

confirmation of relief was required to consent to refuse U.S. customers the option of not segregating funds notwithstanding relevant provisions of the U.K. regulatory system.²⁰ The Act recently was amended, however, to permit intermediaries conducting business on a derivatives transaction execution facility ("DTEF") to offer any customer that is an eligible contract participant ("ECP") the right to opt out of segregation for any transactions entered into on the DTEF. Pursuant to this authority, the Commission adopted Rule 1.68, which permits a DTEF to adopt rules allowing futures commission merchants ("FCMs") to offer certain sophisticated customers the right to elect not to have funds, that are being carried by the FCM for purposes of margining, guaranteeing, or securing the customers' trades on or through a DTEF, separately accounted for and segregated.²¹ Given that the bulk of foreign futures and options activity undertaken by U.S. persons is conducted by sophisticated customers, FSA requested that the Commission authorize U.K. firms to permit U.S. customers that are ECPs to opt out of segregation with respect to those foreign futures and options transactions entered into pursuant to the revised Order.

3. *Bank Undertakings.* Currently, each U.K. firm using an approved bank undertaking to meet any part of its financial resources requirement is subject to a notification requirement should the value of customer funds segregated on behalf of U.S. customers exceed a specified multiple of the firm's minimum financial requirement. If such an event were to occur, the firm consents to notify FSA on its quarterly financial statement to FSA, or at such other times as may be specified by FSA, the value of funds required to be segregated on behalf of U.S. customers. This notification requirement was designed to take into account the impact of bank undertakings in the context of the Commission's minimum financial resource requirement for futures commission merchants (*i.e.*, four percent of segregated funds). FSA has represented that the European Union's Capital Adequacy Directive forbids certain regulated financial institutions, including firms authorized by FSA to conduct futures business and hold customer funds, from using bank undertakings. Accordingly, FSA requested that the Commission eliminate the notification requirement for firms using an approved bank undertaking.

4. *Regulated Markets.* Currently, the scope of the U.K. Rule 30.10 Orders is limited to foreign futures and options traded on a Recognized Investment Exchange ("RIE") or a Designated Investment Exchange ("DIE").

As part of the European Union's ("E.U.'s") attempt to create a single marketplace among all member states, the Investment Services Directive applicable to all E.U. members created a category of markets known as a Regulated Market. A Regulated Market is an exchange organized and operating from within one of the E.U. member states that has been recognized by the E.U. as meeting certain standards for financial integrity and customer protection. With the exception of the London Metal Exchange, the International Petroleum Exchange and EDX London, all U.K. exchanges that are RIEs are now also Regulated Markets within the meaning of the Investment Services Directive. Non-U.K. Regulated Markets have been progressively removed from the category of DIEs because they are exempt from the requirement to be authorized in order to conduct investment business in the U.K. The DIE classification presently includes only non-U.K., non-E.U. markets recognized by FSA. Accordingly, FSA has requested that the Commission expand the scope of the revised Order to include transactions executed on or subject to the rules of RIEs, DIEs, and Regulated Markets, subject to the existing limitation that an exempt firm may not intermediate transactions on behalf of U.S. customers on U.S. exchanges.

Upon consideration of the foregoing, the Commission has determined to consolidate and amend the Orders into a single Order restating the terms and conditions for relief as requested by FSA. Accordingly, the Commission hereby:

(1) Acknowledges that:

(a) Pursuant to the Financial Services and Markets Act 2000, FSA has succeeded the SIB, SFA and IMRO as the relevant U.K. regulatory organization for the supervision of commodity futures and options transactions conducted within the U.K.;

(b) Firms authorized under the Financial Services Act 1986 are now authorized to carry on designated investment business under the Financial Services and Markets Act 2000;

(c) Provisions made under the Financial Services Act of 1986 have been replaced by generally equivalent provisions of the FSA Handbook for rules and guidance under the Financial Services and Markets Act 2000;

(d) All confirmations of Rule 30.10 relief previously extended and then in effect by Commission staff or the National Futures Association ("NFA")²² to SIB, SFA and IMRO firms remain effective with respect to such firms in their capacity as new regulatees of FSA;

(e) The Financial Information Sharing Memorandum of Understanding and related information-sharing arrangements remain applicable, and that firms authorized to carry on designated investment business by FSA shall be entitled to all of the benefits, subject to the remaining parties' performance of their respective responsibilities, including compliance with the Side Letter and Note to the Side Letter; and

(f) The relief set forth previously in the Limited Marketing Orders and the

Supplemental Client Money Order remains effective with respect to each firm that has received confirmation of Rule 30.10 relief pursuant to this Order; and

(2) Confirms that the relief granted pursuant to this Order extends to brokerage activities conducted on or subject to the rules of an RIE, DIE or Regulated Market, but does not extend to rules or regulations relating to trading, directly or indirectly, on U.S. contract markets or derivatives transaction execution facilities; and

(3) Revokes the relief set forth in Orders dated May 19, 1989 and April 5, 1991, issued previously to the now-defunct SIB (54 FR 21599), IMRO (54 FR 21614), and SFA (56 FR 14017).

In connection with the Rule 30.10 relief previously granted to the U.K. regulatory and self-regulatory organizations, Commission staff has issued certain no-action letters regarding the treatment of customer funds attributable to trading on the LME.²³ In light of the changes to the U.K. regulatory program, the Commission believes that it is appropriate to amend these letters by substituting all prior references to AFBD and SFA with FSA.

Based upon the Commission's prior determination to issue relief under Rule 30.10, the information provided to the Commission by FSA describing the recent changes to the U.K. regulatory framework, and the recommendation of Commission staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, generally have been satisfied and that compliance with applicable U.K. law and FSA rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by FSA as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The separate account requirements contained in Commission Rule 30.7, 17 CFR 30.7;
- The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and

²⁰ The Part 30 Orders mandated compliance with Rule 30.7's secured amount requirement or foreign equivalent. The secured amount requirement set forth in Rule 30.7, and described more fully in Appendix B to Part 30, is similar to the segregation requirement set forth in Section 4d of the Act and rules promulgated thereunder.

²¹ 66 FR 20740 (April 25, 2001). At the time of the rulemaking, the Commission determined to defer its decision whether to extend the choice to opt out of segregation to ECPs trading on designated contract markets, but noted that it may reconsider the issue in the future. *Id.* at 20743.

²² See *infra* n.37.

²³ See Letter from Andrea Corcoran, Director, Division of Trading and Markets, to the Hon. Christopher J. Sharples, Chairman, AFBD, dated October 10, 1989; Letter from Andrea Corcoran, Director, Division, to A.R.G. Frase, AFBD, dated June 19, 1990; Letter from Andrea Corcoran, Director, Division of Trading and Markets, to Phillip Thorpe, Chief Executive, AFBD, and Chief Designate, SFA, dated April 1, 1991; Letter from John C. Lawton, Acting Director, Division of Trading and Markets, to Alan Whiting, Executive Director for Regulation and Compliance, LME, dated April 3, 2000.