extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–33918 Filed 12–29–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Concept Release on the Denomination of Customer Funds and the Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is publishing this release to obtain the views of the public on how to address risks related to holding segregated funds offshore or in foreign currencies. The Commission wishes to consider how to update and otherwise to revise existing regulatory standards to avoid inhibiting transnational commodity futures activities or causing undue costs or operational inconvenience, without increasing risks to market participants. This initiative is part of the Commission's recently adopted strategic plan, which includes ensuring ''sound financial practices of clearing organizations and firms holding customer funds'' and facilitating ''the continued development of an effective, flexible, regulatory environment responsive to evolving market conditions.'' [1]

The Commodity Exchange Act (''Act'') [2] requires that all money, securities and property received by futures commission merchants (''FCMs'') to margin, guarantee, or secure customer trades or contracts on domestic contract markets, or accruing to customers as a result of these trades or contracts, be segregated. Until 1988, the Commission generally required that such money, securities and property (hereinafter collectively referred to as ''customer funds'') be held in the United States (''U.S.'') with the exception of certain funds held on behalf of non-U.S.-domiciled customers.[3]

In November 1988, the Commission issued Financial and Segregation Interpretation No. 12, ''Deposit of Customer Funds in Foreign Depositories'' (''Interpretation No. 12'').[4] Interpretation No. 12 permits customer funds to be held in depositories located outside of the U.S., subject to limitations and conditions intended for the protection of these funds. At the time Interpretation No. 12 was issued, the Commission stated its intention to ''monitor experience under this interpretation * * * to alter or supplement the conditions for keeping segregated funds offshore as such experience renders advisable.'' Various developments since 1988 make it appropriate to revisit this area.

Date: Comments must be received on or before March 2, 1998.

FOR FURTHER INFORMATION CONTACT: France M.T. Maca, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W. Washington, D.C. 20581. Telephone: (202) 418–5482.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulatory Requirements

1. Commodity Regulation

The maintenance and location of customer funds is prescribed by Section 4d of the Act which requires that each FCM:

> Treat and deal with all money, securities, and property received by such [FCM] to margin, guarantee, or secure the trades or contracts of any customer of such [FCM], or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such [FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one from whom the same are held.

It further provides that:

> It shall be unlawful for any person, including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing [FCM] or any person other than the customers of such [FCM].

The Commission's segregation requirements are set forth in Regulations 1.20–1.30, 1.32 and 1.36, 17 CFR 1.20–1.30, 1.32 and 1.36. They provide, among other things, that a customer's funds: must be accounted for separately by the FCM; may not be commingled with the FCM's own funds or those of any other person; must be available immediately upon demand; and must be used only to margin or to secure contracts traded on or subject to the rules of a designated contract market. Neither Section 4d of the Act nor these regulations address the holding of customer funds offshore or in foreign currencies.

Interpretation No. 12 permits the deposit of U.S. customer funds offshore, subject to conditions intended to ensure consistency with the segregation requirements of the Act and ''generally to prevent the dilution of customer funds held in segregation in the United States.'' Accordingly, Interpretation No. 12 limits the circumstances under which funds may be held offshore; requires specified qualifications for foreign depositories; requires a certain

[1] See Vision and Strategies for the Future: Facing the Challenges of 1997 through 2002, published by the Commission (September 1997).

[2] 7 U.S.C. 1 *et seq.*

[3] See Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974).

[4] 53 FR 46911 (November 21, 1988).

amount of funds to be held in dollars in the U.S.; and requires that customers whose funds are deposited offshore subordinate their claims against segregated funds to those of customers whose funds are deposited in the U.S. or in other currencies.

More specifically, Interpretation No. 12 permits customer funds, including funds of U.S. customers, to be held offshore subject to the following conditions:

1. With respect to U.S.-domiciled customers, only funds held for trading contracts that are priced and settled in a foreign currency may be held in foreign depositories;
2. FCMs must segregate sufficient funds in dollars in the U.S. to meet all dollar-denominated obligations to customers;
3. Customer funds may be held only in the country of origin of the applicable currency or in a country with which the Commission has an information sharing arrangement;
4. Foreign depositories must meet Commission Regulation 30.7(c) criteria; [5] and
5. FCMs must obtain from customers a subordination agreement whereby the customer authorizes the deposit of its funds in a foreign depository and subordinates its claim thereto to the claims of customers whose accounts are denominated in U.S. dollars.[6] The subordination agreement would be activated in the event the FCM is placed in bankruptcy or receivership and there are insufficient customer funds available for distribution to satisfy all customer claims.

