COMMENT

October 15, 2002

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Via E-Mail (jwebb@cftc.gov)

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Denomination of Customer Funds and Location of Depositories; 67 Fed. Reg. 52641 (August 13, 2002)

Dear Ms. Webb:

On August 13, 2002, the Commodity Futures Trading Commission ("Commission") requested comments on proposed rules that would permit futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") to deposit U.S. customer funds in foreign depositories and in certain currencies other than U.S. dollars. The Commission also proposes adopting an amendment to Appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt FCM or DCO maintains customer property in depositories outside the U.S. or in a foreign currency. National Futures Association ("NFA") welcomes the opportunity to comment on the Commission's release.

NFA applauds the Commission for being responsive to customer and industry needs created by an increasingly global market. In particular, NFA commends the Commission for eliminating the requirement that customers sign a subordination agreement since experience has shown that the burdens imposed by this requirement outweigh the potential benefits. The proposed rules create a reasonable balance between the protection of customers and the business needs of both customers and registrants, and NFA fully supports this effort. NFA does, however, have some comments on the details of the proposal.

Proposed Rule 1.49(b)(2) requires FCMs to prepare and maintain a written record of each transaction converting customer funds from one currency to another. The proposed rule states that the FCM must maintain records of the date the transaction is executed, the currencies converted, the amount converted, and the resulting amount. The rule further requires that this information be provided to the customer upon the customer's request, and the release indicates that it must be included in the customer's monthly statement. FCMs often execute foreign currency transactions using bunched orders that

combine customers and may involve multiple counterparties or multiple transactions. The complexity of these transactions make it impractical to provide a detailed breakdown for individual customers, and NFA asks the Commission to clarify that the information to be provided to the customer may be provided in the aggregate and at an average price.

NFA's final comment in this area relates to futures contracts that are priced and settled in a currency other than U.S. dollars. For customers who have not previously traded these types of contracts, the release states that the firm should tell the customer if the accruals from these trades will be held in a currency other than U.S. dollars and should do so when the customer first places an order. NFA agrees that customers should understand that their monies may be held in a particular foreign currency, but we believe that the FCM should have some flexibility to determine what the customer needs to be told. Obviously, a bank that has been active in the OTC currency markets does not need the same information as a retail customer.

Turning to the location of depositories, NFA agrees that the G7 countries should all be qualified locations. We also recommend that the Commission expand the list to include other locations with stable currencies and other indicia that customer funds will be relatively secure.

The proposed rules also address the qualifications for depositories. FCMs registered with the Commission are listed as one category of qualified depository. NFA assumes this means that security futures funds could be deposited with a notice-registered FCM, and we ask the Commission to confirm that understanding.

Additionally, NFA believes that there should be as much parity as possible in the Commission's regulations governing the use of depositories outside the U.S. The Commission allows Rule 30.7 funds to be held in a foreign bank if it is rated in one of the two highest categories by one or more statistical rating organizations, while proposed Rule 1.49(d)(3)(i)(B) provides that segregated funds may be held in a foreign bank only if it is rated in the highest category. NFA suggests that the proposed rule be changed to provide that a foreign bank will be an acceptable depository if, among other requirements, its commercial paper or long term debt instrument is rated in one of the two highest categories.

Similarly, Rule 30.7 should include all depositories that would be acceptable under proposed Rule 1.49(d)(3). Furthermore, since Rule 30.7 relates to transactions that are executed outside the U.S. and often through relationships with foreign entities, Rule 30.7(c) should continue to allow the use of those depositories specified in subsections (iii) through (v), as well as continuing to allow applications for recognition.

Lastly, NFA supports the Commission's proposed changes to the bankruptcy rules. However, the rules are unclear about what happens if a bankruptcy proceeding is commenced while the firm is in the process of converting customer funds between currencies. NFA asks the Commission to clarify what would happen in this instance.

In closing, NFA asks the Commission to pay particular attention to the comments received from industry organizations with respect to these rules. NFA appreciates this opportunity to present our views to the Commission. If you have any questions concerning this letter, please contact me (312-781-1413, tsexton@nfa.futures.org), Kathryn Camp (312-781-1393, kcamp@nfa.futures.org), or Anne-Marie Kaiser (312-781-1880, akaiser@nfa.futures.org).

Respectfully submitted,

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Vice President and General Counsel

(kpc/CommentLetters/Foreign Depositories)