

Commodity Futures Archive - Selected materials, CFTC Interpretative Letter No 90-14. (No-Action Letter Regarding Solicitations in the United States by Firms Granted 30.10 Relief.), ¶24,888, Commodity Futures Trading Commission, (Jul. 24, 1990)

¶24,888. Commodity Futures Trading Commission. Division of Trading and Markets. July 24, 1990. Correspondence in full text.

Interpretations: Meetings: Solicitations.— Subject to compliance with stipulated terms and conditions, enforcement action would not be recommended against an introducing broker or a foreign firm for conduct proposed to be undertaken in the U.S. during a certain time period with certain institutional investors resident in the U.S. Meetings, with approximately 12 substantial institutions, would be held for the IB to introduce to the firm a number of its existing securities clients in order to discuss dealings in financial futures. All those in attendance would be familiar with the CFTC's sales practice rules and/or the United Kingdom equivalent, and all meetings will be conducted in conformity with the requirements of the CEA.

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

This is in response to your letter to the Division of Trading and Markets ("Division") dated July 12, 1990 on behalf of X, (), a company located in New York which is registered with the Commodity Futures Trading Commission ("Commission or CFTC") as an introducing broker ("IB") and with the National Association of Securities Dealers as a broker-dealer, and (Y), a firm domiciled in the United Kingdom which has obtained relief from among other things, registration as a futures commission merchant ("FCM") under Commission rule 30.10.¹ In your letter, you request that the Division confirm that it will not recommend any enforcement action against X and Y in connection with their proposal to engage in conduct inconsistent with the Commission's Order dated May 15, 1990 granting rule 30.10 relief to the Association of Futures Brokers and Dealers Limited ("AFBD") and to firms which it designates.

In your July 12, 1990 letter, you have stated the following:

We write on behalf of X and Y to request such formal approval as is necessary to conduct the series of meetings described below.

The two companies are under the common control of Z. X has been registered with the [National Futures Association ("NFA")] as an Introducing Broker since October 24th 1989 and has been registered with the NASD as a broker dealer since August 17th 1978. In addition, it joined the New York Stock Exchange on September 6th 1985 and has been a Primary Dealer since December 6th 1989. Y is authorized in the United Kingdom to conduct futures business by the AFBD (having been a member since its inception) and is a founding member of [the London International Financial Futures Exchange ("LIFFE")]. Further, Y has applied for and has obtained conditional exemption under Part 30 of CFTC's rules.

Meetings are planned to take place between the 23rd and 25th of July with approximately 12 substantial institutions. The aim is not to give formal presentations but, rather, for X to introduce to Y a number of its existing securities clients in order to discuss dealings in financial futures—in particular those traded on LIFFE. In view of the informal nature of the meetings the only documentation which will be handed over to the clients will be official publications produced by LIFFE, for example, documents detailing contract specifications. You should note that each of the institutions owns or has assets under management in excess of \$100 million, is familiar with futures products and has expressed an interest in dealing in them with X and/or Y.

Attendance by representatives of the two companies may amount to four or five people, though conduct of the meetings will be in the hands of a Vice-President and registered AP at X and the executive director in charge of Y who, incidentally, is a member of the Board of LIFFE.

All those due to attend are conversant with CFTC's sales practices rules and/or their UK equivalent and the meeting will be conducted in conformity with the requirements of the Commodity Exchange Act ["Act"] and the rules and regulations made thereunder.

As you are aware, on July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 Fed. Reg. 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers.