2. Bankruptcy Regulation

Subchapter IV of Chapter 7 of the Bankruptcy Code (11 U.S.C.) accords customers of an insolvent commodity broker priority in the distribution of customer property:

> The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims, except claims * * * attributable to the administration of customer property.

In 1983, the Commission adopted Part 190 of its regulations to implement the Bankruptcy Reform Act of 1978.[7] Part 190 recognizes different account classes to permit ''the implementation of the principle of pro rata distribution so that the differing segregation requirements with respect to different classes of accounts benefit customer claimants based on the class of account for which they were imposed.'' [8] The account classes are: futures accounts, foreign futures accounts, leverage accounts, commodity options accounts, and delivery accounts.[9] Futures and options accounts that trade foreign currency contracts, contain foreign currencies, or are located offshore are not recognized as a separate account class. The subordination agreement required by Interpretation No. 12, in effect, results in these accounts being treated as belonging to separate account classes in the event of an FCM's bankruptcy.

3. Banking Regulation

Prior to 1988, the Board of Governors of the Federal Reserve had a policy discouraging banks in the U.S. from accepting deposits of foreign currencies. Shortly after the Commission issued Interpretation No. 12, in order to address the needs of contracts settled in foreign currencies, the Board changed its policy and began to allow banks located in the U.S. to accept foreign currency deposits.

Regulation Q (12 CFR § 217) generally prohibits U.S. banks from paying interest on demand deposits. [10] Regulation Q does not prohibit foreign branches of U.S. banks from paying interest on demand deposits, provided that the U.S. bank does not expressly guarantee repayment of the deposits in the U.S.

B. Developments Since the Issuance of Interpretation No. 12

At the time Interpretation No. 12 was issued, the Commission stated its intention to ''monitor experience under this interpretation * * * to alter or supplement the conditions for keeping segregated funds offshore as such experience renders advisable.'' Various developments since 1988 make it appropriate to revisit this area. First, as noted above, when Interpretation No. 12 was issued, U.S. banks generally did not hold foreign currencies in the U.S. Therefore, Interpretation No. 12 does not explicitly address risks related to customer funds denominated in foreign currencies and held in the U.S.[11] Second, since 1988, U.S. contract markets have listed many futures and option contracts that are priced and settled in foreign currencies. The use of foreign currencies in connection with trading these contracts, particularly the use of currencies of countries that are major financial centers, has become commonplace. Third, trading volume in the competing offshore and over-the-counter markets has increased dramatically since 1988, raising competitiveness concerns in the industry. Fourth, industry sources have expressed the view to Commission staff that the subordination requirement of Interpretation No. 12 is cumbersome, unnecessarily penalizes customers who deposit foreign currencies with FCMs, and is an impediment to access to the U.S. futures markets for non-U.S. customers who may be reluctant to subordinate their claims.[12]

Finally, several FCMs and a clearing organization have requested permission to maintain in offshore accounts customer funds denominated in foreign currencies. The FCMs represented that holding funds offshore would better serve the needs of their foreign-domiciled clientele. The clearing organization contended that it could draw interest on customer funds held offshore, which would permit it to be more competitive. Interpretation No. 12 allows customer funds to be held offshore only if ''such funds are used to margin, guarantee, or secure positions in a contract traded on a domestic contract market that is priced and settled in a foreign currency'' and only with the express consent and subordination of the customer. Moreover, Interpretation No. 12 clearly states the Commission's belief that ''some constraints are necessary to prevent the transfer of funds overseas for reasons unrelated to trading in the relevant contracts.'' Accordingly, a clearing organization could not move and maintain customer funds offshore except as permitted by Interpretation No. 12 or unless it

[5] These criteria are detailed in Part III C *infra*.

[6] Commission staff has interpreted this requirement to apply with respect to funds denominated in foreign currencies, wherever held. See, fn. 11 *infra* and accompanying text.

