

April 27, 2006

FAQs – ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT DOING TRANS-ATLANTIC BUSINESS

This information provides guidance on derivatives products, markets and financial intermediaries for the EU¹ and the USA. You may access the information electronically, which is maintained on each participating jurisdiction's website or through the CESR and the US CFTC web-sites. CESR also indicates areas in which European law is harmonized.

The information provided here is intended to summarize material requirements under a variety of scenarios, primarily related to the cross-border, Trans-Atlantic conduct of business.

Derivatives products, for purposes of the information included, do not at this time include counterparty transactions in over-the-counter instruments except OTC products that are admitted to clearing. The category of foreign exchange transactions (forex), however, does include dealer transactions in foreign currency.

Markets include exchanges/regulated/organized markets and multi-lateral trading facilities (MTFs) or automated trading systems (ATS). It is understood that different markets may be regulated differently and by different authorities within the same jurisdiction.

PLEASE OBSERVE that the information contained herein is not intended to be legal advice, nor is it a substitute for legal advice. The following is a resource for identifying sources and information relative to doing business in various jurisdictions. The information should be used to alert oneself of proposed conduct which may require authorization and to prompt further inquiry. No guarantees are being made as to its completeness or accuracy. Any person contemplating to enter into business in another jurisdiction is recommended to seek professional legal advice intended for their specific needs.

The following questions are divided into the categories of Exchanges, Investment Services and End-Users.

¹ The 25 countries of the European Union and Norway and Iceland as being members of the European Economic Area. All these are members of CESR.

JURISDICTION:

United States Commodity Futures Trading Commission², which has exclusive jurisdiction over commodity futures and options contracts and shared jurisdiction over “security futures products” (see below).

Questions concerning equity securities, debt instruments and securities exchanges should be directed to the US Securities and Exchange Commission.

EXCHANGES:³

Briefly:

- | |
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| <p>1. What are the requirements and/or approvals needed, if any, for establishing an exchange in your jurisdiction?</p> |
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The criteria for designation as a contract market are set forth in Section 5(b) of the CEA and [Part 38](#) of the CFTC’s regulations. The criteria relate to the following standards:

- (1) General Demonstration of Adherence to Designation Criteria;
- (2) Prevention of Market Manipulation;
- (3) Fair and Equitable Trading;
- (4) Enforcement of Rules on the Trade Execution Facility;
- (5) Financial Integrity of Transactions;
- (6) Disciplinary Procedures;
- (7) Public Access to Information on the Contract Market; and
- (8) Ability of the Contract Market to Obtain Information.

A complete description of the requirements for designation as a contract market is found in [Part 38](#) of the CFTC’s Rules. [Appendix A to Part 38](#) provides guidance to applicants on how the specific conditions for initial designation may be met by an applicant. [Appendix B to Part 38](#) provides guidance to applicants on how designated contract markets can comply with the core principles both initially and on an ongoing basis.

² Where more than one authority is applicable, identify which authority is responsible for which issue.

³ Exchanges include markets for the purposes of this paper.

Information regarding the various categories of exchanges (*i.e.*, designated contract markets, derivatives transaction facilities, and several types of exempt exchanges), is found at [Ezxnages and Products on the CFTC's web-site. http://www.cftc.gov/cftc/cftcexchproducts.htm](http://www.cftc.gov/cftc/cftcexchproducts.htm)

Exchanges are designated by Order of the CFTC.

2. What are the requirements and/or approvals needed, if any, for an exchange established in another jurisdiction to set up a branch in your jurisdiction?

The CFTC's Rules do not contain special provisions for an exchange "branch." If an exchange is deemed to be located within the United States (*i.e.*, the staff "no-action process" for the placement of trading screens described in #5 below is not applicable), the exchange would be required to seek designation as a "designated contract market" or other type of market and to comply with the requirements set forth immediately below.

3. What are the requirements and/or approvals needed, if any, for an exchange to have a representative office, or a technical service center in your jurisdiction?

There are no formal CFTC Rules. However, it is advisable for an exchange to discuss its plans with the CFTC in order to ensure that its proposed activities do not inadvertently trigger a registration duty.

4. What are the requirements and/or approvals needed, if any, for an intermediary authorized in your jurisdiction to offer a foreign exchange's products to a client located in your jurisdiction?

(a) Authorization

Firms that offer or sell "foreign futures" or "foreign option" contracts to a foreign futures or foreign options customer" (*i.e.*, any person located in the United States, its territories or possessions) must register in the appropriate capacity set forth in CFTC Rule 30.4. For example,

a US firm that sells foreign futures and accepts funds must register as a futures commission merchant (FCM).

Rule 30.4 does not establish a separate registration scheme. Rather, Part 30 requires registration in the appropriate capacity under existing CFTC Part 3 Rules. For example, if a person engages in conduct described under Rule 30.4, the person would follow the application procedures set forth in CFTC Rule 3.10 (registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators).

Procedurally, all applications are processed by the National Futures Association (NFA), which the CFTC has authorized to perform registration activities under the Commodity Exchange Act in a series of orders beginning in 1983. NFA has developed an Online Registration System (ORS) that allows firms and individuals to register with the CFTC and apply for NFA membership electronically. See NFA's [registration](http://www.nfa.futures.org/registration/indexRegistration.asp) web-page. <http://www.nfa.futures.org/registration/indexRegistration.asp>

(b) Compliance

Authorized firms intermediating foreign futures and foreign options must, in addition to the CFTC compliance Rules generally applicable to their registration category, comply with specific Rules contained in Part 30 (e.g., treatment of customer “secured amount” funds, quarterly reporting).

(c) Product Restrictions

In general, properly registered or exempt persons may offer or sell most foreign exchange-traded futures and commodity option products in the United States without additional approvals. Special procedures do apply, however, to the offer and sale of equity and corporate debt, stock indexes and foreign government debt products, subject to regulation under the Commodity Exchange Act. For more information, see *CFTC Background: Foreign Instrument Approvals and Exemptions*. <http://www.cftc.gov/opa/background/opa-part30.htm> The SEC regulates direct options on equity, and corporate and sovereign debt instruments.

Several important product restrictions should be considered. See “End Users”, question #2.

5. What are the requirements and/or approvals needed, if any, for an exchange established in another jurisdiction to locate its terminals in, or to provide direct access to its electronic trading system from, your jurisdiction? Please indicate if there are different requirements for access by intermediaries authorized in your jurisdiction and for individual (professional/retail) traders or for proprietary and customer business.

(a) Staff no-action procedures

In June, 1999, the CFTC issued an order withdrawing proposed Rules addressing foreign electronic systems and instructed the staff to begin immediately processing “no-action” requests from foreign boards of trade seeking to place terminals in the US 64 *Fed. Reg.* 32829 (June 18, 1999)). The term “no-action” position refers to Division staff action that constitutes a determination that the staff will not recommend that the Commission take enforcement action if the subject conduct takes place. To receive this relief the exchange must be a *bona fide* foreign exchange.

