U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5536

Division of Clearing and
Intermediary Oversight

PETITIONS FOR EXEMPTIVE RELIEF PURSUANT TO CFTC REGULATION 30.10 – DCIO INFORMATION AND GUIDANCE ON MATERIALS REQUIRED AND QUESTIONS TO BE ANSWERED BY PETITIONERS

Transactions involving foreign futures and options are regulated by Part 30 of the Commissions Regulations. With respect to the sale of foreign futures and options to U.S. customers by a foreign broker[1], Regulation 30.4 requires those foreign brokers to register with the Commission as a futures commission merchant ("FCM"). Alternatively, a foreign broker may petition for exemptive relief from registration and certain other of the Part 30 requirements pursuant to Regulation 30.10 if the petitioner demonstrates that the regulatory regime in its home country is comparable to the U.S. regulatory regime. Appendix A to Part 30 sets forth seven elements used by the Commission to review whether a particular regulatory regime is comparable. Those seven elements form the basis for this informational document. The Division of Clearing and Intermediary Oversight ("DCIO") submits that this guidance in connection with Regulation 30.10 is for the purpose of eliciting appropriate information to be used by the Commission to determine whether a particular foreign regulatory program is comparable to the Commission's regulatory program. The information requested by DCIO in no way suggests that the foreign regulatory program must be identical to the Commission's program.

Although Appendix A to Part 30 of the Commission's Regulations generally outlines the procedure for obtaining relief, this document provides a more detailed description of: (1) the relief available under Regulation 30.10; (2) the regulatory requirements for futures and options trading in the U.S.; (3) the information that the Commission will require to evaluate a request; and (4) the types of questions that the Commission has in the past asked of applicants seeking relief under Regulation 30.10. At a minimum, applicants are expected to answer all of the questions listed below. However, the Commission reserves the right to make additional inquiries if it is determined necessary.

***** DCIO HAS PREPARED THIS DOCUMENT SOLELY FOR INFORMATION AND GUIDANCE. THE ANSWERING OF ALL QUESTIONS AND THE PROVISION OF DOCUMENTS IS NOT A GUARANTEE OF OBTAINING EXEMPTIVE RELIEF PURSUANT TO REGULATION 30.10. *****

[1] § 30.1(e) defines a "foreign futures and options broker" as a non-U.S. person that is a member of a foreign board of trade … subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of a U.S. FCM … subject to regulation in the jurisdiction in which the affiliate is located. 17 C.F.R. § 30.1(e) (2009).

EXTENT OF REGULATION 30.10 RELIEF

The typical Regulation 30.10 Order issued to a foreign regulator or self-regulatory organization ("SRO") permits regulated brokers or members of the SRO to solicit and accept orders from U.S. customers for otherwise permitted transactions on those exchanges located within the foreign regulator's or SRO's jurisdiction without having to register in the U.S. Should a foreign regulator or SRO seek to extend its Regulation 30.10 relief to allow its members to solicit and accept orders from U.S. customers for otherwise permitted transactions on any non-U.S. exchange authorized by local law, it must: (1) prohibit its members from intermediating otherwise permitted transactions for U.S. customers on unapproved foreign exchanges as set forth under local law, and must specify which exchanges are authorized by local law; (2) represent that member firms with U.S. customers will comply with all the terms and conditions of the original Regulation 30.10 Order with respect to transactions entered into on or subject to the rules of a foreign exchange located outside its jurisdiction; and (3) confirm that it has the authority and the ability to enforce its laws, rules and/or regulations with respect to those transactions to the same extent that it conducts such activities on an exchange located within its jurisdiction.

Additionally, the Commission has issued Orders, known as the Limited Marketing Orders, that govern the extent to which firms that have received Regulation 30.10 relief may engage in limited marketing conduct with respect to U.S. customers from within the U.S. In general, such marketing activities may be directed only towards certain institutional and governmental customers, and then, for only a limited period of time. Pursuant to the terms of the Limited Marketing Orders, the regulatory or self-regulatory organization to which the Commission has issued Regulation 30.10 relief must obtain written confirmation from the Commission that the Limited Marketing Orders apply to such Regulation 30.10 Order.