[7] 48 FR 8716 (1983).

[8] See Part 190 proposal, 46 Fed. Reg. 57535 (1981) (the ''Proposing Release'').

[9] Commodity options accounts do not constitute a separate class to the extent they relate to transactions subject to regulation under the Act and the Commission's regulations, because FCMs are permitted to commingle funds required to be segregated. Section 4d(2) of the Act, 7 U.S.C. 6d(2); Commission's Regulations 190.01 and 1.3(hh).

[10] The Commission requirement that customer funds be available upon demand results in these funds being categorized by banks as demand deposits. A bill to repeal the prohibition on the payment of interest on demand deposits was introduced by Rep. Metcalf on July 31, 1997, and is currently pending. See H.R. 2323, 105th Cong., 1st Sess. (1997).

[11] However, Commission staff has interpreted the subordination requirement of Interpretation No. 12 to be applicable to customer funds denominated in foreign currencies, wherever held.

[12] Interpretation No. 12 ''has the effect of making overseas customers less willing to use U.S. futures markets because it imposes a subordination requirement on foreign currency deposits that is obsolete in today's global economy * * *.'' (Letter dated November 4, 1997, to the Commission from the Chicago Mercantile Exchange). A number of brokerage firms interviewed by Commission staff in connection with reviewing the requirements of Interpretation No. 12 expressed the same view.

obtained relief from the requirements thereof.[13]

II. Policy Considerations

A. Goals

The protection of customer funds is a cornerstone of the Act and the Commission's regulations. Typically, U.S. market participants deposit dollars or dollar-denominated assets with their FCM. These assets are held in segregation in the U.S. Increasingly, however, there appears to be a need or desire to hold customer funds overseas or in non-U.S. dollar denominations.

Historically, the Commission has proceeded with caution in allowing customer funds to be held offshore or denominated in foreign currencies and intends to continue to do so. Nevertheless, at this juncture, the Commission wishes to take a comprehensive look at the needs and practices of the industry in evaluating possible revisions of its requirements. Three distinct questions must be considered: (1) Whether and under what circumstances customers may choose to have segregated funds deposited offshore or denominated in foreign currencies; (2) whether and under what circumstances FCMs may choose to hold segregated funds offshore or in foreign currencies; and (3) whether and under what circumstances clearing organizations may choose to hold segregated funds offshore or in foreign currencies.

In each case, the extent of the need or desire for holding customer funds offshore or in foreign currencies must be assessed against the related risks. Risk limiting measures must be considered, and the question of who should bear the risks that cannot be eliminated must be explored. One of the premises of Interpretation No. 12 is that customers whose accounts are denominated in U.S. dollars must be insulated from the risks resulting from an FCM holding funds offshore or in foreign currencies. The continuing viability of this premise has been questioned by some industry participants.

The Commission encourages commenters to describe their current practices and to provide a detailed analysis of the reasons for their desire or need to keep segregated funds offshore. Commenters should discuss related risks and how these risks should be addressed for the protection of customers. Commenters should also explain how revisions to the current requirements could affect their business.

B. Risks

Holding segregated funds offshore or in foreign currencies creates three types of risk:

—currency risk;
—depository risk; and
—sovereign risk.

Currency risk arises when an obligation is denominated in one currency and the asset held to meet that obligation is in another currency. Fluctuations in exchange rates can cause the amount of the obligation to change at a different rate than the value of the asset, thereby resulting in insufficient funds in segregation to meet the obligation.

Depository risk is the danger that a depository holding customer funds may be unable or unwilling to release those funds on demand. This risk, of course, exists with domestic depositories but contains additional elements overseas, particularly insofar as the Commission's knowledge of, or authority over, foreign depositories may be less.

Sovereign risk is the chance that a foreign government might take action preventing a depository or an FCM from releasing customer funds despite the requirements of Section 4d of the Act.

III. Potential Approaches

This part of the concept release sets forth a number of possible methods to address the risks described above and the issues that have arisen since Interpretation No. 12 was issued. Some of the listed methods are existing requirements; others are measures suggested by industry members or devised by Commission staff. The listing of potential approaches in this concept release is designed only to elicit public comment. It is not intended as an endorsement or to indicate a willingness on the part of the Commission to adopt these approaches or to abandon existing provisions.