No-action applications are processed by the CFTC’s Division of Market Oversight (DMO). Essentially, the foreign exchange submits information concerning the exchange, the desired conduct, the relevant Rules governing the system and an overview of the regulatory system. The Division’s analysis follows the template of the *IOSCO 1990 Principles for the Oversight of Screen-Based Trading Systems* (revised in 2000).

You may reach DMO through the CFTC’s Web Site at:

<http://www.cftc.gov/cftc/cftccontacts.htm>

Examples of “No-Action” letters for the recognition of foreign electronic trading systems at *Foreign Entities Receiving Staff No-Action Letters to make Futures Trading Systems Available in the US.*: <http://www.cftc.gov/dea/deaforeignterminaltable.htm>

NOTE: The grant of the no-action does not negate the general requirement that a firm operating pursuant to the no-action relief **must be appropriately registered (or exempt from registration) in order to engage in the offer or sale of a foreign futures contract for or on behalf of US customers.**

The no-action letters also do not negate the obligations of firms under CFTC Rule 30.10 Orders. For example, Rule 30.10 firms continue to be prohibited from maintaining a physical presence in the US Thus, Rule 30.10 firms cannot provide direct access to the foreign exchange (although they would be permitted to accept orders overseas from customers located in the United States transmitted via AORS).

(b) Proprietary trading

Proprietary traders (see CFTC Rule 1.3(y)) need not be separately licensed in the US but must have clearing arrangements with appropriately licensed firms.

6. What are the requirements and/or approvals needed, if any, for persons located in your jurisdiction to operate as remote members of an exchange located outside your jurisdiction?

There are no CFTC Rules that condition or apply to the membership status of a US person at a foreign exchange. That person's conduct with respect to US customers, if any, however could trigger a registration requirement (e.g., the solicitation or acceptance of orders). For example, see Question 5 above. Many foreign markets only permit entities that are licensed by them or by the remote regulator to be members.

7. What are the requirements and/or approvals needed, if any, for determining who can properly clear derivatives products traded in your jurisdiction?

(a) Derivatives clearing organizations

Registered derivatives clearing organizations, or DCOs, are clearing organizations registered with the Commission to perform the functions described in Section 1a(9) of the CEA with respect to futures contracts or options on futures contracts, or with respect to those contracts as specified in the Commission's order granting registration as a DCO.

[Part 39](#) of the CFTC's Rules sets forth the procedures and requirements for a clearing organization to be registered as a DCO. The criteria for registration as a DCO are set forth in Section 5b of the CEA and [Part 39](#) of the CFTC's regulations. A registered DCO must comply initially and on a continuing basis with the following 14 core principles:

A. In general	H. Rule Enforcement
B. Financial Resources	I. System Safeguards
C. Participant and Product Eligibility	J. Reporting
D. Risk Management	K. Recordkeeping
E. Settlement Procedures	L. Public Information
F. Treatment of Funds	M. Information Sharing
G. Default Rules and Procedures	N. Antitrust

[Appendix A to CFTC Rules Part 39](#) provides more specific information on these requirements as well as guidance to applicants seeking to become registered DCOs.

Additional information on application procedures is found at *Derivatives Clearing Organization Background*. <http://www.cftc.gov/dea/deadcobackground.htm>

(b) Multilateral Clearing Organization for OTC Derivative Instruments

Section 409 of the Federal Deposit Insurance Corporation Improvement Act, which was added by the Commodity Futures Modernization Act of 2000. Section 409 provides that a multilateral clearing organization for over-the-counter derivative instruments (MCO) may operate in the US if, among other alternatives, the MCO is supervised by a foreign financial regulator that the Commission, or one of several other US financial regulators, has determined satisfies appropriate standards. For example, in 2002 the CFTC determined that the multilateral clearing activities of NOS Clearing ASA (NOS) are subject to appropriate foreign supervision. NOS is a Norwegian clearinghouse which clears and settles OTC trades on the International Maritime Exchange (IMAREX), an electronic trading facility for cash-settled futures contracts for the transportation of maritime freight. The Commission's Order permits NOS to now clear and settle trades by US persons on IMAREX.

The CFTC reviewed the applicant's oversight in view of both internationally-accepted standards developed by the *International Organization of Securities Commissions* and the fourteen core principles set forth in the CEA, as amended by the CFMA, for firms registered with the Commission as derivatives clearing organizations. The applicant also represented that it will share with the Commission information on NOS's clearing activities. See *CFTC Press Release 4595-02*. <http://www.cftc.gov/opa/press02/opa4595-02.htm>

8. What are the requirements and/or approvals needed, if any, for an exchange established/authorized outside your jurisdiction to conduct promotional, "road shows" (where no orders are being received) in your jurisdiction?

There are no formal CFTC Rules. However, it is advisable for the exchange to discuss its plans with the CFTC in order to ensure that its activities do not inadvertently trigger a registration duty.

EXCHANGE ISSUES CONTACT INFORMATION

• **CONTACT FOR EXCHANGE ISSUES**

Name of Department: **Division of Market Oversight**

Telephone: 202-418-5270

E-mail: DMO@cftc.gov

Fax: 202-418-5527

- **CONTACT FOR CLEARING ISSUES**

Name of Department: **Division of Clearing and Intermediary Oversight**

Telephone: 202-418-5430

E-mail: DCIO@cftc.gov

Fax: 202-418-5547

- **CONTACT FOR ENFORCEMENT ISSUES**

Name of Department: **Division of Enforcement**

Telephone: 866-366-2382

E-mail: enforcement@cftc.gov

On-line complaint form: <http://www.cftc.gov/enf/enfform.htm>

- **CONTACT FOR GENERAL INQUIRIES**

Name of Department: **Office of International Affairs**

Telephone: 202-418-5645

E-mail: INTERNATIONAL@cftc.gov

Fax: 202-418-5548

INVESTMENT SERVICES

I. Authorization/Licensing Requirements in your jurisdiction:

Briefly,

1. What types of activities performed or services rendered trigger a duty to be authorized as an investment firm/intermediary and what are the application procedures?

General Rule: If you solicit or accept orders from a US customer for commodity futures or options, you will have to register in an appropriate capacity.

(a) Trades executed on a US market

In general, any person, whether domestic or foreign, who conducts business on a US designated contract market (DCM) or derivatives transaction execution facility (DTEF) for a customer located in the United States is subject to compliance with the full panoply of the CFTC's regulatory regime. Registration categories include the following:

- **Futures commission merchants (FCMs):** A FCM is any person that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the Rules of a contract market or derivatives transaction execution facility and who, in connection with such solicitation or acceptance of orders, accepts any money or other property (or extends credit) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.
- **Introducing brokers (IBs):** The term IB means any person (except an individual who elects to be and is registered as an associated person of a FCM) engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the Rules of a contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit) to margin, guarantee, or secure the contracts resulting therefrom.
- **Commodity pool operators (CPOs):**⁴ The term CPO means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or indirectly or through capital contributions,

⁴ Under the CEA, the operators of a pool rather than the pool itself registers through NFA. Virtually all commodity pools operated by registered CPOs were sold as "private placements" (*i.e.*, private, non-public offering of securities that is exempt from registration under the Securities Act of 1933). See CFTC Backgrounder 1-05 *The CPO and Commodity Pool Industry* (March 24, 2005).

the sale of stock or other forms of securities, or otherwise, for the purpose of trading in a commodity for future delivery on or subject to the Rules of a contract market or derivatives transaction execution facility.

