identity of the position holder and related positions, in connection with surveillance of a potential ''market disruption.'' This is particularly true in the case of integrated markets.

The Commission wishes to emphasize that the information sharing arrangements discussed herein are not necessarily a substitute for, nor would they preclude, a more formal agreement or arrangement with respect to the sharing of information.

Marketing Activities by Firms Granted Rule 30.10 Relief

FR date and citation: November 3, 1992, 57 FR 49644; August 17, 1994, 59 FR 42158.

[52 FR 28998, Aug. 5, 1987, as amended at 59 FR 42158, Aug. 17, 1994]

APPENDIX B TO PART 30—INTERPRETATIVE STATEMENT WITH RESPECT TO THE SECURED AMOUNT REQUIREMENT SET FORTH IN §30.7

1. Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts such money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers.[1] This amount is denominated as the ''foreign futures or foreign options secured amount'' and that term is defined in Rule 1.3(rr). The separate accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c). Further, each FCM must obtain and retain in its files for the period provided in Rule 1.31 an acknowledgment from the depository that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

2. In a series of orders issued pursuant to Rule 30.10, the Commission required that certain foreign firms exempt from registration as FCMs essentially comply with the standards of Rule 30.7.[2] Specifically, the Commission stated that ''[the secured amount] requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at *all* intermediaries and exchange clearing organizations.''[3] The Commission

[1] ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.3] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7].'' Rule 30.1(c). ''Foreign futures'' means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Rule 30.1(a). ''Foreign option'' means ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'put,' 'call,' 'advance guaranty,' or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade.'' Rule 30.1(b).

[2] Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Commodity Exchange Act (''Act'') and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization (''SRO''). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief (referred to herein as ''Rule 30.10 firms'') must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. For a list of those foreign regulators and SROs that have been issued a Rule 30.10 order, see appendix C to part 30. In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction be granted broader relief to engage in transactions on exchanges other than in its home jurisdiction (referred to herein as ''expanded relief''), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions. Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7. For the most recent order granting expanded relief, see 64 FR 50248 (September 16, 1999) (Singapore Exchange Derivatives Trading Limited).

[3] 64 FR 50248, 50251, n.19 (emphasis added).

further interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to take appropriate action (i.e., set aside funds in a ''mirror'' account) in the event that it becomes aware of facts leading it to conclude that foreign futures and foreign options customer funds are not being handled consistent with the requirements of Commission rules or relevant order for relief by any subsequent intermediary or exchange clearing organization.

3. Upon further analysis and reconsideration of this matter, the Commission has determined to revise its prior interpretation of the Rule 30.7 secured amount requirement. The Commission notes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating FMC or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whetehr the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.[4]

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) (''Rule 1.55(f) customers'').[5] While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transactions.[6]

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7),[7] or (2) Paragraphs 6 and 8 of appendix A to Rule 1.55(c).[8] Rule

[4] Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. appendix A to part 30.

[5] 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of ''eligible swap participants'' in Rule 35.1.

[6] *Id.* at 8569.

[7] Rule 1.55(b)(7) reads as follows: Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

[8] Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable

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30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulatory) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, 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. If an FCM receives from the initial depository the acknowledgment described in Rule 30,7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of appendix A of Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by is home regulator.

7. IF an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers and acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of October 11, 2000. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of part 30.

[65 FR 60558, Oct. 11, 2000]

APPENDIX C TO PART 30—FOREIGN PETITIONERS GRANTED RELIEF FROM THE APPLICATION OF CERTAIN OF THE PART 30 RULES PURSUANT TO §30.10

Firms designated by the Sydney Futures Exchange Limited.
- FR date and citation: November 7, 1988, 53 FR 44856.
- FR date and citation: April 13, 1993, 58 FR 19210.
- FR date and citation: March 7, 1997, 62 FR 10447.
- FR date and citation: 70 FR 40395, July 17, 2006.

Firms designated by the Singapore Derivatives Trading Limited.
- FR date and citation: January 10, 1989, 54 FR 809.
- FR date and citation: September 16, 1999, 64 FR 50251.
- FR date and citation: September 4, 2007, 72 FR 50645.

Firms designated by the Montreal Exchange.
- FR date and citation: March 17, 1989, 54 FR 11182.
- FR date and citation: February 27, 1997, 62 FR 8877.

Firms designated by the Toronto Futures Exchange.
- FR date and citation: March 22, 1990, 55 FR 10614.

Authorized Persons as designated in Annex E to the Mutual Recognition Memorandum of Understanding
- FR date and citation: June 13, 1990, 55 FR 2390; December 23, 1991, 56 FR 66345.

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as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.