The Commission requests commenters to indicate their preferred alternatives from among those listed or to suggest other methods. The alternatives are organized into six categories. These categories represent potential avenues for dealing with the risks described above. They are:

—the permissible denominations of FCMs' obligations to their customers;
—the permissible denominations of assets held in segregation;
—the permissible locations of segregated funds;
—the qualifications of non-U.S. depositories;
—the segregation and net capital treatment of customer funds held offshore or in foreign currencies; and
—the bankruptcy treatment of these funds.

The first five categories above primarily involve steps that could reduce risks. The last category involves steps that could be taken to allocate losses equitably in the event that shortfalls in segregated funds nevertheless occur. The list of potential choices in each area of intervention generally proceeds from most restrictive to least restrictive. Each option may address more than one type of risk, and choices within one section are not necessarily mutually exclusive. Moreover, a choice under one area may affect a choice in another. For example, choices under section C, relating to countries where segregated funds may be held, must be made in conjunction with related requirements under section E, regarding the segregation treatment of customer funds. Each section is followed with a brief discussion of the potential impact of listed choices. A variety of overall approaches can be constructed by selecting different combinations.

Because the Commission generally favors an approach that emphasizes prophylactic measures, most listed choices are intended to reduce relevant risks. However, the Commission recognizes that all risks cannot be prevented. Accordingly, possible procedures also are included to alleviate the consequences of residual risks, *i.e.*, any risks that cannot be effectively eliminated.

A. Permissible Denominations of Obligations

1. Alternatives

An FCM's obligation to a customer may be denominated in a currency other than U.S. dollars:

a. In connection with contracts priced and settled in that currency.

b. (i) In connection with contracts priced and settled in that currency; or (ii) if the customer is domiciled overseas.

c. If the currency is acceptable for margin purposes on a U.S. contract market.

d. With the customer's written authorization.

e. Other, please specify.

2. Discussion

As noted above, because currencies fluctuate at different rates, where obligations are denominated in one currency and assets held to meet these obligations are denominated in another,

[13] Indeed, on a case by case basis, the Division of Trading and Markets has permitted customer funds to be maintained by clearing organizations in London and Mexico City.

an imbalance may result between assets and obligations resulting in insufficient funds in segregation to meet the obligations. Accordingly, the denomination of both assets and obligations to customers must be considered.

Discussions with participants in the industry indicate that, under current practices, the agreement signed by a customer opening an account with an FCM usually specifies either that obligations to the customer are in U.S. dollars, unless otherwise agreed, or that the customer will be paid in the currency it deposits or in which any earnings are accrued. The discussions also indicate, however, that these principles are not uniformly applied and indeed that some FCMs may not have a clear agreement with their customers regarding the currencies in which customers are to be paid. This should be clarified as it may ultimately dictate whether gains and losses resulting from currency fluctuations will accrue to, or be borne by, the FCM or its customers. The choices made for this section must be considered in close conjunction with those made for the next section relating to permissible denomination of assets.

B. Permissible Denominations of Assets

1. Alternatives

Assets held in segregation may be denominated in a foreign currency only:

a. In connection with contracts priced and settled in that currency.

b. (i) In connection with contracts priced and settled in that currency; or (ii) if the customer is domiciled overseas.

c. If the currency is acceptable for margin purposes on a U.S. contract market.

d. With the customer's written authorization.

e. Other, please specify.

2. Discussion

Current Interpretation No. 12 permits the deposit offshore of funds ''used to margin, guarantee, or secure positions in a contract traded on a domestic contract market that is priced and settled in a foreign currency or accrue to such a customer as a result of positions in such contracts.'' Provided that FCMs recompute the asset/obligation balance on a daily basis, any choice above would effectively address currency risk. Absent a requirement to rebalance asset/obligations daily, only choice (a) could result in a ''natural'' balance. The other choices would not ensure the continuous balance of assets and obligations.[14] Commenters should indicate whether alternatives (b), (c), and (d) should be limited further to specific currencies.