GENERAL INFORMATION ON THE EXCHANGE AND THE REGULATORY SYSTEM GOVERNING THE EXCHANGE

Applicants must provide a general description of the Exchange as well as copies of laws and regulations governing the Exchange, specifically, copies of local laws and regulations governing the Exchange, the Exchange's Articles of Incorporation, Exchange By-Laws, and any related rules or regulations.

Answers should be provided to the following questions:

1. Generally, what are the functions of the relevant regulatory agency (or agencies)? Do they enact regulations based on a particular law? Do they recommend changes to the laws regarding futures markets? Do they conduct inquiries concerning the markets? Do they have the authority to conduct audits, investigations, and do they have enforcement powers? Is the regulator an independent agency?

2. What is the form of the Exchange? Is it member-owned or a for-profit corporation? If the latter, what is the shareholding structure?

3. Please describe the Exchange's trading system. Is the Exchange open-outcry, electronic, or both? How are orders matched on the Exchange?

4. Is the Exchange authorized by a particular regulator or regulators? What does authorization entail?

5. Do the appropriate authorities approve Exchange rules or changes to those rules? Do they approve Exchange agreements with clearing houses? Do they approve clearing house rules? Do they approve Exchange members?

6. What standards do the regulators and/or the Exchange use to approve products for trading?

7. What entity clears for the Exchange? Are contracts cleared and marked-to-market on a daily basis? What procedures does the clearing house follow when a clearing member is in default or is in danger of defaulting? Under what circumstances will a clearing member be deemed to be in default?

SPECIFIC AREAS OF REGULATORY CONCERN

The areas of regulatory concern relevant to an application for relief under Regulation 30.10 are: (1) Qualification; (2) Minimum Financial Requirements; (3) Customer Funds; (4) Recordkeeping and Reporting; (5) Sales Practice Standards; (6) Compliance; and (7) Information-Sharing. Each is discussed further below.

QUALIFICATION

The Commodity Exchange Act ("Act") requires that all persons and organizations (with certain exceptions) that intend to do business as futures professionals register with the Commodity Futures Trading Commission ("CFTC"). The CFTC has delegated responsibility to the National Futures Association ("NFA") to review applications and grant or deny registrations for the categories of applicants listed below.

Entities subject to regulation for commodity futures and options trading in the United States include FCMs, introducing brokers ("IBs"), commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), and other persons and entities. An FCM is a commodity broker who can solicit or accept orders from customers and also accept customer funds related to trading. FCMs also perform services concerning customer accounts, including executing and clearing orders on commodity exchanges. An IB also may solicit or accept orders from customers, but unlike FCMs, IBs may not hold any customer funds.

FCMs, IBs and other industry professionals in the United States are subject to the rules and regulations of several regulatory bodies. FCMs, IBs, CPOs and CTAs must comply with the Act, the regulations of the CFTC, and in appropriate cases, the rules of the NFA. An FCM also must comply with the rules of the commodity exchanges of which any FCM is a member.

Answers should be provided to the following questions on "Qualification":

1. Must a company or person dealing in futures be a member of an exchange or other type of SRO similar to the NFA?

2. What categories of companies or persons are licensed by the local authorities or may be Exchange members, e.g., public brokers, floor traders, introducing brokers?

3. What qualifications must a person demonstrate to become licensed under local law or to become a member of the Exchange? What other information must a person submit with an application for registration? Must the applicant include information regarding judgments involving fraud and bankruptcy? Must the applicant submit financial statements? What investigation of applicants is undertaken by the Exchange or the relevant authorities? Must applicants receive ethics training? Must applicants pass a proficiency examination?

4. What additional qualifications, if any, must operators of electronic terminals have?

5. Can the Exchange or the local authorities revoke or condition a member's registration? Under what conditions? Must members renew their registration periodically?

MINIMUM FINANCIAL REQUIREMENTS

CFTC Regulation 1.17 establishes the minimum financial requirements for FCMs. By establishing uniform capital requirements for all FCMs, CFTC Regulation 1.17 acts to protect the integrity of the marketplace and the funds of customers who use that marketplace by ensuring that FCMs have, at all times, the liquidity and capital levels required to satisfy their obligations to customers.

