

when dealing on behalf of U.S. customers on a DIE.⁷

Fourth, in 2000, the Commission further clarified the procedures applicable to the treatment of customer funds by FCMs and Rule 30.10 firms. In new Appendix B to Part 30⁸ and an order amending prior Rule 30.10 orders,⁹ the Commission revised its prior interpretation of the Rule 30.7 secured amount requirement. In particular, the Commission stated that, subject to an additional disclosure requirement, the Rule 30.7 acknowledgment only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. Only if an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the necessary disclosure statement, must it then set aside funds with an acceptable depository and receive from such depository the required acknowledgment. With respect to the U.K., the Commission clarified the procedures with which SFA and IMRO members should comply when dealing on behalf of U.S. customers on a DIE.¹⁰

Information Sharing

Prior to the issuance of the U.K. Rule 30.10 Orders, the Commission entered into the Financial Information Sharing Memorandum of Understanding ("FISMOU") with, among others, SIB, AFB, TSA and IMRO.¹¹ In order to facilitate the exchange of information related to the U.K. Rule 30.10 Orders, the Commission subsequently entered into the "Addendum dated May 15, 1989 to Financial Information Sharing Memorandum of Understanding" ("Addendum") with, among others, SIB, AFB, TSA and IMRO.¹² The Commission and SIB also exchanged letters, referred to as the Side Letter and the Note to the Side Letter, regarding the continued application of a separate information sharing arrangement between U.S. and U.K. regulators entered into originally in 1986.¹³

Recent Changes to the U.K. Regulatory Structure

On December 1, 2001, pursuant to the Financial Services and Markets Act 2000 ("2000 Act"), the Financial Services Authority ("FSA"), as the successor organization to SIB,¹⁴ assumed its role as the single U.K. regulator directly responsible for the regulation of investment business, including the offer and sale of commodity futures and options. Prior to the enactment of the 2000 Act, the responsibility for supervising commodity futures markets and intermediaries rested with FSA and certain SROs, including the SFA and IMRO. Pursuant to the 1986 Financial Services Act ("FSA Act"), FSA regulated the U.K. financial markets and established general standards for investor protection. The SROs conferred the status of authorization for intermediaries and promulgated general fitness standards, financial requirements, sales practice rules and rules designed to ensure the integrity of the market. With the enactment of the 2000 Act, the responsibility for each of these tasks has been assumed by FSA as the single supervisory authority, the U.K. SROs have been wound up, and the members of these now-defunct organizations are deemed to have been authorized by FSA. In addition, the FSA Handbook replaces all prior rules and regulations regarding firm conduct and operations. In light of its new regulatory role, FSA has requested that the Commission amend the U.K. 30.10 Orders to reflect this change in regulatory oversight.

Recent Changes Under the Commodity Futures Modernization Act

The Commission notes that the Commodity Futures Modernization

between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures (dated September 23, 1986), as supplemented by the Memorandum Relating to US/UK MOU (dated November 22, 1988), and superseded by the Memorandum of Understanding on Mutual Assistance and the Exchange of Information Between United States Securities and Exchange Commission and Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry and the Securities and Investment Board (dated September 25, 1991) (collectively, the "US/UK MOU"). After the 1991 update to the US/UK MOU, the SIB and CFTC exchanged letters confirming the continued applicability of the Side Letter and the Note to the Side Letter. See Letters exchanged by Wendy L. Gramm, Chairman, Commission, and Sir David Walker, Chairman, SIB, dated September 25, 1991.

¹⁴ In 1977, SIB's name was formally changed to FSA as a first step to unite banking supervision and investment services regulation under one body. In 1998, banking supervision was transferred to FSA from the Bank of England.

Act¹⁵ amended the Act to provide the Commission greater regulatory flexibility to streamline and eliminate unnecessary regulation for the entities regulated under the Act. With this in mind, Commission staff has reviewed the Commission Orders issued pursuant to Rule 30.10. As part of this review, Commission staff has discussed with each Rule 30.10 Order recipient how best to update, if necessary, the information contained in the Order, whether some or all of the terms and conditions of the order continue to be necessary, and whether new conditions may be required based upon developments in the relevant jurisdiction.

In response to Commission staff's discussion with it, FSA has requested further that the Commission amend certain terms and conditions set forth within the U.K. Rule 30.10 Orders.¹⁶ Specifically, FSA requested the following changes:

1. *Risk Disclosure.* Subsequent to the Commission issuing the U.K. Rule 30.10 Orders, it adopted Appendix A to Rule 1.55(c).¹⁷ In doing so, the Commission noted that the generic risk disclosure statement set forth in Appendix A may be used in lieu of the statements required by Commission Rules 1.55, Rule 33.7 and the special bankruptcy disclosures of Commission Rule 190.1(c).¹⁸ The Commission determined further that all firms operating pursuant to confirmed Rule 30.10 relief may elect to use the generic risk disclosure statement or the risk disclosure statements mandated by Commission Rules 1.55 and 33.7 and applicable Commission orders, as appropriate.¹⁹ FSA has provided DCIO with the written disclosures required to be provided to prospective customers pursuant to FSA conduct of business rules and DCIO has determined that such disclosures track the language set forth in the generic risk disclosure statement. Accordingly, FSA requested that the Commission exempt firms designated by FSA from compliance with the Commission's risk disclosure requirements as they apply to transactions under Part 30.

2. *Segregation of Customer Funds.* At the time that the Commission issued the U.K. Rule 30.10 Orders, U.S. customers were not permitted to opt out of segregation. Accordingly, each U.K. firm receiving

¹⁵ Pub. L. 106-554, 114 Stat. 2763 (December 21, 2000).

¹⁶ See Letter from Michael Folger, Director of Conduct of Business Standards, FSA, to Jane Kang Thorpe, Director for the Division of Clearing and Intermediary Oversight, dated July 24, 2003 ("July 24 Letter"). As part of its policy to promote more transparency to the activities of the Commission and to permit affected parties to voice their support or concerns, the July 24 Letter was posted on the Commission's Web site and interested parties were provided a two-week period to submit any comments. No comments were received.

¹⁷ 59 FR 34376 (July 5, 1994).

¹⁸ *Id.* 34378.

¹⁹ *Id.* 34379.

⁷ 62 FR 10447 (March 7, 1997) (SFA); 62 FR 10449 (March 7, 1997) (IMRO).

⁸ 65 FR 60558 (October 11, 2000).

⁹ 65 FR 60560 (October 11, 2000) (referred to herein as the "Supplemental Client Money Order").

¹⁰ 65 FR at 60563-64.

¹¹ Dated September 1, 1988.

¹² See, e.g., 54 FR 21604, 21607-08.

¹³ See, e.g., 54 FR 21604, 21608. The Side Letter and Note to the Side Letter referred to the 1986 Memorandum of Understanding Between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and