- **Commodity trading advisors (CTAs):** The term CTA means any person who for compensation or profit engages in the business of advising others, either directly or indirectly or through publications, writings, or electronic media, as to the value of or the advisability of trading in a commodity for future delivery on or subject to the Rules of a contract market or derivatives transaction execution facility, any commodity option authorized under Section 4c of the CEA, or any leverage transaction authorized under Section 19 of the CEA. [Note: CTAs have been included in this document in connection with their exercise of discretionary trading authority over accounts and for completeness in describing the regulatory scheme.]
- **Associated persons (APs) (i.e., sales personnel):** Any person associated with an FCM, IB, CPO, and CTA who solicits or accepts customer orders (other than in a clerical capacity) or who supervises persons who do so must register as an AP.

(b) Exception for transactions intermediated by a foreign person solely on behalf of non-US customers. When an intermediary conducts business on a US market for a foreign customer, the determination as to whether that intermediary is subject to CFTC regulation may be affected by where that intermediary is deemed to be located. If the intermediary is located in the United States, that intermediary will be required to register. If the **person is acting in the capacity of an introducing broker, commodity pool operator or commodity trading advisor and is located outside of the United States, and all of its solicitation efforts are directed at persons located outside of the United States**, that intermediary is not required to register with the CFTC even if it is transacting on behalf of foreign customers trading on US markets. If the person is acting in the capacity of a FCM, but is (a) located outside the US, (b) directing all of its activities at persons located outside the US, and (c) clearing trades on US markets through a FCM registered under the Commodity Exchange Act on an omnibus basis, the CFTC would not require registration under the Act as a FCM, but would impose certain requirements on the person as a “foreign broker” in terms of reporting positions for market surveillance purposes and acting as an agent for service of process on foreign traders. However, if this person sought to be a direct clearing member of a US exchange, that is, it did not wish to clear trades on an omnibus basis through a registered FCM, the CFTC has required registration of the foreign-located person as an FCM under the CEA.

(c) Foreign broker carrying US FCM’s omnibus account is generally not required to register as a FCM under Part 30 Rules.

When a FCM transfers its customer omnibus account to an offshore firm which is either a member of a foreign exchange or is an offshore affiliate of a US FCM licensed or authorized by the offshore jurisdiction where it is located, and such foreign exchange member’s or affiliate’s contact with foreign futures and options customers (i.e., US customers) is limited

to carrying the customer omnibus account of the US FCM for execution on the foreign exchange, such activity should not bring it within the scope of the Part 30 Rules. See CFTC Rule 30.4(a), as amended in 69 *Federal Register* 49800 (August 12, 2004), which superseded Staff Letter 87-7, Division of Trading and Markets, November 17, 1987, *reprinted in* Comm. Fut. L. Rep., ¶ 23,972 (Nov. 17, 1987).

2. What are the general requirements for establishing an investment firm/intermediary in your jurisdiction?

Registration generally requires the applicant, among other things, to provide complete disclosure of its management structure, the filing of information by certain categories of “principals” and sales employees (“associated persons”) to enable an inquiry into the fitness of those persons, including a determination that the applicant is not subject to a statutory disqualification under either Section 8a(2) or 8a(3) of the Commodity Exchange Act, and the demonstration of capacity to conduct business and adequacy of capital.

All applications are processed by the National Futures Association (NFA), which conducts registration activities for the CFTC under authority delegated to it by the CFTC. NFA has developed an Online Registration System (ORS) that allows firms and individuals to register with the CFTC and apply for NFA membership electronically. NFA registration <http://www.nfa.futures.org/registration/indexRegistration.asp> contains detailed requirements for each registration category.

For example an applicant for registration as a FCM is required to file the following:

- A completed Form 7-R.
- A completed Form 8-R, fingerprint card and fee of \$85 for each individual principal.⁵ Fingerprint card and fee are not required if such person is currently registered with the CFTC in any capacity or is listed as a principal of a current CFTC registrant.

⁵ A principal is: (1) an individual who is: a sole proprietor of a sole proprietorship; a general partner of a partnership; a director, president, chief executive officer, chief operating officer or chief financial officer of a corporation, limited liability company or limited partnership; in charge of a business unit, division or function of a corporation, limited liability company or limited partnership if the unit, division or function is subject to regulation by the CFTC; or a manager, managing member or a member vested with the management authority for a limited liability company or limited liability partnership; or
(2) an individual who 10% or more of any class of a registrant's voting securities; has contributed 10% or more of a registrant's capital; is entitled to receive 10% or more of a registrant's net profits; or has the power to exercise a controlling influence over a registrant's activities that are subject to regulation by the directly or indirectly, through agreement, holding companies, nominees, trusts or otherwise: is the owner of 10% or more of the outstanding shares of any class of a registrant's stock; is entitled to vote 10% or more of any class of a registrant's voting securities; has the power to sell or direct the sale of Commission; or
(3) an entity that is a general partner of a registrant; or is the direct owner of 10% or more of any class of a registrant's securities; or has directly contributed 10% or more of a registrant's capital unless such capital contribution consists of subordinated debt contributed by: an unaffiliated bank insured by the Federal Deposit Insurance Corporation; a United States branch or agency of an unaffiliated foreign bank that is licensed under the

- Individual principals and branch office managers who are applying for registration as an associated person⁶ must satisfy all applicable filing and proficiency requirements, including having a sponsoring FCM. Also, for each branch office manager proof of passage of the futures branch office manager examination (Series 30) or sponsorship by a broker-dealer and proof of having met the branch office manager requirements of either the New York Stock Exchange or the National Association of Securities Dealers, Inc.
- A completed Form 1-FR-FCM or FOCUS Report (certified audit).
- A statement describing the source of the current assets of the FCM applicant combined with a representation that the applicant's capital has been contributed for the purpose of operating the business of an FCM and will continue to be used for that purpose.
- A non-refundable registration fee of \$500.

Net capital requirements. FCMs and independent IBs are subject to a net capital requirement. *See* http://www.nfa.futures.org/compliance/issues_fcm_ib.asp

Proficiency requirements. Individuals who are applying for NFA membership as a sole proprietor FCM, IB, CPO, CTA or for registration as an AP of any of these categories must satisfy proficiency requirements. Unless they are eligible for the alternatives listed below, they must have passed the National Commodity Futures Examination (NCFE or Series 3) within the two years preceding their application. NFA publishes a study outline to help prepare for the futures industry examinations. Exams are administered by the NASD contractors at locations around the world.