C. Permissible Locations of Segregated Funds

1. Alternatives

Segregated funds may be held at an approved depository in any of the following geographic locations (commenters should choose the appropriate combination):

a. The U.S.

b. The country of origin of the currency in which the related contract is priced and settled.

c. A country with which the Commission has an information sharing arrangement.[15]

d. For a limited period of time, the country in which the customer is domiciled, and only for operational ease in receiving and disbursing funds from and to customers living in foreign countries and trading on U.S. contract markets.

e. Without time limitation, the country of domicile of the customer.

f. The G7 countries (plus Switzerland).[16]

g. Some or all of the twenty-four countries that the Securities and Exchange Commission (''SEC'') considers as major money centers.[17]

h. Other, please specify.

2. Discussion

Choice (a), requiring funds to be held in the U.S., is more restrictive than the current Interpretation No. 12 approach. This choice is more viable now than it was at the time Interpretation No. 12 was issued because, as noted above, in the interim, the Federal Reserve changed its policy concerning foreign currency deposits in the U.S. Nevertheless, the Commission recognizes that it could impose additional costs on the industry. The requirement that segregated funds be held in the country of origin of the currency (choice (b)) is a current Interpretation No. 12 requirement. Under choice (b), an increase in the number of currencies in which contracts traded in U.S. contract markets settle would automatically trigger additional countries as permissible segregated funds locations.[18] This choice may result in countries being added and taken off the list of permissible locations based on contract designations at any given time.

Choice (c) also reflects current Interpretation No. 12. In 1988, the Commission had an information sharing arrangement with the Australian National Companies and Securities Commission and with the United Kingdom Securities and Investments Board. The Commission currently has information sharing or cooperation arrangements with regulators of over fifteen foreign jurisdictions. While the existence of a framework of cooperation with the Commission is a positive factor, other factors, such as economic and political soundness of the country, also are important. Choices (f) and (g) would limit possible depository countries to countries generally considered to be secure and to have sophisticated regulatory regimes. Alternative (e) would permit FCMs to hold customer funds offshore for operational convenience in any country where an FCM's customer is domiciled.

D. Qualifications of Depositories

1. Alternatives

To qualify to hold segregated funds, a depository must provide the depositing FCM the segregation acknowledgment required by Commission Regulation 1.20 and:

a. Must be located in the U.S.

b. If located offshore, must have a branch or correspondent in the U.S. which guarantees repayment in the U.S. in the event the foreign depository fails to fulfill its obligation for any reason.

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[14] However, potential imbalances would be mitigated by other measures such as a requirement that FCMs take a haircut in their net capital computation for any unhedged foreign currencies. See Part III E *infra*.

[15] The Act enables the Commission to enter into various types of cooperative arrangements with foreign futures authorities. See, *e.g.*, Sections 8(a)(1) and 12(f)(2) of the Act.

[16] The G7 is a group of industrialized countries. It includes: the U.S., Canada, France, Germany, Italy, Japan and the United Kingdom. For purposes of determining major money centers, Switzerland is often added to the list.

[17] SEC no action letter from Michael Macchiaroli to Douglas Preston of the Securities Industry Association [1992 Transfer Binder], SEC Rep. (CCH) ¶ 76,245 (August 21, 1992). Subject to certain conditions, the Market Regulation Division would not recommend any enforcement action against broker dealers who hold money market instruments in a ''major money market'' if they do not take a one hundred percent haircut on these instruments in calculating net capital under Rule 15c3–1 of the Securities Exchange Act of 1934. The letter lists twenty-four countries that are considered as major money markets. These countries are: Australia; Austria; Belgium; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong; Ireland; Italy; Japan; Luxembourg; the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; the United States; the United Kingdom.

[18] When Interpretation No. 12 was issued, no contracts priced and settled in a foreign currency were traded on U.S. contract markets. However, two applications were pending before the Commission for designation of such contracts. Currently, many contracts that margin and settle in foreign currencies are traded on U.S. contract markets.

c. If located offshore, must have a branch or correspondent in the U.S. which guarantees repayment in the U.S. in the event the foreign depository fails to fulfill its obligation for any reason other than sovereign action.

d. If located offshore, must be an FCM or a designated bank or trust company as defined in Advisory 87–5.[19]

e. Some combination of the elements of alternatives (a) through d.

f. Other, please specify.

