



February 5th, 2013

Mr. Takashi Ishizaki
Director, Commerce and Consumer Affairs Policy Division
Commodity Derivatives Market Supervisory Office,
Ministry of Economy, Trade and Industry

Mr. Keishi Tokuda
Director, Commodity Trade Division, Food Industry Affairs Bureau
Ministry of Agriculture, Forestry and Fisheries

cc: Mr. Kazumichi Okachi
Chairman, Japan Commodity Futures Industry Association

Re: Regulatory Interpretation of the requirements for segregation of customers' funds related to the transactions on Foreign Futures Exchange Markets

Futures Industry Association Japan is an Ippan Shadan Hohjin duly organized under the Law of Japan. Please refer to the attached Corporate Brochure. We hereby submit our letter requesting clarification of the regulatory interpretation of the ordinance covering Segregation of the Customer Funds applying to Commodity Futures Commission Merchants (Commodity FCM) related to their customers' futures and options transactions on Foreign Regulated Commodity Exchange Markets (FRCEM) including but not limited to the exchange markets in USA. Through submission of this letter, we would like to invite your good understanding and agreement to treat "Deposited Customers' Assets with Foreign Regulated FCMs as Recognized Customers' Segregated Funds under Japanese regulatory requirements" with the provision that it be determined that the customers' protection policies and regulations under the foreign regulatory authorities such as US Commodity Futures Trading Commission (CFTC) are comparable to the ones in Japan.

Background

Commodity Exchange Markets provide dynamic economic functions including fair mark price discovery and risk management through highly liquid and transparent market

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environment. The Clearing houses (CCPs) attached to, or otherwise available to, exchanges are also acknowledged as being vital institutions for counterparty financial risk managements for market participants, including those who participate with the underlining cash markets. Further, commodity futures and options contracts are considered as an essential investment asset class for diversified investment portfolios both for highly sophisticated professional investors including investment funds and other managed trusts as well for retail investors.

While we have seen remarkable growth in Commodity Trading by FRCEM, the development of our markets in Japan have been rather stagnant, in spite of the fact that we are a nation recognized as a world leading consumer of primary commodities influencing the global economy. To maintain an active and liquid Japanese Commodity Exchange Market comparable to the FRCEM has been, and will be, even more important to smooth the flow and distribution of the physical commodities in the Asian Time zone. Globalization of the trading interests on commodity markets has been accelerated by the rapid development of Information Technologies. As a result, world markets economic functions are being consolidated in the areas of the price discovery process and price correlation.

Under the circumstances indicated above, diversification of the trading portfolios and interests on commodity markets including arbitrage transactions between foreign and domestic markets can be considered as national interests for our commodities industry. However, as a result of the existing uncertainties in the interpretation of the regulations, there is difficulty in accepting such customers' transactions on foreign commodity markets, including important arbitrage transactions against our Japanese Markets.

The Problems

We understand that under the Laws of Japan, customers' assets deposited with the Commodity FCMs as commodity futures and options margin money for their transactions must be segregated and separately maintained from the assets and property of the Commodity FCMs. For domestic Futures Exchange Transactions, deposits segregated at the domestic Clearing House (JCCH) meet this requirement. For Foreign Commodity Futures and Option Transactions, customers' margin money and other assets deposited with the Commodity FCMs must be segregated in a Trust Account and separately maintained from the assets and property of the Commodity FCMs; however, the amounts deposited at Foreign Clearing Houses where the customer's transactions are cleared, meets this requirement for segregation.



The problem is that Japanese Commodity FCMs, including Japanese Subsidiaries of Foreign Major Financial Institutions acting as Global FCMs, generally are not acting as direct clearing members of the Foreign Clearing Houses. The customers' transactions originated from Japan are being executed and cleared through an Omnibus Account or Introducing Broker relationships with Foreign Regulated FCMs. Japanese FCMs are unable to transmit and deposit the funds directly with foreign Clearing Houses. However, the funds are required to be deposited with foreign regulated FCMs as "Regulated Segregated Customer Funds".

Currently, such margin money and other assets at the possession of Foreign FCMs might not be considered and treated as Segregated Customers' Assets under an interpretation of appreciable Laws and Regulations. As a result, customers' funds are essentially required to be segregated and maintained domestically in Japan in a Trust Account, and Japanese Commodity FCMs are required to use their own funds to meet with the margin required for the customers' trade interests by Foreign FCMs. This results in a duplication of the amount of segregated funds at the burden of the Commodity FCMs. We believe, this situation is one of detrimental factors to the success and viability our commodity markets. Further, it is inconsistent with the practices of global markets wherein the foreign broker has an omnibus account with Japanese FCM.

In general, the foreign broker having an omnibus account with a Japanese FCM, the amount equal to the Total Equity of the account has been treated as segregated customers' funds by foreign regulators. For example, under US rules, the customers' funds in the possession of foreign brokers have been recognized as Secured Funds and are treated as Segregated Funds under foreign jurisdiction. The CFTC does, however, require the US FCM to receive from the foreign broker the written acknowledgement that the funds are belonging to the customer, not the broker.

Negative influence caused by the Interpretation

Although the importance of growing customers' interests on cross-border transaction is well recognized, Japanese commodity exchange markets may be isolated from the global markets. As result, this not only result in a decline in market liquidity but also failure to maintain the price discovery function inherent in international arbitrage transactions between one market and others. Further, Japanese Commodity FCMs are



discouraged from accepting such customers' orders as it may cause a substantial amount of additional financial requirements to meet with customer's trading interests resulting in a decline customer service capability.

We highly appreciated your consideration on this most important matter. We will be pleased to meet and discuss this issue with you further at you convenience.

Representative Director, Chairman: Mitch Fulscher

A handwritten signature in black ink, appearing to read 'MR Fulscher', written over a horizontal line.

Representative Director, Vice President: Yasuo Mogi

A handwritten signature in black ink, appearing to read 'Yasuo Mogi', written over a horizontal line.

Notes: This letter has been prepared by Futures Industry Association Japan as a translated version into English of the attached original letter written in Japanese language as addressed to Ministry of Economy, Trade and Industry and Ministry of Agriculture, Forestry and Fisheries.

Any contradictions with the original letter will be subject to interpretation of the original letter written in Japanese.