An FCM is required by CFTC Regulation 1.17(a) to maintain, as a minimum capital requirement, adjusted net capital equal to or in excess of the greater of: (1) $1,000,000; (2) the firm's risk-based capital computation; (3) the amount required by the National Futures Association; or (4) for FCMs that also are registered as broker-dealers with the Securities and Exchange Commission (SEC), the amount required by SEC rules.

Risk-Based Capital Requirement

CFTC Regulation 1.17(a)(1)(i)(B) provides an alternative minimum capital computation based on the required maintenance margin levels for customer and noncustomer positions carried by the firm. Specifically, an FCM's risk-based capital requirement is equal to 8 percent of the

total “risk margin” requirement for both positions carried by the FCM in customer accounts and positions carried by the FCM in non-customer accounts.

Subject to additional adjustments, CFTC Regulation 1.17(b)(8) defines the “risk margin” requirement to mean the level of maintenance margin, or performance bond, that the FCM is required under the rules of an exchange (or clearing organization) to collect from the owner of a customer account or non-customer account for all positions, whether futures or non-futures positions, held in such accounts.

CFTC Regulation 1.17(b)(4) defines “noncustomer account” to mean a commodity futures or options account carried on the books of the FCM which is either: (1) not included in the definition of a customer or proprietary account; or (2) certain accounts of foreign-domiciled persons trading foreign futures and options that is not proprietary to the FCM, as defined in CFTC Regulation 1.17(b)(3).

Computation of Adjusted Net Capital

In computing its adjusted net capital, an FCM must first compute its net capital. CFTC Regulation 1.17(c)(1) defines "net capital" as the amount by which an FCM's current assets exceed its liabilities.

Current Assets. The term "current assets", for net capital purposes, is defined in CFTC Regulation 1.17(c)(2) and generally is limited to cash and those assets that are unencumbered and can be readily converted to cash within a short-term time-frame. Assets that do not qualify as current assets under Regulation 1.17 may not be counted as assets in determining net capital.

Under CFTC Regulation 1.17(c)(2), current assets generally include:

- cash;
- readily marketable[2] securities;
- guarantee deposits with exchange clearing organizations;
- receivables resulting from the marketing of inventories that are commonly associated with the business of the FCM and are outstanding no longer than 3 months from the date they are accrued;

[2] The term "readily marketable", as used in CFTC Regulation 1.17, has the same definition as is found in Rule 240-15c3-1(c)(11) of the SEC. "Readily marketable" means the asset in question can be purchased or sold on a recognized, established market where there exist independent bona fide offers to buy or sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

- advances on commodity fixed-price purchase commitments that are outstanding no longer than 3 months from the date they are accrued;

- interest, floor brokerage, or commissions receivable from other brokers or dealers that are outstanding no longer than 30 days from the date they are due or payable;

- receivables from commodity or securities exchange clearing organizations;

- receivables from other FCMs or brokers resulting from commodity futures or option transactions, except for unsecured debit or net deficit balances in commodity futures or option trading accounts;

- other secured[3] receivables;

- readily marketable spot or cash commodities;

- inventories held for resale in the normal course of the FCM's business activities; and

- stock in exchange clearing organizations to the extent of its margin or performance bond value at the clearing organization.

Excluded from current assets by CFTC Regulation 1.17(c)(2) are:

- all assets doubtful of collection or realization;

- any unsecured debit or net deficit balance in a commodity futures or option trading account, with a one-business-day grace period;

- all unsecured receivables, advances and loans, except for those receivables, advances and loans listed above as current assets;

- all prepaid expenses and deferred charges;

- all inventories, except for those listed above as current assets;

- fixed assets, except in some instances in which fixed assets collateralize long-term debt; and

- exchange memberships.

[3] A receivable is considered "secured" by readily marketable collateral that is otherwise unencumbered and that can be readily converted into cash. The readily marketable collateral must be in the possession or control of the firm. Otherwise, the firm must have a legally enforceable written security agreement, signed by the debtor, and have a perfected security interest in the readily marketable collateral within the laws of the State in which the collateral is located.

