

Commodity Futures Archive - Selected materials, CFTC Interpretative Letter No. 89-6. (Risk Disclosure Requirement.), ¶24,472, Commodity Futures Trading Commission, (Jun. 5, 1989)

¶24,472. Commodity Futures Trading Commission. Division of Trading and Markets. June 5, 1989. Correspondence in full text.

Interpretations: Foreign Transactions: Risk Disclosure Requirement.— The Division of Trading and Markets will not recommend that the CFTC take enforcement action with respect to the failure of any firm in the United Kingdom which previously had been granted interim relief and which now wishes to avail itself of the full relief granted in the Commission's Orders dated May 15, 1989 to comply with the requirement in Reg. §30.6 in respect of clients who were customers of the firm prior to January 4, 1988. The relief granted with respect to a firm's risk disclosure obligation is inapplicable with respect to any customer of the firm who was not a customer of the firm prior to January 4, 1988, the effective date of the foreign futures and option rules. Specifically, a firm exempted under Reg. §30.10 is required to provide all new U.S. customers with the risk disclosure statement in Reg. §30.6 and, with respect to a U.S. customer who has granted general discretionary authority to a firm in connection with Part 30 transactions, receive a signed and dated acknowledgement from such customer that the customer has received and understood the Reg. §30.6 risk disclosure statement. In addition, this no action position is limited to such firm's obligation to comply with the specific requirement in Reg. §30.6 to provide such pre-existing U.S. customers with the risk disclosure language and in no way diminishes or qualifies such firm's other obligations under the Commission's regulations as set forth in the CFTC's Orders dated May 15, 1989.

See ¶12,825, "Liabilities—Prohibitions" division, Volume 1.

This is in response to your request for a confirmation of the position of the Division of Trading and Markets as set forth in a letter to you dated March 2, 1989 in connection with the requirements in Commission rule 30.6.¹ Specifically, you have requested confirmation that the requirement in Commission's United Kingdom Orders dated May 15, 1989 with respect to the rule 30.6 risk disclosure obligation may be applied prospectively so that firms previously granted interim relief with respect to their preexisting United States customers and who wish to avail themselves of full relief under rule 30.10,² need not provide such pre-existing United States customers with the rule 30.6 disclosure statement.

As you are aware, in granting the relief contained in its Orders dated May 15, 1989, the Commission specifically stated that such Orders did not provide an exemption from, among other things, the disclosure provisions of Commission rule 30.6. Rule 30.6 generally provides that it shall be unlawful for any firm to open a foreign futures or option account for a customer resident in the United States unless such firm first delivers to the customer the risk disclosure statement set forth in that rule. Accordingly, absent the issuance of the relief set forth herein, United Kingdom firms granted relief under rule 30.10 would be required to provide to all customers resident in the United States, including pre-existing customers as to whom specified United Kingdom firms had been granted interim relief by the Commission,³ the rule 30.6 risk disclosure statement.

The Division has considered your request and now confirms that it will not recommend that the Commission take enforcement action with respect to the failure of any firm in the United Kingdom which previously had been granted interim relief and which now wishes to avail itself of the full relief granted in the Commission's Orders dated May 15, 1989 to comply with the requirement in Commission rule 30.6 in respect of clients who were customers of the firm prior to January 4, 1988.

In this connection, the Division wishes to clarify that the relief granted herein with respect to a firm's risk disclosure obligation is inapplicable with respect to any customer of the firm who was not a customer of the firm prior to January 4, 1988, the effective date of the foreign futures and option rules.⁴ Specifically, a firm exempted under rule 30.10 is required to provide all new United States customers with the risk disclosure statement in rule 30.6 and, with respect to a United States customer who has granted general discretionary authority to a firm in connection with Part 30 transactions, receive a signed and dated acknowledgement from such customer that the customer has received and understood the rule 30.6 risk disclosure statement.⁵ In addition, this no action position is limited to such firm's obligation to comply with the specific requirement in rule 30.6 to provide such preexisting United States customers with the risk disclosure language and in no way diminishes or qualifies such firm's other obligations under the Commission's regulations as set forth in the Commission's Orders dated May 15, 1989, for example, its obligation under the antifraud provision in Commission rule 30.9.⁶

The no-action position adopted herein is subject to the conditions set forth in this letter. Moreover, this position is solely that of this Division and does not necessarily represent that of the Commission or any other unit of its staff.

Footnotes

- 1 17 C.F.R. §30.6 (1988).
- 2 17 C.F.R. §30.10 (1988).
- 3 *See e.g.*, 53 Fed. Reg. 3338 (February 5, 1988) and 53 Fed. Reg. 11491 (April 7, 1988).
- 4 52 Fed. Reg. 28980 (August 5, 1989).
- 5 *See* 17 C.F.R. §30.6(a)(2) (1988).
- 6 *See* 17 C. F. R. §30.9 (1988).