As part of this regulatory program, the Commission also adopted rule 30.10 which allows persons located and doing business outside the United States who solicit or accept orders directly from United States customers for foreign futures and options and who are subject to a generally comparable regulatory system in their jurisdiction of domicile to seek an exemption from the application of certain of the Part 30 rules.² In effect, as set forth in Appendix A of Part 30, “Interpretative Statement with Respect to the Commission’s Exemptive Authority under §30.10 of its Rules,” which contains the standards the Commission will consider in assessing comparability, the Commission will accept substituted compliance by the foreign firm with comparable regulations in effect in the foreign jurisdiction.³

In making the determination to defer to the rules of a foreign regulatory regime, the Commission, among other things, obtains assurances that the activities subject to regulation, including sales practices, will occur from a location outside the United States and will be subject to supervision by the appropriate regulatory authorities in that jurisdiction with whom the Commission has appropriate information sharing arrangements. Accordingly, in issuing orders under rule 30.10, the Commission has required as a condition that the foreign regulatory or self-regulatory authority represent that it will monitor firms to which rule 30.10 relief is granted for compliance with the regulatory requirements upon which substituted compliance is accepted.⁴ Based on an analysis of the framework of customer protection in the United Kingdom under the Financial Services Act 1986, the Commission granted the rule 30.10 petition of, among others, AFBF on May 15, 1989 subject to specified conditions,⁵ and on September 15, 1989, granted conditional rule 30.10 relief to Y based on the consents and undertakings contained in its August 25, 1989 rule 30.10 filing. In particular, the Division notes that rule 30.10 relief has been granted to Y on a conditional basis pending receipt of certain representations and undertakings from its parent company, Z, in connection with certain of its banking branches in the United States.⁶ In this connection, by letter dated July 23, 1990, A of Y, on behalf of Z, has represented that he expects to provide the requisite undertakings by Z with respect to its United States branches on or before August 3, 1990.

As set forth in the July 12, 1990 letter, Y, accompanied by appropriate personnel of X, intends to solicit certain customers resident in the United States from a location in the United States with respect to foreign futures and options. Such activity is inconsistent with the terms and conditions upon which the Commission’s rule 30.10 Order with respect to AFBF was issued, in particular, that the activities engaged in by the AFBF member firm granted rule 30.10 relief occur from a location outside the United States subject to supervision by the AFBF.

Under the circumstances herein, and subject to compliance with the terms and conditions set forth below, however, the Division is of the opinion that a no action position with respect to the activities proposed to be undertaken by Y and X from the date of this letter to July 25, 1990 may be granted. In particular, the Division notes that during the presentations referenced above, visiting personnel of Y will be accompanied by appropriate personnel of X, in this case, a Vice-President of the IB who is also a registered associated person (“AP”). You have also stated that *all* those in attendance are familiar with the Commission’s sales practice rules and/or the United Kingdom equivalent and that all meetings will be conducted in conformity with the requirements of the Act. Moreover, each of the investors solicited will be substantial institutions which own or manage assets in excess of \$100 million and are familiar with futures activities and who have expressed interest in dealing in futures with X and/or Y as appropriate, both of which are under the common control of Z.⁷

The position taken herein is subject to the facts and circumstances as set forth above and receipt by the Division of written consents and undertakings of the following terms by an officer of each company duly authorized to bind his respective corporation or by a duly authorized officer of the parent company, Z:

- (1) no contact will occur between the above-referenced United States customers and the visiting personnel of Y unless the AP of X, who is also a Vice-President of the Company is present;
- (2) all accounts opened by Y as a result of such solicitations will be introduced by X in its capacity as an IB;
- (3) X and Y will be jointly and severally liable with respect to the activities of either firm subject to regulation under the Act which occur during the presentations; and
- (4) all sales activities of X and Y will otherwise be consistent with the Act and regulations thereunder, the Commission’s Order dated May 15, 1989 granting rule 30.10 relief to AFBF, the August 25, 1989 rule 30.10 filing of Y and the facts and circumstances as set forth in the July 12, 1990 letter.