NFA membership. All registered FCMs, IBs, CPOs and those registered CTAs who manage or exercise discretion over customer accounts must be members of NFA in order to conduct futures business with the public.

Persons acting as APs of NFA members must become NFA Associates.

laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions; or an insurance company subject to regulation by any State.

An individual's status as a principal is determined by the individual's 1) ability to control a registrant's business activities; 2) formal title or position with the registrant; and 3) financial or ownership interest in the registrant. Individuals who, through their conduct or activity, directly or indirectly control a registrant are principals of the registrant, irrespective of their formal title or financial interest in the registrant. Similarly, individuals who hold specific positions or titles with registrants (see definition of principal above) are also principals of the registrant, irrespective of their ability to control the registrant's business.

⁶ An AP is an individual who solicits orders, customers or customer funds (or who supervises persons so engaged) on behalf of a FCM, IB, CTA, or CPO. An AP is, in effect, anyone who is a salesperson or who supervises salespersons for any of these categories of individuals or firms. The registration requirements apply to any person in the supervisory chain-of-command and not only to persons who directly supervise the solicitations of orders, customers or funds.

Mandatory membership is the cornerstone of NFA's regulatory structure, and effective industry wide self-regulation is not possible without it. NFA Bylaw 1101 very clearly prohibits the conduct of customer business with non-NFA members.

NFA Members must be especially diligent not to violate NFA Bylaw 1101. They must examine the relationships they have with other registrants, with customers, with third-party account controllers, with branch offices and so on, to determine that they are in compliance.

Application forms for NFA membership and Associate membership are incorporated in Forms 7-R and 8-R. AP applicants automatically apply for Associate membership when the Form 8-R is filed if their sponsor is or becomes an NFA Member.

See NFA's [Frequently Asked Questions](http://www.nfa.futures.org/registration/faq.asp) on registration at:
<http://www.nfa.futures.org/registration/faq.asp>

3. What are the requirements for an investment firm/intermediary established in another jurisdiction to locate a branch in your jurisdiction?

The location of a branch in the United States and the performance of conduct described in Question 1 above would trigger a registration requirement. The specific registration category depends on the type of conduct engaged in by the intermediary. See the general registration requirement Question #2 above. Registration requirements are the same, although NFA requires certain undertakings concerning access to books and records. Specifically, before NFA registers a foreign applicant – whether under Part 3 or Part 30 – it requires (1) an affidavit identifying the location of the firm's books and records and affirming that the books and records will be made available on 72 hours notice at a stated location and (2) an opinion of counsel that any secrecy or blocking laws of the country in which the applicant is located will not interfere with full inspection of the applicant's books and records by the CFTC or NFA.

4. What are the requirements for an investment firm/intermediary authorized in another jurisdiction to operate as a remote member of an exchange located in your jurisdiction, for proprietary business? Is there a difference for customer business?

The CFTC does not impose any conditions related to the membership qualifications of persons or firms seeking to become members of US contract markets. Exchange Rules determine the conditions for exchange membership.

- 5. Such a remote member may be required to register in the appropriate capacity with the CFTC (through NFA) should it engage in regulated activity discussed above, particularly if it wishes to act as a direct clearing member of a US contract market. What generally are the ownership requirements, the so called fit and proper requirements, for a person/firm located in another jurisdiction wishing to establish an intermediary in your jurisdiction?**

The requirements are the same as described in Question# 2 above. In general, the “owners” would likely fall within the definition of “principal” and be required to provide information, including fitness information, as described in Question # 2 above. The fitness review would include fingerprinting and communication with the home country regulator and Interpol.

- 6. What are the requirements for a person/firm that is not an authorized investment firm/intermediary to operate as a proprietary trader on an exchange in your jurisdiction?**

Assuming that it does not engage in any solicitation of customers or the acceptance of orders, a bona fide proprietary trader doing business on a US exchange need not register. “Proprietary account” is defined in CFTC Rule 1.3(y). Link to CFTC Rules at: <http://www.cftc.gov/cftc/cftclawreg.htm>

II. Services from an Intermediary Located Outside Your Jurisdiction:

In general:

- 1. What are the circumstances, if any, under which an intermediary that is located outside your jurisdiction can solicit and accept business from clients (prospective clients), located in your jurisdiction?**

General Rule: The solicitation or acceptance of orders for futures and options products (whether foreign or domestic) from a customer located in the United States or its possessions and territories, will trigger a registration requirement. For example, if you solicit or accept orders from US persons for US or foreign futures and commodity options products and accept customer

funds, you must register as an FCM. *See* registration categories in Section I. Question 1 (a) above, “Authorization/Licensing Requirements.”

Foreign firms that solicit and accept orders **for non-US products** and that are subject to a “comparable” regulatory scheme may be granted exemption relief from FCM registration under the procedures of Rule 30.10. *See* Question 3(c) below.

More specifically:

2. Do any different requirements apply regarding products that are traded on an exchange that is located in your jurisdiction?

No. The offer or sale of US products to US customers will require registration in the appropriate category as described in Section I, Authorization/Licensing Requirements, Question #1 (a) above.

3. Do any different requirements apply regarding products that are traded on an exchange that is located outside your jurisdiction?

Generally not for a firm located in the United States. The firm would in the first instance be required to register with the CFTC in the appropriate capacity. *See* Question #3 (a) below. However, foreign firms that solicit and accept orders **for non-US products** and that are subject to a “comparable” regulatory scheme may be granted exemption relief from FCM registration under the procedures of Rule 30.10. *See* Question 3(b) of this question below.

Note: A US firm may carry foreign products that are not otherwise approved for sale to United States customers for their foreign customers. *See* CFTC Order in *57 Federal Register* 36369 (Aug. 13, 1992) and SEC No-Action letter dated August 8, 2002 issued by the SEC’s Division of Market Regulation to Jonathan Barton, Chairman of the FIA/SIA Steering Committee, the Securities Industry Association and Futures Industry Association.

(a) Intermediation of foreign futures to US customers requires domestic registration

Firms, foreign or domestic, that offer or sell “foreign futures” or “foreign option” contracts to a foreign futures or options customer” (i.e., any person located in the United States, its territories

or possessions) must register in the appropriate capacity set forth in CFTC Rule 30.4. See CFTC law and regulation links at: <http://www.cftc.gov/cftc/cftclawreg.htm>

Rule 30.4 does not establish a separate registration scheme. Rather, Part 30 requires registration in the appropriate capacity under existing CFTC Part 3 Rules. For example, if a person engages in conduct described under Rule 30.4, the person would follow the application procedures set forth in CFTC Rule 3.10 (registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators).

Registration processing is conducted by NFA. See Section I. “Authorization/Licensing Requirements, Question #2 above.