2. Discussion

Alternative (d), which relies on the commercial paper or long term debt rating of foreign depositories, is the current Interpretation No. 12 requirement. Alternative (b) would effectively address location risk (both sovereign and depository risks) by requiring a repayment guarantee in the U.S. whatever the cause of the shortfall. However, as noted above, it appears that banks would not be allowed to pay interest if an unconditional guarantee were given. Accordingly, choice (b) would be unsatisfactory where customer funds are held offshore for the purpose of yielding interest. Alternative (c) would address only depository risk.

E. Segregation and Net Capital Treatment

1. Alternatives

a. Customer funds must be segregated only in accounts payable in the U.S. No account located or payable outside the U.S. is considered an acceptable segregated deposit.

b. A percentage of excess segregated funds on deposit in non-U.S. locations (*e.g.,* ten to twenty-five percent) may be recognized as good segregated assets.

c. Only funds received from foreign-domiciled customers may be held offshore. However, they will not be considered to be properly segregated.

Segregated funds may be held offshore and/or in foreign currencies:

d. Provided that sufficient funds are held in each currency to meet all obligations in that currency, as computed daily.

e. Provided that sufficient U.S. dollars are segregated in a U.S. depository to meet all U.S. dollar obligations. To the extent other currencies are segregated in foreign depositories, excess U.S. dollars (*e.g.,* 10%) must be held in the U.S. as a cushion.

f. Provided that alternative sources of funding such as dedicated lines of credit, in a form acceptable to the Commission, are available to cover shortfalls or delays in payment.

g. Some combination of the elements of alternatives (c) through (e).

h. Other, please specify.

2. Discussion

Under alternative (a), funds deposited by customers for trading on U.S. contract markets would be held in the U.S. only. This is founded on the proposition that futures and options positions are carried in the U.S., and therefore, the need for these funds, for variation settlements and for standing margin is in the U.S. Having these funds in the U.S. ensures that the funds will be available and subject to U.S. law in the event of insolvency and that they will be distributed according to the Bankruptcy Code and the regulations thereunder.

Alternative (b) would recognize a percentage of excess segregated funds held offshore as properly segregated. All other segregated funds would be required to be held in the U.S. Alternative (c) would set no limit on the amount of foreign-domiciled customer funds held in offshore locations; however, these funds would not be recognized as good segregated funds. Under alternative (d) customer funds could be properly segregated offshore, subject to daily balancing of assets and obligations in each currency. This would address currency risk, but not location risk. Under alternative (e), all dollar obligations would be matched by U.S. dollars held in segregation in the U.S. An FCM could hold foreign currencies in segregation. As a protection against currency rate fluctuations, however, the FCM would be required to hold additional U.S. dollars in the U.S. Alternatives (a) through (e) all are intended to prevent the occurrence of shortfalls. Alternative (f) provides a method to cover shortfalls should they occur. As noted, these alternatives are not necessarily mutually exclusive.

F. Bankruptcy Treatment[20]

1. Alternatives

a. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to those of customers whose funds are segregated in the U.S. and in U.S. dollars in the same manner as under current Interpretation No. 12.

b. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to those of customers whose funds are segregated in the U.S. and in U.S. dollars in the same manner as in Appendix B to the Commission's Bankruptcy regulations.[21]

c. Customers whose funds are held offshore or in foreign currencies must subordinate their claims against these funds to claims of customers whose funds are segregated in the U.S. and in U.S. dollars in the event there are shortfalls as a result of sovereign action.[22]

d. In the event of bankruptcy of an FCM or foreign depository, segregated funds in each currency will constitute a separate pool, and each customer will recover to the extent that there are funds in the pool against which the customer holds a claim.

e. In the event of bankruptcy of an FCM or foreign depository, all segregated funds will constitute a single pool and will be distributed pro rata without regard to the location or denomination of these funds.

f. Other, please specify.

2. Discussion

The majority of measures considered earlier in this release were intended to minimize risks. This section deals with apportioning losses should they occur. Alternative (a) is the requirement of current Interpretation No. 12. As noted

[19] Pursuant to CFTC Advisory 87–5 (1987–1990 CCH Transfer Binder ¶ 23,997), FCMs are required to disclose on their Form 1–FR the identity of offshore depositories. Any bank or trust company located outside the U.S. whose commercial paper or long term debt is rated in one of the two highest rating categories by Standard & Poors Corporation or Moody's Investors Service, Inc. is deemed automatically recognized. FCMs must submit an application for recognition of other non-U.S. located banks and trust companies not meeting this standard. Such banks or trust companies are deemed recognized unless the Division gives the FCM notice to the contrary within 60 days following receipt of the application. No such application has been received.