Liabilities. The term "liabilities", for net capital purposes, is defined in CFTC Regulation 1.17(c)(4), and generally means all money obligations of the FCM, including economic obligations recognized and measured in conformity with generally accepted accounting principles. Certain deferred credits recognized and measured in conformity with generally accepted accounting principles also are considered liabilities of the firm.

Some liabilities are excluded from total liabilities in computing net capital, such as:

- liabilities subordinated to the claims of all general creditors pursuant to a "satisfactory subordination agreement" (as defined by CFTC Regulation 1.17(h)) between the FCM and a lender;

- certain deferred tax liabilities; and

- certain long-term debt obligations associated with fixed assets used by the firm in the ordinary course of a business or trade segment other than in futures or securities business activities.

Haircuts and Adjusted Net Capital. After determining its net capital, an FCM is required by CFTC Regulation 1.17(c)(5) to reduce its net capital by certain amounts for specified types of current assets. These charges against net capital are referred to as "haircuts" and are intended to recognize the market risk inherent in particular types of assets and possible declines in the value of such assets prior to liquidation. The firm's net capital, less the required capital charges, is the firm's "adjusted net capital," or capital for regulatory purposes. Examples of haircuts include: (1) 20 percent of the value of unhedged cash commodity inventories; (2) the applicable margin amount for open commodity positions in the FCM's proprietary accounts where the FCM is a clearing member of the clearing organization that clears the positions; and (3) for undermargined futures accounts carried by the FCM where account equity is below the maintenance margin level, the amount necessary to restore account equity to initial margin levels.

Early Warning Requirement

Pursuant to CFTC Regulation 1.12, an FCM must comply with several requirements upon the occurrence of predefined events that may raise concerns regarding the firm's ability to meet its obligations to the market, safeguard customer funds, or otherwise continue normal business operations. The requirements set forth within CFTC Regulation 1.12 enhance the ability of the CFTC and the firm's designated self-regulatory organization ("DSRO") to respond with a heightened degree of surveillance, as may be necessary or prudent, in light of the possibility of deteriorating operating or financial conditions at a firm. These requirements therefore are generally referred to as "early warning" requirements.

CFTC Regulation 1.12(a) provides that if an FCM's adjusted net capital falls below its early warning capital level, as defined by CFTC Regulation 1.12(b), the FCM must file written notice to that effect with the CFTC, the SEC (if the FCM is also a securities broker-dealer),

NFA, and the firm's DSRO. The notice must be filed 24 hours after the FCM knew or should have known that its adjusted net capital was below its early warning level.

Answers should be provided to the following questions on "Minimum Financial Requirements":

1. How do financial requirements generally compare with those in the U.S.?

2. Are factors such as liquidity, collectability, market risk and credit risk considered in computing a broker's regulatory capital position? Are haircuts or charges taken for different types of assets based upon their particular characteristics and risk attributes?

3. Are there any adjustments required to a broker's capital position for assets that are encumbered or cannot be readily converted to cash or realized within a short-term time-frame?

4. How must a brokerage firm classify or treat for regulatory capital purposes a customer account that has a net deficit balance or liquidates to a debit balance? What is the treatment of undermargined customer accounts?

5. Are brokerage firms subject to "early warning" requirements? What are those requirements?

SAFEGUARDING CUSTOMER FUNDS

Section 4d(2) of the Act and CFTC Regulation 1.20 thereunder require an FCM to treat and deal with all money, securities and property received by an FCM to margin, guarantee, or secure the commodity futures and options trades of customers as belonging to such customers. Section 4d(2) of the Act and Regulation 1.20 further require an FCM to account separately for, or segregate, such money, securities and property, and not to commingle such customers' assets with the proprietary assets of the FCM or funds held by the FCM for noncustomers. Customers' segregated assets also shall not be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the customers for whom the assets are held.