(b) Alternative procedures for non-domestic persons. CFTC Rule 30.5 permits intermediaries located outside the United States, which otherwise are required to register as an IB, CPO or CTA, to apply for an exemption from such registration requirement provided that the intermediaries conduct business through a FCM located in the United States and enter into a written agency agreement either with that FCM, the NFA or other agent for service of process pursuant to which that agent is authorized to serve as agent for the purpose of accepting delivery and service of communication from the CFTC, US Department of Justice, any self-regulatory organization or any US customer. See Rule 30.5 under CFTC Rules in “law and regulation” link at: <http://www.cftc.gov/cftc/cftclawreg.htm>

(c) Exemption from FCM registration for foreign firms soliciting US persons for non-US products

Under CFTC Rule 30.10, persons located outside the United States who solicit or accept orders and related funds from US customers for foreign futures or options transactions and who are subject to a comparable regulatory scheme in their home country, may apply for an exemption from FCM registration and the application of certain of the Part 30 Rules. The exemption implements a concept of substituted compliance, such that compliance with generally comparable foreign regulations will be considered sufficient to warrant exemption from what otherwise may be duplicative regulation.

To receive such relief under Rule 30.10, the firm’s home-country regulator must demonstrate that it provides a comparable system of regulation (as outlined in Appendix A to CFTC Rules Part 30) and must enter into an information-sharing agreement with the CFTC. For a more detailed discussion of the Rule 30.10 application process, and the representations and conditions required therein, see 62 *Federal Register* 47792 (Sept. 11, 1997) and Appendix A to Part 30 of the CFTC Rules. <http://www.cftc.gov/cftc/cftclawreg.htm> and select “CFTC Rules.”

The CFTC office in charge of Rule 30.10 arrangements is the Division of Clearing and Intermediary Oversight (DCIO). You can reach DCIO via the CFTC’s Web Site at:

<http://www.cftc.gov/cftc/cftccontacts.htm>

Once the CFTC has issued a Rule 30.10 order to a foreign regulator, a firm subject to regulation by that regulator may seek confirmation that the Rule 30.10 relief applies to the firm. The CFTC has delegated to the National Futures Association (NFA) the authority to verify the fitness of and representations made by firms seeking to operate under a Rule 30.10 Order.

(d) Rule 30.10 procedures of interest to EU firms operating as branches

The CFTC authorized the NFA to confirm Rule 30.10 relief to a firm that is organized in one country (home country), but operating in one or more countries (host country) through a branch or branches (hereinafter referred to as cross-border futures brokers (CBFB)) and therefore subject to combined regulation by authorities located in two different jurisdictions under the following specific circumstances:

HOME	HOST	AVAILABILITY OF RELIEF
Rule 30.10 Order issued to the Home Country regulator or SRO	Rule 30.10 Order issued to the Host Country regulator or SRO	NFA is authorized to confirm the availability of relief, subject to certain conditions. See scenario (i) below.
Home Country regulator or SRO does not have Rule 30.10 relief	Rule 30.10 Order issued to the Host Country regulator or SRO	NFA is authorized to confirm the availability of relief, subject to certain conditions. See scenario (ii) below.
Rule 30.10 Order issued to the Home Country regulator or SRO	Host Country regulator or SRO does not have Rule 30.10 relief	CFTC reserves authority to determine appropriateness of relief on case-by-case basis.

(i) Host and Home country regulator each have been issued a Rule 30.10 Order

The CFTC has authorized NFA to confirm Rule 30.10 relief to any CBFB that solicits or accepts orders (and accepts money, securities or property to margin the trades that result or may result therefrom) from US foreign futures and options customers and that is fully regulated, in the aggregate, by a host and home country regulator, each of which has received a Rule 30.10 Order from the CFTC (modified relief).

For a CBFB to receive confirmation of such modified relief, the CBFB:

1. Must apply for confirmation of relief in accordance with the provisions set forth in the host country regulator or SRO’s Rule 30.10 Order;
2. Represent that it will comply with the relevant provisions of each Rule 30.10 Order; and
3. Agree to provide to each regulator or SRO any information regarding transactions arising from such relief.

In addition, each regulator or SRO must confirm that it will monitor the CBFB for compliance with the local laws, Rules and regulations governing those aspects of the broker’s business

subject to regulation in its respective jurisdiction, and state that it will share information with the CFTC in accordance with the terms and conditions of the applicable Rule 30.10 Order.

(ii) For CFBFs organized and operating pursuant to the European Passport and only the Host Country regulator has been issued a Rule 30.10 Order.

The CFTC also authorized NFA to confirm modified Rule 30.10 relief to a CFBF that is organized and operating pursuant to the “European Passport” from a branch location in a jurisdiction whose regulator or SRO has received Rule 30.10 relief, notwithstanding that the CFTC has not issued a Rule 30.10 Order to the home country regulator.

The CFTC determined that, in the aggregate, the regulatory program governing cross-border activity of any firm operating pursuant to the European Passport from a branch located within a jurisdiction whose regulator or SRO has received Rule 30.10 relief provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Therefore, the CFTC determined that it is no longer appropriate to require a CFBF operating pursuant to the European passport to petition the CFTC for confirmation of relief when NFA already has been authorized to confirm other standardized requests for relief.

The CFBF seeking the alternative modified Rule 30.10 relief under this scenario must:

1. Apply for confirmation of relief in accordance with the provisions set forth in the Host Country regulator or SRO’s Rule 30.10 Order;
2. Represent that it will be operating from a branch located in the Host country pursuant to the European Passport, and will comply with the applicable provisions of the Host country’s Rule 30.10 Order and the applicable laws and regulations of its country of origin, as well as all current and future Directives and other legislation underlying the European Passport; and
3. Agree to provide to the Host and Home Country regulator or SRO any information regarding transactions made in accordance with such relief.

In addition, both the Host and Home Country regulator, respectively, must confirm that they will monitor the CFBF for compliance with local laws, Rules and regulations governing those aspects of the broker’s business subject to regulation in its respective jurisdiction, and state that they will share information with the Commission, wither in accordance with the terms and conditions of the applicable Rule 30.10 order (Host Country regulator) or pursuant to a separate written undertaking (Home Country regulator).

Prior to confirming modified Rule 30.10 relief under this alternative method, NFA is required to consult with CFTC staff to ensure that the information-sharing arrangement between the CFTC and the Home country regulator is sufficient.

- (iii) **For CFBs organized in a country whose Home Country regulator is the recipient of a Rule 30.10 Order and seeks to conduct brokerage activities pursuant to the European Passport through a branch from a location where the Host Country regulator is not the recipient of a Rule 30.10 Order.**

The CFTC determined that, under the above circumstances, it would retain the authority to determine on a case-by-case basis whether Rule 30.10 relief would be appropriate. *See* 70 *Federal Register* 2621, 2623 (Jan.14, 2005).

