CFTC Levies Fines Against German Firm

WSJ

7/28/95 By JEFFREY TAYLOR C1

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WASHINGTON – The Commodity Futures Trading Commission waded into the fray over the near-collapse of **Metallgesellschaft AG**, fining two of the German company's U.S. units $2,250,000 for failing to report weaknesses in their internal controls and other alleged infractions.

MG, once Germany's 14th biggest corporation, was brought to the brink of insolvency in late 1993 after an oil-price plunge produced about $1 billion in "margin calls" and other short-term losses. The company's bankers refused to provide more money to maintain the massive oil-market positions. (Margin calls are demands for additional collateral to hold positions in futures and other derivatives markets when prices fall.)

The CFTC's 10-page order on the MG crisis contains a finding that MG Refining & Marketing Inc., the unit responsible for marketing energy-supply agreements to MG's customers in the U.S., was selling what amounted to illegal off-exchange futures contracts. The order also says that MGR&M accelerated its sale of these contracts in an effort to improve its operating results for fiscal 1993, even as it was paying out millions of dollars to cover margin calls and other short-term losses.

"I think the most important point is the focus on the lack of internal controls throughout the organization," CFTC Chairwoman Mary Schapiro said. "We hope this will teach multinational corporations that they must have adequate internal controls" over far-flung derivatives-trading operations, she said.

In the aftermath of the 1993 oil-market losses, a supervisory board headed by Ronaldo Schmitz, an executive at MG creditor Deutsche Bank, decided to fire top executives at both the parent company and the U.S. units and "unwind," or sell off, most of the huge futures and derivatives position.

Since then, the multinational refining, mining and trading conglomerate has been reduced to a shadow of its former self. It

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has sold off many of its holdings worldwide and laid off hundreds of employees. Meanwhile, a legal and academic war has raged over who was to blame for the crisis.

Heinz Schimmelbusch, the deposed chairman of MG in Germany, and W. Arthur Benson, the former head of the U.S. oil-trading operation, have both filed lawsuits against their former employers. These suits allege that the companies wrongfully fired and blamed them for the crisis and seek millions of dollars in damages. MG's new managers responded with a lawsuit in a German court against Mr. Schimmelbusch and a counterclaim against Mr. Benson, whose legal case was moved to arbitration.

Dueling Academic Studies

And university professors have unveiled dueling academic studies about the crisis. Studies by University of Chicago professor Merton Miller concluded that the German bankers made a mistake by refusing to finance the oil-market positions and let MG's "hedge" against a price decline work. A subsequent study by professors Antonio Mello and John Parsons of the University of Wisconsin and Columbia University, respectively, attacked this analysis. They asserted that a company can't be expected to withstand hundreds of millions of dollars in short-term losses while waiting for a hedging strategy to run its course.

In an interview yesterday, Prof. Miller said the CFTC's conclusions in its enforcement case against MG amount to "rank second-guessing" and said the question of whether MGR&M was selling illegal futures contracts is irrelevant. "I don't know what the commission thinks it's doing here, other than ambulance chasing," Prof. Miller added. "It's all over now. Nothing much can be done about it now except litigate."

Special Oversight Committee

The CFTC order requires MG Futures Inc., another of the German company's U.S. subsidiaries, through which MGR&M did much of its oil-futures trading, to set up a special oversight committee to review its internal control systems before it can resume its oil-futures trading in the U.S. For three years after resuming that business, MGFI must provide the CFTC a report from an accounting firm on whether it is adhering to its internal control policies.

MG Corp., MG's main U.S. unit, said MGR&M agreed to settle the CFTC's administrative case by paying the fine and that MGRFI would comply with other demands in the order. In a statement, the president and chief executive of MG Corp., Thomas McKeever, said the settlement is "one of the last major steps in putting the problems of the past behind us." He added that the company intends to "resolve all outstanding claims on satisfactory terms and move forward."