

## **APPENDIX**

### **I. STANDARDS USED TO EVALUATE COMPARABILITY**

As set forth in Appendix A to Part 30 of the CFTC regulations, the CFTC reviews six specific regulatory elements to determine whether a foreign regulatory program offers protections to U.S. customers comparable to those offered in the U.S. These elements are: (1) registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and (6) compliance. In addition, the CFTC determines whether sufficient information-sharing arrangements exist between the CFTC and the recipient of an order issued by the CFTC. Note that the scope of relief issued by the CFTC pursuant to Part 30 extends to the activities of foreign brokers acting in the capacity of a futures commission merchant (“FCM”). An FCM is a commodity broker who can accept customer funds and property in connection with the solicitation or acceptance of orders.

### **II. QUALIFICATION**

The Commodity Exchange Act (“Act”) generally requires that all persons that intend to do business as futures professionals satisfy certain standards for fitness and register with the CFTC. The CFTC has delegated responsibility to the National Futures Association (“NFA”) to review applications and grant or deny registrations for all registration categories, including FCMs.

### **III. MINIMUM FINANCIAL REQUIREMENTS.**

Section 4f(b) of the Act expressly contemplates that adequately financed FCMs are necessary to protect customers. 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 and other participants in the commodities industry.

### **IV. 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. 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.

## **V. RECORDKEEPING AND REPORTING REQUIREMENTS.**

CFTC regulations require FCMs to file periodic and annual reports to both the CFTC and to customers. 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 also receives financial report filings from most FCMs on at least a monthly basis. CFTC Regulations 1.31 to 1.39 detail the recordkeeping requirements for FCMs.

## **VI. SALES PRACTICE STANDARDS**

The Act generally prohibits certain fraudulent activities. Section 4b of the Act 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). The Act also requires commodity professionals to make appropriate disclosures to customers regarding the risk of trading futures and options contracts.

## **VII. COMPLIANCE**

The CFTC shares with NFA the responsibility for ensuring compliance with the Act and CFTC regulations. 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 exchanges promulgate and enforce their own set of rules governing the transactions entered into on the exchange by FCMs.

## **VIII. INFORMATION-SHARING**

As a prerequisite to the CFTC issuing an order pursuant to Regulation 30.10, the recipient must enter into an information-sharing arrangement with the CFTC. The recipient generally must confirm that it:

- (1) will 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) will 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) does not believe that any local laws or statutes serve as an impediment to such cooperation.

## **ANNUAL QUESTIONNAIRE REGARDING MATERIAL CHANGES**

The following questions relate to material changes that have occurred since the original filing of the 30.10 petition. Please answer the following questions in detail.

1. Have there been any material changes with regards to the identity or organization of the original Petitioner (i.e. change in control, change in name, change in structure, etc.)?
  
2. Has there been a change in the role of the government, the regulator, or the self-regulatory organization(s) which has or could potentially impact their supervision of and their enforcement powers over the exchange and its members?
  
3. Has there been any material change in the legal framework which impacted or could impact any of the following:
  - a. Registration, authorization or other form of licensing, fitness review or qualification of persons through which customer orders are solicited and accepted;
  
  - b. Minimum financial requirements for those persons that accept customer funds;
  
  - c. Protection of customer funds from misapplication;
  
  - d. Recordkeeping and reporting requirements;
  
  - e. Minimum sales practice standards, including disclosure of risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law; and
  
  - f. Compliance (i.e. any change in oversight structure which impacted or could impact the governmental authority or the self-regulatory organization's ability to audit Part 30 firms for compliance with, or take action against persons that violate the requirements of the Part 30 program).

4. What changes, if any, have occurred in insolvency laws as they affect futures customers? If there have been changes to insolvency laws, have the changes occurred within the past two to three years? To what extent do you view any recently proposed changes to insolvency laws as resulting from the 2008-09 financial crisis?
  
5. Security futures products have both an equity component and a futures component. Consequently, in what accounts are security futures products held (i.e. the equity account, the futures account, or a combined account)? Are security futures products subject to separate disclosure and margin requirements than those required for plain vanilla futures products?
  
6. Please provide an updated list of all firms with relief under the Regulation 30.10 exemption.
  
7. Since the granting of the original exemption, please affirm whether 30.10 firms have been subject to arbitration and/or disciplinary proceedings arising from transactions with U.S. customers. To the best extent possible, please provide the number of times and a brief description of such proceedings.

Please provide the name and contact information for individuals to whom follow up questions might be directed.

END OF QUESTIONNAIRE