4. Does your jurisdiction have a division in between “retail” and “wholesale” client, or a similar division? If so, how do you differentiate between the two?

As noted below, certain CFTC regulations make distinctions for essentially “well qualified” customers, based generally on measures of assets or institutional status.

4(a). If so, which requirements apply regarding “wholesale” or “professional clients”?

(a) Distinctions based on status of the customer:

Numerous distinctions are made, including:

- **Exclusions from certain part 4 Rules for CPOs and CTAs with respect to offerings to qualified eligible persons.** CFTC Rule 4.7 provides relief from certain otherwise applicable disclosure, periodic reporting, and annual reports requirements to CPOs and CTAs who solicit “qualified eligible persons” as defined by Rule 4.7(a)(2).⁷
- **Staff registration relief to a foreign firm operating under a Rule 30.10 exemption that introduced orders to US FCMs for well-qualified customers.** A February 1993 CFTC staff letter granted registration relief to a U.K. firm exempted under Rule 30.10, which proposed to introduce to a US FCM orders of certain U.K. branch offices of US corporations (among other entities) for transactions on US contract markets. Under existing standards, firm accepting orders from such US customers ordinarily would be required to register with the CFTC. However, relief was granted based in part on the status of the customer (*i.e.*, highly qualified institution, operating as independent profit center outside the United States),

⁷ CFTC Rule 4.7 defines qualified eligible persons in terms of both “sophistication” and business experience as well as personal wealth. The term includes, for example, FCMs, broker dealers registered under the Securities Act, “accredited investors” under the Securities Acts and any non-United States person. *See* Rule 4.7 for details.

the Rule 30.10 status of the firm, and the fact that the accounts of each customer would be carried by a US FCM on a fully disclosed basis.

- **Foreign currency transactions with retail customers.** It is unlawful to offer foreign currency futures and option contracts to retail customers⁸ unless the offeror is a regulated financial entity as enumerated in the CEA, including FCMs and **certain** of their affiliates. Off-exchange trading of foreign currency futures or options with retail customers by counterparties that are not within one of the enumerated categories is a violation of Section 4(a) of the CEA. The enumerated counterparties who may lawfully conduct off-exchange foreign currency futures and options trading with retail customers are regulated financial entities. These include, among others, FCMs and **certain** affiliates of FCMs. Other enumerated counterparties are: (1) financial institutions; (2) registered broker-dealers; (3) associated persons of registered broker-dealers; (4) insurance companies or affiliates thereof; (5) financial holding companies; and (6) investment bank holding companies. *See* Section 2(c)(2)(B)(ii) of the CEA.
- **Certain customers of a FCM may contact the foreign broker carrying the US FCM's omnibus account.** *See* Question # 7(b) below.

Exempt Boards of Trade and Exempt Commercial Markets

- Transactions by “**eligible contract participants**” as defined in section 1a(12) of the CEA in selected commodities may be conducted on an exempt board of trade under the CEA. The requirements and provisions related to exempt boards of trade (XBOTs) are set forth in Section 5d of the CEA and Part 36.2 of the CFTC’s regulations. Under Section 5d, a board of trade electing to operate as an exempt board of trade must so notify the CFTC. Exempt boards of trade are subject only to the CEA's anti-fraud and anti-manipulation provisions. An exempt board of trade is prohibited from claiming that the facility is registered with, or recognized, designated, licensed or approved by the CFTC. Also, if it is performing a price discovery function, the market must provide certain pricing information to the public. Definition of “Eligible contract participant.” <http://www.cftc.gov/dea/deacedefinition.htm>
For information concerning these markets, see <http://www.cftc.gov/dea/deaxbotbackground.htm> and <http://www.cftc.gov/dea/deaxcombbackground.htm>

⁸ Generally, retail customers for these purposes are: (1) individuals with less than \$10 million in total assets, or less than \$5 million in total assets if entering into the transaction to manage risk, and who are not registered as futures or securities professionals; (2) companies, other than financial institutions and investment companies, with less than \$10 million in total assets, or a net worth less than \$1 million if entering into the transaction in connection with the conduct of their businesses; and (3) commodity pools that have less than \$5 million in total assets. CEA Section 1a(12)

- Electronic trading facilities providing for the execution of principal-to-principal transactions between **eligible commercial entities**, as defined in section 1a(11) of the CEA, in **exempt commodities, as defined in section 1a(14) of the CEA**, may operate as exempt commercial markets (ECMs) under the CEA. The requirements and provisions related to exempt commercial markets are set forth in Sections 2(h)(3)-(5) of the CEA and in Part 36.3 of the CFTC’s regulations. Under Section 2(h)(5), an electronic trading facility electing to operate as an exempt commercial market must so notify the CFTC. Under Section 2(h)(4), a ECM is subject to anti-fraud and anti-manipulation provisions and a requirement that, if performing a significant price-discovery function, the market must provide pricing information to the public. An ECM is prohibited from claiming that the facility is registered with, or recognized, designated, licensed or approved by, the CFTC. *See* definition of Eligible commercial entity. <http://www.cftc.gov/dea/deacecdefinition.htm>

4b). If so, which requirements apply to the offer or sale of products to “retail” clients?

All sales practice requirements (disclosure, etc.) *See* Question #8 below.

5. Do any different requirements apply regarding products that are of a particular type?

Yes. In general, each category of transaction described above is subject to specific requirements.

- Exclusions from certain part 4 Rules for CPOs and CTAs with respect to offerings to qualified eligible persons. *See* CFTC Rule 4.7(a).
- Staff registration relief to a foreign firm operating under a Rule 30.10 exemption that introduced orders to US FCMs for well-qualified customers.
- Foreign currency transactions with retail customers. *See* section 2(c)(2)(B)(ii) of the CEA.
- Exempt Boards of Trade. *See* <http://www.cftc.gov/dea/deaxbotbackground.htm>
- Exempt Commercial Markets. *See* <http://www.cftc.gov/dea/deaxcombbackground.htm>

6. What requirements are there for an intermediary to do business through an omnibus account with intermediaries located in your jurisdiction?

Omnibus accounts are permitted.

Pursuant to CFTC Rule 1.58, each futures commission merchant (FCM) which carries a commodity futures or commodity options position for another FCM or for a foreign broker on an omnibus basis must collect, and each FCM and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with CFTC Rule 17.04 at a level no less than that established for customer accounts by the Rules of the applicable contract market. CFTC Rule 1.58. http://www.access.gpo.gov/nara/cfr/waisidx_04/17cfr1_04.html

Under the CFTC's **large-trader reporting system**, clearing members, FCMs, and foreign brokers (collectively called "reporting firms") electronically file daily reports with the CFTC. Part 17 Rules at: http://www.access.gpo.gov/nara/cfr/waisidx_04/17cfr17_04.html

These reports contain the futures and option positions of traders that hold positions above specific reporting levels set by CFTC regulations. (A list of current Commission reporting levels can be found at the Commission's website: <http://www.cftc.gov/dea/dearlevel2.htm>) If, at the daily market close, a reporting firm has a trader with a position at or above the Commission's reporting level in any single futures month or option expiration, it reports that trader's entire position in all futures and options expiration months in that commodity, regardless of size.