The segregation requirements apply to customers' assets received by an FCM for customers' commodity futures and options trades executed on commodity exchanges located in the U.S. CFTC Regulations 1.20 through 1.30 and 1.32 specify the manner in which an FCM must segregate, handle, and account for customers' assets.

For purposes of Section 4d(2) and rules thereunder, the term "customers" does not include owners or holders of proprietary accounts, such as the FCM itself, affiliate firms of the FCM, or insiders of the FCM, such as officers, directors, ten percent or greater shareholders, and sales personnel.

CFTC Regulations 1.20 through 1.30 and 1.32 require that:

- each bank, broker, exchange clearing organization or other depository account for Section 4d(2) customer segregated assets is properly titled or named as such (CFTC Regulation 1.20(a));

- the depository for each account of Section 4d(2) customer segregated assets acknowledge in writing, or be subject to a clearing organization requirement, that the funds are held in the account in accordance with Section 4d(2) of the Act and are funds of the FCM's customers and not of the FCM (CFTC Regulation 1.20(a));

- all monies received by or accruing to an FCM incident to a Section 4d(2) customer's commodity futures and options trading activity are treated and accounted for as accruing to such customer (CFTC Regulation 1.21);

- the assets of one Section 4d(2) commodity customer at an FCM are not used to purchase, margin, or settle the trades, contracts, or commodity options positions, or to secure or extend the credit, of any person other than such customer (CFTC Regulation 1.22);

- the books and records of an FCM shall at all times accurately reflect the FCM's interest in total assets on deposit in segregated accounts, which is the amount of funds in segregation in excess of the amount of funds required to be segregated (CFTC Regulation 1.23);

- an FCM shall invest customer segregated assets only in certain investments, including obligations of the U.S. or a sovereign nation, general obligations of any State or political subdivision thereof, obligations fully guaranteed as to principal and interest by the U.S., certificates of deposit issued by a bank or the domestic branch of a foreign bank, commercial paper, corporate notes, or interests in money market mutual funds (CFTC Regulation 1.25);

- each FCM that invests customer segregated assets must keep a record of such investments that shows certain information for each investment (CFTC Regulation 1.27);

- the proceeds of any loan made by an FCM to a segregated commodity customer of the FCM to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of such customer are treated, dealt with, and segregated by the FCM as belonging to such customer (CFTC Regulation 1.30); and,

- each FCM must prepare, as of the close of each business day, by noon the following business day, a record showing the total amount of customer assets required by the Act to be deposited in segregated accounts, the total amount of assets deposited in Section 4d(2) segregated accounts, and the amount of the

FCM's residual interest in such segregated customer assets (excess funds in segregation) (CFTC Regulation 1.32).

For U.S. customers trading commodity futures and options contracts on or subject to the rules of exchanges or boards of trade located outside the U.S. through an FCM, regulatory requirements exist that are similar to the segregation requirements for customers trading contracts on exchanges located in the U.S. Much like the segregation requirements discussed above, FCMs in the U.S. carrying accounts for customers trading contracts on exchanges outside the U.S. are required to set aside in separate accounts sufficient funds to cover the FCMs' current obligations to those customers. FCMs also are required to separately account for and handle those customers' funds and trades.

Segregated Funds Deficiency, or Undersegregation. Whenever an FCM knows or should have known that the total amount of its funds on deposit in segregated accounts on behalf of customers is less than the total amount of such funds required to be segregated on behalf of customers, CFTC Regulation 1.12(h) requires the FCM to report immediately such deficiency to the CFTC and to either NFA or the exchange having primary responsibility for compliance surveillance of the firm. As soon as an FCM knows or should have known of a deficiency in segregated funds, the FCM is expected to immediately take whatever action is necessary to move funds into segregated accounts to correct the deficiency and restore compliance with segregation rules.

Answers should be provided to the following questions on "Safeguarding Customer Funds":

1. How do the regulatory requirements pertaining to the segregation, treatment, use and accounting for commodity customers' funds generally compare to the requirements in the U.S.?

2. Are brokers required to separately account for customers' money, property and trades?

3. Are commodity customers' funds restricted to being used to margin, secure and guarantee the trades of those customers by the broker receiving the funds?