[20] As noted above, the special provisions of the Bankruptcy Code applicable to the bankruptcy of commodity brokers generally require that in the event of the bankruptcy or insolvency of an FCM all segregated funds be distributed on a pro rata basis to customers of the same class.

[21] 17 C.F.R. 190 Appendix B. Appendix B, which governs the distribution of property where a bankrupt FCM holds cross-margin funds, while intended to assure that non-cross-margining customers of such an FCM will not be adversely affected by a shortfall in the pool of cross-margining funds, modified the applicable distributional rules such that the required subordination is more limited.

[22] Some industry members believe that the risk that a foreign government would freeze deposits within its borders is ''remote, especially when dealing with the major global currencies.'' They recommend that the Commission exempt deposits of the major currencies, wherever held, from all aspects of Interpretation No. 12. See letter dated October 16, 1997, to Chairperson Born from the Chicago Board of Trade.

above, to ensure that in the event of an FCM bankruptcy customers whose funds are held in the U.S. and in U.S. dollars will not share pro rata in possible shortfalls in customer funds held offshore, Interpretation No. 12 requires that customers who deposit funds denominated in a foreign currency subordinate their claims to those of customers with U.S. dollar claims. Alternative (b) would use the same device in a manner that would be less adverse to customers with funds denominated in foreign currencies. Under alternative (c), the subordination would be activated only in the event shortfalls resulted from sovereign action. Other losses would be shared pro rata.

Alternative (d) would pay each customer a pro rata share of the currency pool(s) against which it had a claim. In certain circumstances, this alternative could be inequitable to customers with foreign-denominated claims. For example, the bankruptcy of a depository could result in shortfalls in foreign currencies of the type held by the depository. Under this alternative, the shortfalls would be shared only by customers with claims against those currencies. However, some of these customers may not have had funds in that depository or any responsibility for its selection.

As noted above, the Bankruptcy Code and regulations require pro rata sharing among customers in each account class. Accordingly, this alternative would require the Commission to amend its bankruptcy regulations to define each currency pool as a separate account class. By sharing all available customer funds among all customers without regard to the segregation locations, alternative (e) furthers the view that shortfalls should be shared among all customers without regard to the denomination or location of customer funds.

IV. A Specific Approach

To illustrate the interrelationship of choices under the various headings and to assist the Commission further in reaching a resolution of the issues, staff has prepared a specific formulation combining choices from each category.[23] The Commission is not endorsing this approach at this time, but the Commission believes that receiving comments on it would provide a valuable supplement to the other comments. This approach would address the concern that current regulatory standards may impede access to the U.S. futures market by eliminating the subordination agreement currently required by Interpretation No. 12. To facilitate the receipt of funds from offshore customers, this approach, however, would permit FCMs to maintain operating accounts in non-U.S. depositories. Under this approach:

—Funds used by an FCM to meet its obligations to customers who trade on U.S. contract markets must be segregated in accounts payable in the U.S. That is, no account located or payable outside of the U.S. would be considered an acceptable segregated depository. In addition:

—As an operational convenience, an FCM would be permitted to receive commodity margin funds into non-U.S. accounts from customers located outside the U.S. However, funds in these accounts would not be recognized as segregated assets. This means that customer funds in accounts located outside of the U.S. would not have to be transferred to the U.S. An FCM would be considered in compliance with the segregation rules as long as there were sufficient funds segregated in the U.S. to cover its obligations to all of its customers, including the non-U.S. customers whose funds had not yet been transferred to the U.S.

—A deposit of any customers' funds into an account outside of the U.S. would result in an increase in the FCM's segregated liability to its customers. The FCM's excess segregated funds would be used to cover the credit to the customer's account. This coverage must be made immediately upon receipt of the funds in the non-U.S. account.