Under CFTC Rule 17.00(e) a FCM, clearing member or foreign broker must report gross long and short positions in each future of a commodity and each strike price of a put or call option for each expiration month of all special accounts, including (4) omnibus accounts. See http://www.access.gpo.gov/nara/cfr/waisidx_04/17cfr17_04.html .

7. What requirements are there to permit the customer of a foreign intermediary to use an intermediary in your jurisdiction to execute transactions for the foreign intermediaries' omnibus customer account?

(a) Contact of US FCM carrying the foreign broker's omnibus account.

The CFTC does not have any Rules that restrict or condition the customer of a foreign intermediary from using an intermediary in the US to execute transactions for the foreign intermediary's omnibus customer account. Any such US intermediary would be required to be registered as a FCM. The exchanges have requirements that would address "give up"

arrangements. In this regard, the US Futures Industry Association (FIA) has a model give-up agreement.

(b) Reverse scenario: US customer of FCM contacting the foreign broker carrying the US FCM's omnibus account.

CFTC Rule 30.12 permits certain well-qualified customers of US FCMs, eligible swap participants,⁹ that maintain omnibus accounts with foreign brokers to effect orders for their own account by dealing directly with the foreign broker. CFTC Rule 30.12 (c) exempts any person located outside the United States who accepts such orders from registration as a FCM or IB under the Part 30 Rules as long as the order is effected consistent with the “order transmittal procedures,” which basically are intended to ensure that such customer is properly authorized, that the transaction is properly supervised and that the responsibilities are clear. The foreign broker otherwise could be characterized as “accepting” orders and be required to register under the Part 30 Rules.

(c) Due Diligence Measures for Certain Types of Accounts Involving Foreign Persons

The Patriot Act amended the Bank Secrecy Act (BSA) to require that financial institutions establish Anti-money laundering (AML) Programs. FCMs, CPOs, and CTAs are now included in the definition of financial institution in the BSA.

The Patriot Act requires that financial institutions must establish appropriate, and where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through foreign private banking and correspondent accounts.

Interim final Rules (issued by the US Treasury) require FCMs, IBs, and broker-dealers to immediately take steps to comply with the due diligence statutory requirements with respect to foreign private banking accounts **pending issuance of final implementing Rules**. FCMs, IBs, and broker-dealers must have due diligence programs designed to ensure that the financial institution takes reasonable steps to ascertain the identity of the nominal and beneficial owners and sources of funds deposited into foreign private banking accounts to guard against money laundering and to conduct enhanced scrutiny of private banking accounts maintained by senior foreign political figures (or their immediate family members or close associates) and transactions that may involve the proceeds of foreign corruption.

See <http://www.cftc.gov/cftc/cftcaml.htm#foreign> for link to interim Rules.

See <http://www.fincen.gov/> for Patriot Act and requirements

⁹ CFTC Rule 35.1(b)(2) defines “eligible swap participant” to include, among others, banks, insurance companies, investment companies subject to the Investment Company Act, corporations or individuals having net assets in excess of \$10 million.

See NFA's Anti-Money Laundering Reminder to FCMs and IBs.
<http://www.nfa.futures.org/compliance/amlLetter.asp>

8. What are the applicable ongoing conduct of business Rules in each of these circumstances listed in questions 1 to 7 above?

Conduct of business Rules for registrants apply, including among other things, Rules addressing, recordkeeping and oversight apply. See, generally

- Sales practice procedures, including disclosure (see CFTC Rule 1.55 and NFA's Sales Practice Rules. http://www.nfa.futures.org/compliance/sales_practice_Rules.asp;
- Trade practice (<http://www.nfa.futures.org/compliance/tradePracticeMktSurv.asp>);
- Financial surveillance, (<http://www.nfa.futures.org/compliance/financialSurveillance.asp>)
- Segregation of customer funds (see CFTC Rule 4.2)
- Dispute resolution procedures (see CFTC Rule 180)

NFA Regulatory Guide to Retail Forex Transactions.
<http://www.nfa.futures.org/compliance/forexRegGuide.asp>

INVESTMENT SERVICES CONTACT INFORMATION

- **CONTACT FOR INTERMEDIARY ISSUES**

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- **CONTACT FOR EXEMPT MARKET ISSUES**

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- **CONTACT FOR ANTI-MONEY LAUNDERING ISSUES**

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- **CONTACT FOR ENFORCEMENT ISSUES**

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E-mail: enforcement@cftc.gov

On-line complaint form: <http://www.cftc.gov/enf/enfform.htm>

- **CONTACT FOR GENERAL INFORMATION**

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Passporting within the EU and EEA

The legislation in the EU and EEA countries concerning investment firms is based upon the Investment Services Directive (93/22/EEC), generally known as the ISD. That directive will be replaced by the new Markets on Financial Instruments Directive (2004/39/EC) known as MiFID, which shall be transposed into the legislation of the member states of the EU and EEA.

Under both of these directives exists the possibility of using the authorization acquired in one EU/EEA member state in order to conduct business in another member state according to the system of mutual recognition, often referred to as passporting. Hence, a firm must first obtain an authorization in one member state, its home member state, where it has its legal seat. One can access another EU/EEA market by setting up a branch in that EU/EEA country, the host member state, or by providing services into the host member state without setting up a permanent place of business there.

Establishment of Branches

An investment firm that wishes to set up a branch office in another member state shall notify the competent authority in its home member state (home authority), and provide certain documentation. Unless the home authority has reason to doubt the adequacy of the information it will communicate that information to the competent authority in the host member state (host authority) within three months. The investment firm can start its business in a branch office, two months after the host competent authority has received notification from the home competent authority.

The supervision of an investment firm including its branches located in another member state remains the main responsibility of the home authority. The branch may also have reporting obligations to the host authority. It must also follow the market conduct Rules of the host authority. There are Rules on assistance in supervision between home and host authorities.

Provision of Services

When providing services under the freedom to provide services, without setting up a branch office, the home authority shall also be notified by the investment firm and it shall within one month communicate the information provided by the investment firm to the host authority. The investment firm may then start to provide the investment services in question in the host Member State.