4. Are customers' funds and property for trading commodity futures and options segregated separately from funds related to other types of financial products or instruments, such as securities, foreign exchange transactions, and other derivative instruments?

5. What are acceptable depositories for customer funds received by a broker? Is a broker permitted to deposit customer commodity funds with banks, exchange clearing organizations, other commodity brokers, securities brokers, or other financial institutions? If the broker is a bank, is it required to deposit customer funds at a different institution?

6. Are depositories of commodity customers' assets required to acknowledge in writing, or do relevant clearing organizations specify, that the assets on deposit belong to commodity customers of the firm and not to the firm itself?

7. Is a brokerage firm required to have on deposit in segregated or separate accounts sufficient funds on behalf of customers to cover or meet the amount payable to the firm's customers?

8. Is a brokerage firm required to monitor its total payable to customers and ensure that it has enough funds to meet its obligations to customers at all times?

9. Are customers' open positions and trading accounts marked or valued to the market on a daily or other basis? How does such valuation affect segregation of commodity customers' funds and accounts?

10. Are there any restrictions as to the types of financial instruments in which commodity customer funds may be invested?

11. Are Exchange members' accounts segregated from customer accounts at the clearing house?

12. How is a "customer" defined? Is a distinction made between customer and proprietary accounts?

13. Are customers allowed to opt out of segregation requirements?

14. What priority would customers have with respect to a broker's assets in the event of a broker's bankruptcy? Are customer assets protected from claims of the broker's other creditors?

15. What amount of funds or assets must a broker have in segregated or separate accounts to meet its obligations payable to its customers?

16. Is a broker required to promptly notify regulators in the event the amount of funds segregated or set aside for customers is below the amount required?

17. If the amount of funds or assets segregated or set aside for customers is less than the amount required to be segregated or set aside, what actions are required to be taken by the broker and by regulators?

RECORDKEEPING AND REPORTING REQUIREMENTS

CFTC Regulation 1.10(b) requires an FCM to file an unaudited financial report as of the end of each fiscal quarter, and a financial report which is audited by an independent public accountant as of each fiscal year-end. The CFTC receives financial report filings from most FCMs on at least a monthly basis.

CFTC and NFA or exchange staffs review and analyze the financial reports received for adverse trends and unusual or questionable items. Firms that are considered high financial risks are given particular scrutiny.

CFTC Regulation 1.10(d) specifies the financial statements and other information that must be included in an FCM's financial reports filed with the CFTC. The required financial statements and other information are:

- statement of financial condition;
- statement of income (loss) and statement of cash flows, which are routinely required only with the filing of year-end certified reports;
- statement of changes in ownership equity;
- statement of changes in liabilities subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement;
- notes to financial statements, which are routinely required only with the filing of year-end certified reports;
- statement of the computation of the minimum capital requirements;
- statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges;
- statement of secured amounts and funds held in separate accounts for customers trading contracts on foreign commodity exchanges pursuant to CFTC Regulation 30.7; and
- such further information as may be necessary to make the required statements and schedules not misleading.

Year-end audited financial statements must include an independent accountant's signed report and opinion with respect to the statements and schedules covered by the report. The year-end audited financial report also must include an independent accountant's supplemental report describing any material inadequacies in the accounting system, internal accounting controls, and procedures for safeguarding customer and firm assets found to exist or to have existed since the date of the previous audit.

CFTC Regulations 1.33 and 1.46 also provide that FCMs must furnish their customers with monthly statements of account activity and confirmations of individual trades.

Answers should be provided to the following questions on “Reporting Requirements”:

1. What information must brokers provide the regulator(s) or the Exchange, e.g., statement of operations, balance sheet, capital adequacy report, annual report, report concerning

large positions? How often must reports be filed? How does the regulator(s) or the Exchange use these reports?

2. What information must brokers provide customers, e.g., trade confirmations, account statements? How long must brokers maintain such documents?

3. What information must the Exchange provide to the public, e.g., contract specifications, Exchange rules, an annual report?