This position is also subject to receipt by the Division on or before August 3, 1990 of written consents and undertakings of the following terms by an officer duly authorized to bind Z:

- (1) Z, on behalf of itself and its branches, agencies and representative offices in the United States, must describe the exact nature to which it is subject to regulation and supervision by federal or state banking regulators, and represent that will not engage in any activities subject to regulation under the Act and regulations thereunder,

except for proprietary purposes;

- (2) Z consents to provide, upon request of the Commission or the National Futures Association, access to its books and records for purposes of ensuring compliance with the foregoing undertaking; and
- (3) Z identifies its branches, agencies and other representative offices in the United States, including addresses of the contact persons at each such United States office, and consents to notify the Division of any new United States offices of the type described above which it determines to open.

All of the terms and conditions of the May 15, 1989 Order, as well as the 30.10 filing of Y consenting to such terms and conditions will remain applicable to Y in connection with its solicitation of the United States customers referenced above from the date of this letter to July 25, 1990. In particular, Y submitted an undertaking as part of its rule 30.10 filing, consistent with the Commission's Order of May 15, 1989, that all foreign futures and option transactions for or on behalf of customers resident in the United States will be consistent with the rules of the AFBF and applicable provisions of the Financial Services Act.⁸ Under the terms of the Commission's rule 30.10 order with respect to the AFBF, the antifraud provisions in Commission rule 30.9 continue to apply.⁹

Based on the foregoing, and subject to compliance with the terms and conditions referenced herein, the Division will not recommend that enforcement action be taken against Y or X for the conduct proposed to be undertaken in the United States from the date of this letter to July 25, 1990 with the above-referenced institutional investors resident in the United States. The position adopted herein is based on the information as set forth in your letter of July 12, 1990 and the conditions contained herein. Any different, changed or omitted facts or conditions might require us to reach a different conclusion. This position is solely that of the Division of Trading and Markets and does not necessarily represent the views of the Commission or those of any other unit of its staff.

Footnotes

- 1 17 C.F.R. §30.10 (1989).
- 2 See 52 Fed. Reg. 28980, 28981 (August 5, 1987) and Appendix A to 17 C.F.R. Part 30 (1989), "Interpretative Statement with respect to the Commission's Exemption Authority under §30.10 of its Rules."
- 3 The relief is not available to persons located in the United States engaged in such activities who, in all instances, are subject to the full panoply of the Commission's regulations.
- 4 See 54 Fed. Reg. 21604, 21606 (May 19, 1990).
- 5 See Commission rule 30.10 Order issued to Association of Futures Brokers and Dealers, 54 Fed. Reg. 21604 (May 19, 1989). See also Commission Orders issued to Securities and Investments Board, 54 Fed. Reg. 21599 (May 19, 1989); The Securities Association, 54 Fed. Reg. 21609 (May 19, 1989); and Investment Management Regulatory Organization, 54 Fed. Reg. 21614 (May 19, 1989).
- 6 See Interpretative Letter No. 89-10, [1987-1990 Transfer Binder] **Comm. Fut. L. Rep. (CCH)** ¶24,497 (July 27, 1989).
- 7 In this connection, the Division notes the recent adoption by the Securities and Exchange Commission of rule 15a-6 which, among other things, specifically permits persons affiliated with a foreign broker-dealer to visit certain United States institutional investors within the United States provided such foreign person is accompanied by a person affiliated with a registered broker-dealer who accepts responsibility for commissions occurring during the visits. See 54 Fed. Reg. 30013, 30028 (July 18, 1989). Also, any transactions resulting from such visits must be effected through that registered broker-dealer. *Id.* The Division also notes that under the United Kingdom Financial Services Act 1986, a United States firm which does not have a permanent place of business in the United Kingdom may conduct investment business with professionals and business investors in the United Kingdom without having to obtain United Kingdom authorization. See letter dated June 15, 1990 from A.R.G. Frase of the AFBF to Andrea M. Corcoran, of the Commission.
- 8 See 54 Fed. Reg. 21604, 21606 (May 19, 1990).
- 9 See 54 Fed. Reg. 21604, 21605 (May 19, 1990) and 17 C.F.R. §30.9 (1989).