



U.S. COMMODITY FUTURES TRADING COMMISSION

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Gary Barnett
Director

Division of Swap Dealer and Intermediary Oversight

CFTC Letter No. 14-03
No-Action
January 10, 2014
Division of Swap Dealer and Intermediary Oversight

Barbara Wierzynski
Futures Industry Association
2001 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20006-1823

Re: Staff No-Action position regarding the Limitation on the Holding of Customer Funds
Outside of the United States under Regulation 30.7(c)

Dear Ms. Wierzynski:

This letter is in response to your letter dated January 7, 2014, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By your letter, you request, on behalf of the Futures Industry Association’s (“FIA”) member futures commission merchants (“FCMs”) and similarly situated FCMs, that the Division confirm it will not recommend that the Commission take enforcement action if, subject to certain terms and conditions noted below, such FCMs hold customer funds deposited to margin, guarantee, or secure foreign futures and options transaction in jurisdictions outside of the United States (“U.S.”) in a manner that may not be consistent with the Regulation 30.7(c), as amended.

Regulatory Background

On November 14, 2013, the Commission published in the Federal Register final regulations requiring enhanced customer protections for FCMs holding customer funds, including risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs (the “Customer Protection Final Rulemaking”).¹ The effective date for those amendments is January 13, 2014 (the “Effective Date”).

¹ See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Final Rule, 78 FR 68,506 (Nov. 14, 2013).

In the Customer Protection Final Rulemaking, the Commission revised Regulation 30.7(c) to prohibit an FCM from depositing or holding funds deposited by customers to margin, secure, or guarantee foreign futures and foreign option positions in accounts maintained outside of the U.S. except to meet margin requirements imposed by foreign boards of trade, foreign clearing organizations, or to meet margin obligations issued by foreign brokers.² Regulation 30.7(c) further provides that an FCM may deposit an additional amount of up to 20 percent of the total amount of funds necessary to meet such margin and prefunding margin requirements to avoid daily transfers of funds between the FCM's accounts maintained in the U.S. and accounts maintained in foreign jurisdictions.

In your letter, you state that many factors affect both an FCM's assessment of exposure to offshore locations and the ability of the FCM to withdraw excess funds, including time zones, currency conversion, and foreign broker response. You further state that as a result of these factors, there will be delays between the time an FCM calculates the amount of 30.7 customer funds held outside of the U.S. and the time such funds are received.³ You also request that the Division confirm that an FCM will be deemed to be in compliance with Regulation 30.7(c) if, promptly after completing the daily computation of the 30.7 customer funds secured amount requirement as provided in Regulation 30.7(l) and its analysis of 30.7 customer funds held outside of the U.S., the FCM initiates appropriate action to reduce its non-U.S. assets as necessary to bring such balances, in the aggregate, below the 120 percent restriction.

No-Action Relief Granted

Based upon the foregoing and the representations made in your letter requesting no-action relief, the Division believes that granting no action relief is warranted. Accordingly, the Division will not recommend that the Commission initiate an enforcement action against an FCM that holds an amount of 30.7 customer funds with non-U.S. depositories that exceeds 120 percent of the total margin requirements, as described above, subject to the following conditions:

1. The non-U.S. depositories qualify as depositories to hold 30.7 customer funds under Regulation 30.7(b);
2. By noon each business day, the FCM prepares a daily computation of its secured amount requirement as of the close of business on the previous business day as required by Regulation 30.7(l) and identifies the amount of 30.7 customer funds held in non-U.S. jurisdictions that exceeds 120 percent of the required margin for the 30.7 customers' positions and on the same business day initiates the request with the foreign depositories for the transfer of such excess funds to U.S. depositories ; and

² 17 CFR 30.7.

³ The term "30.7 customer" is defined in the Customer Protection Final Rulemaking to generally mean any U.S. or foreign-domiciled customer of an FCM that trades foreign futures or foreign option transactions.

3. The FCM receives into its U.S. depositories the requested funds from the foreign depositories within 2 business days of initiating action to have such funds moved to the U.S. depositories.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter, and the position taken herein, are based upon the representations made to us and are subject to compliance with the conditions stated above. Any different, changed or omitted material facts or circumstances might require the Division to reach a different conclusion and render this letter void. You must notify the Division immediately in the event there is any change to the facts presented to the Division. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the regulations issued thereunder. Further, this letter does not create or confer any rights for or obligations on any person or persons subject to compliance with the Commodity Exchange Act that bind the Commission or any of its other offices or divisions.

Should you have any questions, please do not hesitate to contact Jennifer Bauer, Special Counsel, at 202-418-5472; Joshua Beale, Attorney-Advisor, at 202-418-5446; or Francis Kuo, Attorney-Advisor, at 202-418-5695.

Sincerely,

Gary Barnett