- **For additional information see FAQs at CESR web-site at: <http://www.cesr-eu.org/>**

END USERS

1. Which derivative products can be traded in your jurisdiction under the laws of your jurisdiction?

(a) **US Products:** The CFTC web-site provides information on US derivatives products. <http://www.cftc.gov/cftc/cftcexchproducts.htm#products>

The exchanges subject to CFTC regulation trade futures and options on futures based on physical commodities and a broad spectrum of financial instruments and indexes, including “security futures” (futures on stock indexes and single shares):

- **Contracts Listed Pursuant to Exchange Certification:**
<http://www.cftc.gov/dea/deacertif.htm>
- **Contracts Recently Approved by the CFTC:**
http://www.cftc.gov/dea/deacontract_approved_list.htm
- **Contracts Pending CFTC Approval:**
<http://www.cftc.gov/dea/deapendingindustryfilings.htm#approvalrequests>
- **Security Futures Product (SFP) Filings**
- **Futures on Single Stocks (including ADRs):**
http://www.cftc.gov/sfp/sfpcertifiedtable_single.htm
- **Futures on Narrow-Based Indexes**
http://www.cftc.gov/sfp/sfpcertifiedtable_narrow.htm#narrow_based
- **Futures on Other Eligible Securities: ETFs, TIRs, Closed-End Funds**
http://www.cftc.gov/sfp/sfpcertifiedtable_narrow.htm#Etf TIRs

(b) **Note on “security futures products”:**

The Commodity Futures Modernization Act of 2000 (CFMA), which became law on December 21, 2000, establishes a framework for joint regulation by the CFTC and the Securities and Exchange Commission (SEC) of the trading of futures on **single securities** and on **narrow-based security indexes** (collectively, security futures products or SFPs). Previously, these products were prohibited from being offered in the United States. Instead, futures contracts were allowed only on diversified indexes that contained many securities and could not be used as a surrogate for trading in a single security.

With the passage of the CFMA, **broad-based security indexes, which are not considered security futures products**, continue to trade under the sole jurisdiction of the CFTC, while security futures products are subject to the joint jurisdiction of the CFTC and the SEC. For additional information, including methods for determining when an index is broad or narrow-based, see link at: <http://www.cftc.gov/sfp/sfpmain.htm>

2. Which possible prohibitions exist on products offered from your jurisdiction?

(a) **Product restrictions:** In addition to firm registration requirements, special considerations apply to the offer and sale to US persons of futures (or options on such futures) based on foreign securities or foreign government debt. *See CFTC Backgrounder: Foreign Instrument Approvals and Exemptions.* <http://www.cftc.gov/opa/backgrounder/opapart30.htm>

(b) **Foreign securities:** Futures and options on futures based on **broad-based security indexes** are under the exclusive jurisdiction of the CFTC. This is in contrast to **security futures products**, including futures on narrow-based security indexes, which are subject to the joint jurisdiction of the CFTC and the Securities and Exchange Commission. Specifically, Section 2(a)(1)(C)(iv) of the CEA generally prohibits any person from offering or selling a futures contract based on a security index in the US, except as otherwise permitted under the Act, including Section 2(a)(1)(C)(ii). By its terms, Section 2(a)(1)(C)(iv) of the CEA applies to futures contracts on security indices traded on both domestic and foreign boards of trade.

Section 2(a)(1)(C)(ii) of the CEA sets forth three criteria to govern the trading of futures contracts on a group or index of securities on contract markets and derivatives transaction execution facilities:

- (1) The contract must provide for cash settlement;
- (2) The contract must not be readily susceptible to manipulation or to being used to manipulate any underlying security; and
- (3) The group or index of securities must not constitute a narrow-based security index.

(c) **The CEA does not explicitly address the standards to be applied to a foreign security index futures contract traded on a foreign board of trade.** The CFTC's Office of General Counsel has applied the same three criteria noted above in evaluating requests by foreign boards of trade to allow the offer and sale within the US of their foreign security index futures contracts when those foreign boards of trade do not seek designation as a contract market or registration as a derivatives transaction execution facility to trade those products.

The information a foreign board of trade should submit when seeking no-action to offer and sell in the United States futures contracts on broad-based securities indexes is set forth in Appendix D to Part 30 of the CFTC Rules. Appendix "D" as well as other relevant information may be found at: <http://www.cftc.gov/dea/analysis/deaforeignexempt.htm>

(d) Note on Narrow Based Indexes

Although Section 2(a)(1)(E)(i) of the CEA authorizes the SEC and CFTC to jointly issue Rules to allow the offer and sale to a US person of security futures products traded on foreign boards of trade, that provision did not have a statutory deadline attached to it and the agencies have not issued such Rules.

To date, there is no procedure that allows narrow based foreign indexes to be offered to US customers.

(e) Foreign government debt

Debt obligations of a foreign government must be designated as an exempted security by the US Securities and Exchange Commission (SEC) under SEC Rule 3a12-8 before a futures contract or option thereon can be offered or sold in the United States.

3. How does an end user from another jurisdiction know how to identify the market operators, investment firms/intermediaries/brokers/asset managers in your jurisdiction with which they can do business?

(a) Intermediaries

NFA's BASIC website provides information on the registration status of intermediaries. <http://www.nfa.futures.org/basicnet/>.

NFA also maintains a listing of firms that have been disciplined for sales practice violations. http://www.nfa.futures.org/compliance/sales_practice_Rules_disciplined.asp

(b) Markets

The CFTC's web-site provides lists of approved markets. *See* link at: <http://www.cftc.gov/cftc/cftcexchproducts.htm>

4. What client money protections exist in your jurisdiction both in case of individual accounts and managed accounts, both individually and collectively?

CEA Section 4d and CFTC Rule 1.20 require FCMs (including any depositories) to treat and deal with customer funds as belonging to the customer, separately account for such funds, and

not commingle those funds with the funds of any other person. CFTC Rule 4.30 prohibits a CTA from receiving client funds in the trading advisor's name.

5. In principle: In the event of insolvency, bankruptcy or liquidation of an investment firm/intermediary: Is client money or other assets protected from claims from creditors of the investment firm? Would the client in such a situation be able to close or manage its positions?

The US Bankruptcy Code, Title 11 USC. Ch. 7, Subchapter IV and CFTC Rules Part 190 govern the failure of a market intermediary subject to CFTC jurisdiction. Under the CFTC's bankruptcy regulations, the accounts held by a commodity broker are divided into the following types or classes: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts and delivery accounts. In general, the CFTC's bankruptcy regulations require that customer property which is segregated on behalf of a specific account class, or readily traceable to customers of such account class, must be allocated on a pro-rata basis to the customer estate of the account class for which it is segregated or traceable. All other property is allocated among all account classes using a formula intended to equalize the percentage of each claim for each account class. CFTC Rule 190.08(c). Classes of customer accounts are identified to permit the implementation of the principle of pro rata distribution so that differing segregation requirements with respect to differing classes of accounts benefit customer claimants on the class of account for which they were imposed.

Among other things:

- Customer funds are acknowledged as separate from the broker and receive a priority. 11 USC. §766(h)
- Margin cannot be set aside except for fraud 11 USC. §546(i)(f)
- Liquidation or finality of variation margin payments can not be impaired by any court 11 USC. §556
- Transfer of accounts is explicitly permitted. 11 USC. §764

See also CFTC Rule 1.49. <http://www.cftc.gov/cftc/cftclawreg.htm>

[List of contacts follows on next page.]

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