



Commodity Futures Trading Commission • Office of Public Affairs
Contact: **John C. Phillips** or **R. David Gary**, (202) 254-8630 • Fax: (202) 254-3678

News Release

Release: #3859-95

For Release: July 27, 1995

CFTC Order Imposes \$2.25 Million Civil Penalty Against MG Refining and Marketing, Inc. and MG Futures, Inc.; Other Remedial Sanctions Include Review of Internal Control Systems for Risk Management

WASHINGTON - The Commodity Futures Trading Commission (CFTC) announced today that it has issued an order instituting administrative proceedings against **MG Refining & Marketing, Inc. (MGR&M)** of Houston, Texas, and its affiliate **MG Futures, Inc. (MGFI)** of New York, New York, and simultaneously accepted their offer of settlement under which MGR&M and MGFI will jointly pay a \$2.25 million civil penalty, among other remedial sanctions. MGFI is registered with the Commission as a futures commission merchant (FCM) and carried futures trading accounts for MGR&M.

Without admitting or denying the findings in the CFTC order, MGR&M and MGFI consented to the entry of the order which finds that MGFI failed to report to the CFTC material inadequacies in its internal controls and failed to file certified financial reports, and that MGR&M sold illegal off-exchange futures contracts, all in violation of the Commodity Exchange Act (CEA) and CFTC regulations.

CFTC Chairman Mary L. Schapiro commented: "The MG-related events are a compelling case study and a stern warning about the importance of maintaining adequate internal controls to manage risk in a dynamic marketplace. The creation of narrow purpose subsidiaries or complex organizational structures cannot relieve management of its business and regulatory responsibility to understand and control the activities of its employees."

MGFI Failed to Notify the CFTC of Material Inadequacies in Internal Control Systems and Failed to File Certified Financial Reports Required by the CFTC's Regulations

Specifically, the CFTC order finds that from at least December 1991 until December 1993, MGR&M marketed, offered, and sold illegal, off-exchange futures contracts, known as Firm Fixed Price (45-Day) Agreements for the Sale of Petroleum Product, to more than 100 commercial counterparties - including independent gasoline stations and heating oil distributors. These so-called 45 Day Agreements were part of MGR&M's overall energy contract business, which it hedged barrel-for-barrel with futures contracts, including New York Mercantile Exchange (NYMEX) futures contracts, and over-the-counter swaps.

By the end of September 1993, a substantial increase in the sale of the 45 Day Agreements coupled with adverse energy market conditions caused MGR&M to face a significant cash flow and funding crisis. As a result of material inadequacies in internal control systems at MGFI, the risks associated with MGR&M's activity in the energy and energy futures markets threatened the financial condition of MGFI. MGFI failed to notify the CFTC of these material inadequacies and further failed to file certified financial reports for fiscal years 1993 and 1994, as required by the CFTC's regulations.

- MORE -

Special Oversight Committee Will Review and Make Recommendations Regarding MGFI's Internal Control Systems; MGFI Must Implement All Reforms

The order requires that MGFI, currently an inactive FCM, establish a special oversight committee comprised of representatives of certain of its affiliates, including Metallgesellschaft, AG (MGAG), of Frankfurt, Germany, the ultimate parent of MGR&M and MGFI. Prior to MGFI's resumption of business as an FCM, the committee must review and make recommendations regarding MGFI's internal control systems, including:

- risk management procedures;
- organizational structures to assure the independence of the individuals and units performing MGFI's risk management functions from the units engaged in the business and trading functions being monitored; and
- procedures to assure that MGFI provides all necessary information about the ongoing nature and risks of its business to any affiliate upon which it relies for funding or guarantees.

The Committee is also required to provide a report to the CFTC detailing the results of the review and identifying any needed reforms, which must be implemented by MGFI.

MGFI must also, for the first three years following resumption of business as an FCM, provide the CFTC with a written determination by an independent certified public accountant of whether MGFI is implementing its internal controls. MGFI also must deliver to the CFTC, at least 30 days prior to resumption of business as an FCM, required certified financial statements.

Finally, the special oversight committee must review MGR&M's policies and procedures concerning the marketing, offer, and sale of off-exchange contracts to determine whether such policies and procedures are adequate to reasonably assure that such contracts conform to the requirements of the CEA and CFTC regulations. MGR&M is required to implement all committee recommendations for needed reforms in this area.

45 Day Agreements Declared Illegal under the Commodity Exchange Act

The order also finds that the 45 Day Agreements are off-exchange futures contracts and are therefore illegal. The order requires MGR&M to notify all purchasers of existing 45 Day Agreements of the CFTC's findings, and prohibits MGR&M from marketing, offering, or selling 45 Day Agreements. The order also prohibits the further sale and marketing of certain other petroleum contracts as sold by MGR&M between December 1991 and December 1993. In addition, the settlement order directs MGR&M to cease and desist from violating Section 4(a) of the CEA (which prohibits the offer and sale of illegal off-exchange futures contracts) and orders MGFI to cease and desist from violating CFTC regulations 1.10(b)(1)(i) and 1.12(d) (relating to the reporting of material inadequacies in internal controls and the filing of certified financial reports).

###