Notification Requirements

If an FCM fails to comply with the financial and recordkeeping requirements of the CFTC, or experiences a significant decline in its adjusted net capital or significant events regarding the margining of the trading accounts it carries, the firm may have to give immediate telegraphic or written notice, depending on the situation, to the CFTC, NFA or the exchange having primary responsibility for monitoring the firm's compliance, and the SEC, if the firm also is a securities broker or dealer. CFTC Regulation 1.12 requires an FCM to notify regulatory authorities when:

- the firm's adjusted net capital is below the minimum adjusted net capital required by CFTC Regulation 1.17;
- the FCM's adjusted net capital is below the early warning level for adjusted net capital;
- the FCM has failed to make or keep current the required books and records;
- the FCM becomes aware of a material inadequacy in its accounting system, internal accounting controls, or procedures for safeguarding customer and firm assets;
- an account carried by an FCM for another FCM fails to meet a call for margin or fails to make other required deposits with the carrying FCM;
- an account carried by the FCM is undermargined by an amount which exceeds the FCM's adjusted net capital;
- an account carried by the FCM is subject to a margin call, or call for other deposits required by the FCM, which exceeds the FCM's excess net capital, and such call has not been answered by the close of business on the day following the issuance of the call;
- the FCM's net capital has declined by 20 percent or more of the FCM's net capital as last reported in financial reports filed with the CFTC pursuant to CFTC Regulation 1.10;

- an anticipated withdrawal of equity, advance or other action by a stockholder or partner of the FCM would cause a 30 percent or more reduction in the FCM's excess adjusted net capital as last reported in financial reports filed with the CFTC pursuant to CFTC Regulation 1.10.

Answers should be provided to the following questions on "Notification Obligation":

1. Are brokers required to file notices promptly with regulators when the broker fails to comply with capital or restricted equity, segregation or recordkeeping requirements?

2. Are there situations involving undermargined trading accounts which are required to be reported promptly by a broker?

3. Is a broker required to report promptly any material inadequacy in its accounting system, internal accounting controls, or controls for safeguarding firm and customer assets of which it becomes aware?

4. How are such notices used by the regulator(s) or the Exchange in monitoring regulatory compliance by brokers and in protecting commodity customers?

SALES PRACTICE STANDARDS

The Act generally prohibits certain fraudulent activities. Section 4b generally makes it unlawful for any person, in or in connection with any futures or option transaction, to:

- Cheat or defraud or attempt to cheat or defraud another person;

- Willfully make or cause to be made to another person any false report or statement thereof, or willfully to enter or cause to be entered for another person any false record thereof;

- Willfully to deceive or attempt to deceive another person by any means whatsoever in regard to any act of agency performed with respect to any order or contract for that person; or

- "Bucket" an order of another person, *i.e.*, to willfully and knowingly and without the prior consent of another person become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

Section 4c of the Act generally makes it unlawful for any person to offer, enter into or confirm the execution of any futures or option transaction if such transaction is used to cause any price to be reported, registered or recorded which is not a true or bona fide price (*i.e.*, the trade is a fictitious sale). These types of trades are known in the U.S. as "wash sales," "cross trades," and "accommodation trades." Note that in certain circumstances, set forth in Section 4j to the Act, brokers on the trading floor may execute customer orders during a trading session in which the

broker executes a trade in the same market for his own account. This is known in the U.S. as "dual trading."

The Act also requires commodity professionals to make appropriate disclosures to customers regarding the risk of trading futures and options contracts. In particular, Regulation 1.55 generally requires FCMs to provide a standard risk disclosure document, to retail customers and governmental units before opening a commodity futures account. The prospective customer must acknowledge that he has read the risk disclosure document by signing and returning the document to the FCM prior to opening the account.

Answers should be provided to the following questions on "Sales Practice Standards":

1. Are there prohibitions or restrictions relating to the "bucketing" of customer orders by brokers or enter into any non-competitive trades, e.g., wash sales, cross trades or accommodation trades?

2. Are there any requirements for brokers and/or other similar intermediaries to undertake due diligence to sufficiently learn about the customer prior to engaging in futures transactions on behalf of such customer?