—An FCM would be permitted to recognize as segregated assets foreign currencies credited to the FCM in segregated foreign currency accounts with banks located in the U.S. as long as the account balances were payable in the U.S. The non-U.S. currencies which would be recognized as segregated assets would be limited to those foreign currencies which would have been identified as acceptable for margin purposes by the contract markets on which the FCM's customers trade.

—An FCM must take appropriate action to maintain a balance between the currencies it had in segregated accounts and its obligations to customers denominated in the same foreign currency. To achieve this, an FCM must perform a daily calculation of the balance between its foreign currency deposits and its obligations to its customers in those currencies, including U.S. dollars. This calculation must be performed as part of the daily segregation calculation. Imbalances must be corrected by the day following the ''as of'' date of the calculation. An appropriate capital charge must be taken on any imbalances, pursuant to the Commission's net capital rule, regardless of any rebalancing achieved the following day.

This approach would not compel an FCM to transfer any funds into the U.S., provided the FCM had sufficient excess segregated assets in the U.S. FCMs could maintain accounts in non-U.S. locations and use such accounts to take in deposits from foreign-domiciled customers and to make disbursements. However, the funds contained in these accounts would not count towards meeting the FCM's segregated liability. Although funds in these accounts would not qualify as good segregated funds, they could qualify for net capital purposes, provided the accounts met the requirements of the net capital rule, which are less stringent than those of the segregation rule.

V. Request for Comment

The Commission requests comment on the need for and effectiveness of the various alternatives and, in particular, on the ''specific approach.'' In formulating their choices, commenters should consider the following factors: (a) FCMs increasingly have a customer base offshore; (b) U.S. banks are currently prohibited by the Board of Governors of the Federal Reserve from paying interest on demand deposits while unguaranteed offshore deposits may yield interest; (c) some U.S. depositories are reluctant to hold a substantial amount of foreign currencies; (d) as the volume of contracts that are priced and settled in foreign currencies increases, the need to deposit customer funds denominated in foreign currencies also increases; (e) the enforceability of the subordination agreement has not been tested and is not clear in the event of a bankruptcy adjudicated by a non-U.S. court; and (f) other steps outside the Commission's purview could help reduce the risks related to customer funds held offshore or in foreign currencies, such as steps to facilitate the movement of foreign currencies through the Fedwire.

The Commission encourages commenters to provide information on their current business practices and how they could be affected by the methods listed in this release and any additional

[23] This approach combines, with some modifications, choices (A)(1)(c), (B)(1)(c), (C)(1)(a), (D)(1)(a), (E)(1)(a), and (F)(1)(a).

methods they propose. The Commission also requests comment on the practicality of the various methods.

Finally, the Commission requests comment on whether it is appropriate to allow exchanges and/or clearing organizations to hold customer funds offshore without the customers' express authorization and without a direct operational necessity. If so, commenters should indicate what conditions and limitations should be imposed. The Commission welcomes any cost-benefit analysis commenters care to provide in support of their choices.

The Commission requests that commenters, in making their choice among the proposed alternatives or in indicating other alternatives, clearly indicate whether the provision should apply at the FCM level and/or at the clearing level. The Commission will give serious consideration to the comments in determining an appropriate manner in which to revise the requirements set forth in Interpretation No. 12. The Commission wishes: (a) To facilitate access to the United States markets for the growing international customer base using them; (b) to reduce the regulatory burden, where practicable, on FCMs and clearing organizations that accept customer deposits in foreign denominations and use foreign depositories; and (c) to maintain the safety of customer funds.

Issued in Washington, DC on December 23, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–33955 Filed 12–29–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, January 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–34062 Filed 12-24-97; 11:12 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, January 29, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–34068 Filed 12–24–97; 11:12 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check; DD Form 2660; OMB Number 0730–0002.

Type of Request: Reinstatement.

Number of Respondents: 315,000.

Responses per Respondent: .1

Annual Responses: 315,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 26,250.

Needs and Uses: DD Form 2660, "The Statement of Claimant Requesting Recertified Check," is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one year of the date of their issuance, when an original check has been lost, not received, damaged, stolen, etc. the form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 22, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–33786 Filed 12–29–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency; Joint Military Intelligence College; DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday 12 January 1998, 0800 to 1800; and Tuesday, 13 January 1998, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advice the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.