

CFTC letter No. 04-11**March 24, 2004****Interpretation****Division of Clearing and Intermediary Oversight**

Dear _____:

This is in response to your letter dated February 25, 2004, to the Division of Clearing and Intermediary Oversight (the "Division" or "DCIO") of the Commodity Futures Trading Commission ("Commission"). You requested on behalf of your client, _____, ("Bank"), confirmation that the Bank's trust account product ("Trust Account") satisfies the requirements of Section 4d(b) of the Commodity Exchange Act^[1] (the "Act") and Commission Rule 1.20^[2] for the deposit of segregated customer funds by Commission registered derivatives clearing organizations ("DCOs").

The Division has previously issued to you a letter dated August 25, 2003, confirming that the Trust Account meets the requirements of Section 4d(a)(2) of the Act and Commission Rules 1.20 and 1.25, as applicable, for the deposit of segregated customer funds by registered futures commission merchant ("FCM") customers of the Bank (Interpretative Letter No. 03-31).^[3] Interpretative Letter No. 03-31 was issued in response to your letter dated August 7, 2003, and other materials submitted by you in support of the August 7 letter.

Your February 25 letter specifically incorporates by reference and renews all representations made in your August 7, 2003 letter. In addition, you have represented that with respect to DCO customers of the Bank, the Trust Account would be appropriately titled under an account name which clearly shows that the funds are the customer funds of the DCO's clearing members. You have further represented that the funds in the Trust Account would be identified by the Bank on its records as customer funds of commodity or option customers of clearing members of the DCO, segregated as required by the Act and Commission regulations.

Section 4d(b) of the Act requires DCOs and depositories that have received clearing member customers' funds for deposit in segregated accounts to treat such funds as segregated for the benefit of such customers.^[4] Commission Rule 1.20 expands on this requirement to provide that "customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the commodity or option customers of clearing members, segregated as required by the Act and these regulations."^[5] In addition, Commission Rule 1.20 provides that "[t]he clearing organization shall obtain and retain in its files...a written acknowledgement from such bank or trust company that it was informed that the customer funds deposited therein are those of commodity or option customers of its clearing members and are being held in accordance with the provisions of the Act and these regulations."^[6]

Based upon the representations set forth in your February 25, 2004 letter and the materials incorporated therein by reference, including your prior August 7, 2003 letter and other supporting materials, DCIO considers the analysis set forth in Interpretative Letter No. 03-31 similarly applicable to your current request. DCIO also agrees with your analysis that the deposit of customer funds into the Trust Account by DCOs would be permitted under the Act and Commission Rule 1.20.

The position taken herein is based upon the representations that have been made to DCIO. Any different, changed, or omitted facts or conditions might require DCIO to reach a different conclusion. You must notify DCIO immediately in the event that there is any change from the facts as presented to us concerning the Trust Account. Further, this letter represents the position of DCIO only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Jennifer C.P. Bauer, an attorney on my staff, at (202) 418-5472.

Very truly yours,

James L. Carley
Director

^[1] 7 U.S.C. §1 *et seq.* (2000).

^[2] 17 C.F.R. §1.20. Commission rules referred to herein are found at 17 C.F.R. Ch. 1 (2003).

^[3] Comm. Fut. L. Rep. (CCH) ¶29,576 (August 25, 2003). Interpretative Letter No. 03-31 may also be obtained by accessing the Commission's website at www.cftc.gov.

^[4] §4d(b) states that it shall be unlawful for "any person, including but not limited to any clearing agency of a contract market or derivatives execution facility and any depository, that has received any money, securities or property for deposit in a separate account [for commodity or options customers under Section 4d(a)(2)] to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant..." 7 U.S.C. §6d(b).

^[5] 17 C.F.R. §1.20(b).

^[6] *Id.*