



July 24, 2003

BY POST AND FAX

Mrs Jane Kang Thorpe
Director
Division of Clearing and Intermediary Oversight
U.S. Commodity Futures
Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581
USA

Dear Mrs. Kang Thorpe,

Further to your letter of 27 February 2003 addressed to Michael Parker and your subsequent meeting with him at FSA's offices on 19 May I am writing formally to request changes to the terms of the 30.10 Order to be issued to the FSA.

Based on discussions between FSA staff and the Division of Clearing and Intermediary Oversight, we suggest that the following changes warrant consideration:

1. Risk Disclosure - Subsequent to the Commission issuing the Part 30 orders, it adopted Appendix A to Rule 1.55(c). In doing so, the Commission noted that the generic risk disclosure statement set forth in Appendix A may be used in lieu of the statements required by Commission Rules 1.55, Rule 33.7 and the special bankruptcy disclosures of Commission Rule 190.10(c). The Commission determined further that all firms operating pursuant to confirmed Rule 30.10 relief may elect to use the generic risk disclosure statement or the risk disclosure statements mandated by Commission Rules 1.55 and 33.7 and applicable Commission orders, as appropriate. DCIO has reviewed the written disclosures required to be provided to prospective customers pursuant to the FSA's conduct of business rules and indicated to us that such disclosures track the language set forth in the generic risk disclosure statement. Accordingly, the FSA requests that the Commission exempt firms designated from FSA from compliance with the Commission's risk disclosure requirements as they apply to transactions under Part 30.

2. Segregation of Customer Funds - At the time when the Commission issued the Part 30 orders, U.S. customers were not permitted to opt out of segregation. Accordingly, each U.K. firm receiving confirmation of relief was required to consent to refuse U.S. customers the option of not segregating funds notwithstanding relevant provisions of the U.K. regulatory system. The Commodity Exchange Act recently was amended, however, to permit intermediaries conducting business on a derivatives transaction execution facility ("DTEF") to offer any customer that is an eligible contract participant ("ECP") the right to opt out of segregation for any transactions entered into on the DTEF. Accordingly, the FSA requests that the new Rule 30.10 order to be issued to the FSA authorises U.K. firms to permit U.S. customers that are ECPs to opt out of segregation with respect to those foreign futures and options transactions entered into pursuant to the order.

3. Bank Undertakings - Currently, each U.K. firm using an approved bank undertaking to meet any part of its financial resources requirement is subject to a notification requirement which is triggered if the value of customer funds segregated on behalf of U.S. customers exceed a specified multiple of the firm's minimum financial requirement. This notification requirement was designed to take into account the impact of bank undertakings in the context of the Commission's minimum financial resource requirement for futures commission merchants (i.e., four percent of segregated funds). However the requirement is unlikely to be triggered because;

a) the European Union's Capital Adequacy Directive restricts the use of bank undertakings by regulated financial institutions, including firms authorized by FSA to conduct futures business and hold customer funds, and

b) the value of the undertaking would be extremely unlikely to reach levels that would require notification.

Also, FSA monitors the use of such undertakings against the value of funds required to be segregated on behalf of U.S. customers via quarterly reporting statements from its member firms.

Accordingly, FSA requests that the Commission eliminate the notification requirement for firms using an approved bank undertaking.

4. Regulated Markets - Currently the scope of the UK Rule 30.10 Orders is limited to foreign futures and options traded on an RIE or DIE. However, subsequent to the Commission issuing the Part 30 orders the European Union has introduced a category of markets known as a Regulated Market. A Regulated Market is an exchange organised and operated from within one of the EU member states that has been recognised by the EU as meeting certain standards for financial integrity and customer protection, as laid down in the Investment Services Directive. Regulated Markets must be notified to the European Union by each member state and these include a number of futures and options exchanges. Accordingly the FSA requests that the Commission expand the Rule 30.10 relief to include transactions executed on or subject to the rules of Regulated Markets.

Thank you for your consideration of these amendments.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Folger". The signature is written in a cursive style with a prominent loop at the end of the last name.

Michael Folger
Director of Conduct of Business Standards