trading confidential from employees at "X"; and (2) it will not be economically feasible for "Y" to execute "A's" trades at a discount if "Y" must furnish "X" with order tickets as required by Rule 155.3(c)(3).

The Commission has determined to deny your request. In adopting the Part 155 rules, the Commission expressed the view that information pertaining to the time and sequence of transactions was essential for contract markets to be able to reconstruct the trading on any given day. Such information would also assist FCMs in carrying out the public protection function of the trading standards rules, i.e., "to insure that FCMs and their employees do not take advantage of their relationship with customers by using their knowledge of

customer orders to trade ahead of or against the interests of such customers for their own benefit or that of their preferred customers."³ See also United States v. Dial, 757 F.2d 163 (7th Cir. 1985)(affirming criminal conviction of brokers for trading ahead of customer orders). In light of the important customer protection issues at stake, the Commission believes that you have not articulated an adequate justification for an exemption from Rule 155.3(c)(3).

If you would like to discuss this matter further, please feel free to contact David M. Battan, Chief Counsel, or Lawrence B. Patent, Associate Chief Counsel, in the Commission's Division of Trading and Markets, at (202) 418-5430.

Very truly yours,

Jean A. Webb

Secretary of the Commission

¹ Although your letter was addressed to the Director of the Division, Rule 155.10 gives the Commission the authority to grant an exemption from Part 155. This authority has not been specifically delegated to the Division, and consequently the Commission rather than the Division responds to your request.

² Commission rules referred to in this letter are found at 17 C.F.R. Ch. I (1998).

³ 41 Fed. Reg. 56134, 56139 n.18.