3. Are brokers required to make any disclosures to customers about the risks of trading in futures and options contracts? What disclosures are required? Must customers sign a document acknowledging the risks of futures trading prior to opening an account?

4. Under what circumstances, if any, is "dual trading" permitted?

5. Under what circumstances, if any, may a broker offset two or more opposing customer orders without submitting either order to the market?

6. What sort of audit trail is maintained on trading by the Exchange?

7. What sort of audit trail are Exchange members required to maintain?

COMPLIANCE

Both the CFTC and NFA have the responsibility for ensuring compliance with the Act and CFTC rules. Both the CFTC and NFA may conduct audits of registered firms, initiate enforcement actions against those firms and individuals suspected of violating the Act or its regulations, or NFA rules, respectively, and sanction those firms and individuals for their misconduct. In addition, each U.S. commodity exchange promulgates and enforces its own set of rules governing the transactions entered into on the exchange.

Answers should be provided to the following questions on "Compliance":

1. Please describe, in detail, the regulatory and/or Exchange requirements for monitoring

compliance by intermediaries with applicable regulatory and/or Exchange requirements governing the offer and sale of futures and option contracts.

2. Please explain, in detail, the relevant programs in place which establish procedures to implement such requirements. Specifically, please describe:

   a. The number of personnel and the amount of training involved,
   b. The nature and scope of compliance oversight,
   c. The frequency of on-site surveillance, and
   d. The regulatory consequences of any adverse findings (such as reprimands, fines, suspensions, etc.)

3. Do the regulators engage in day-to-day monitoring of the Exchange, or have they delegated this responsibility to the Exchange itself or some other entity such as a SRO? Does the Exchange monitor trading in both the futures and physical markets? Does the Exchange conduct daily surveillance? Are surveillance reports produced? Who receives those reports?

4. Please describe the range of sanctions that may be assessed against financial intermediaries for violations of the governing laws, rules and regulations, including whether such sanctions are criminal or civil in nature.

5. Please provide a summary of the disciplinary actions taken by the Exchange against Exchange members in the past two years.

6. Please describe the available alternative dispute resolution programs available (e.g., arbitration, mediation, etc.) for customers trading locally. For each program please describe the following:

   a. The applicable law or rules controlling the program,
   b. Who may serve as the ultimate decision maker,
   c. The procedures for presenting evidence and reaching a final decision,
   d. The role, if any, of the regulator, and
   e. The extent to which members of the Exchange are required to participate in these programs.

7. Does the regulator conduct a review of the Exchange? With what frequency?

8. Do the regulator and Exchange have emergency powers?

INFORMATION-SHARING

As a prerequisite to receiving a Regulation 30.10 Order, an applicant must enter into an appropriate information-sharing arrangement with the CFTC. In the first instance, the Commission will look to see if the applicant is a member of the International Organization of Securities Commissions (IOSCO) and whether the applicant is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of

Information (IOSCO MMOU). Each signatory to the IOSCO MMOU specifically represents that no domestic secrecy or blocking laws or regulations prevent the sharing of information with another foreign regulator.

The applicant must represent that it will:

> (1) cooperate with the CFTC and NFA with respect to inquiries or investigations and enforcement proceedings relating to the offer and sale of the applicant's products in the U.S.;
>
> (2) provide to the CFTC, on an "as needed basis," the information noted in Appendix A to Part 30 that could be relevant to the protection of U.S. customers engaged in transactions on the applicant's exchange, including, but not limited to, information as to trade confirmation, tracing of customer funds, firm related fitness (such as standing to do business and financial condition) and the sales practices of firms selling products into the U.S.; and
>
> (3) that it does not believe that any local laws or statutes serve as an impediment to such cooperation.

FILING INSTRUCTIONS

Please direct two copies of your petition for exemption and supporting materials in English to:

Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Please include the English version of any document cited within the petition for exemption. We request that the petition and supporting materials be presented in a manner that will allow us to remove and re-insert portions without much difficulty. For this purpose, we recommend that all materials be submitted in three-ring binders or their equivalent. Electronic versions of supporting documents also are acceptable.

QUESTIONS

Please email your questions to dcio@cftc.gov.