

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dol- lars
454111	Electronic Shopping	\$21.0
454112	Electronic Auctions	21.0
454113	Mail-Order Houses	21.0

f. In the table “Small Business Size Standards by NAICS Industry,” revise the heading “Subsector 511—Publishing Industries” to read “Subsector 511—Publishing Industries (except internet).”

g. In the table “Small Business Size Standards by NAICS Industry,” in

NAICS 511140 revise “Database and Directory Publishers” to read “Directory and Mailing List Publishers.”

h. In the table “Small Business Size Standards by NAICS Industry,” remove the following two (2) Subsectors together with all entries within those

Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dol- lars
Subsector 515—Broadcasting (except Internet)		
515111	Radio Networks	\$6.0
515112	Radio Stations	6.0
515120	Television Broadcasting	12.0
515210	Cable and Other Subscription Programming	12.5
Subsector 516—Internet Publishing and Broadcasting		
516110	Internet Publishing and Broadcasting	12.5
Subsector 517—Telecommunications		
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	12.5
517510	Cable and Other Program Distribution	12.5
517910	Other Telecommunications	21.0
Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services		
518111	Internet Service Providers	21.0
518112	Web Search Portals	6.0
518210	Data Processing, Hosting, and Related Services	21.0
Subsector 519—Information Services and Data Processing Services		
519110	News Syndicates	6.0
519120	Libraries and Archive	6.0
519190	All Other Information Services	6.0

Dated: August 5, 2002.

Hector V. Barreto,
Administrator.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 190

RIN 3038-AB31

Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading
Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to adopt a new rule that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States

dollars. The Commission is also proposing to adopt an amendment to Appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency. This new distributional framework is intended to assure that customers whose funds are held in a United States depository will not be adversely affected by a shortfall in the pool of funds held in a depository outside the United States that is due to the sovereign action of a foreign government or court. The proposed rule would replace Financial and Segregation Interpretation No. 12.

DATES: Comments on the proposed new rule and amendments must be received by October 15, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418-5528, or by e-mail to secretary@cftc.gov. Reference should be made to "Foreign Depositories."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Michael A. Piracci, Attorney-Advisor, Division of Clearing and Intermediary Oversight, for further information regarding amendments to appendix B of part 190, contact Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most important functions of the Commodity Exchange Act (the "Act")¹ and the rules thereunder is the protection of customer funds. Section 4d(a)(2) of the Act requires that every futures commission merchant ("FCM"):

treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, 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 commission merchant 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 for whom the same are held.

Prior to 1988, the Commission, and its predecessor agency, the Commodity Exchange Authority, had construed this provision to require that customer funds deposited with an FCM relating to trading on a domestic exchange be held in the United States ("U.S."), unless the funds were being held for a foreign-domiciled customer.² In light of the growing internationalization of the futures and options markets, the Commission in 1988 issued Financial and Segregation Interpretation No. 12 ("Interp. 12"),³ which provided that, under certain conditions, an FCM may deposit segregated funds of customers domiciled in the U.S. in foreign depositories.

Interp. 12 permits FCMs to hold the funds of customers domiciled in the U.S. offshore if such funds are used to margin 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."⁴ Interp. 12 requires that such funds be held in depositories that meet the criteria under Commission Rule 30.7(c)⁵ and are located in the country of the applicable currency or a country with which the Commission has an information sharing arrangement. Additionally, FCMs and clearing organizations must obtain from the depository a written acknowledgement of the applicability of Commission regulations regarding the segregation of customer funds required under Commission Rule 1.20.

Under Interp. 12, before an FCM may deposit customer funds offshore, it must

obtain an agreement from the customer that authorizes the deposit of the customer's funds into a foreign depository. The agreement must also authorize the "subordination of the customer's claim attributable to funds held offshore in a particular foreign currency to the claims of customers whose funds are held in [U.S.] dollars or other foreign currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in the particular currency to satisfy all customer claims against those funds."⁶ The subordination applies if the insufficiency in funds was a result of the offshore account being underfunded or if all of the funds in the account could not be recovered. For example, the government of the foreign country where the funds are being held may freeze or confiscate the assets or the applicable bankruptcy laws may prevent the full recovery of the funds. An FCM must hold in segregation in the U.S. sufficient funds denominated in U.S. dollars to meet all U.S. dollar-denominated obligations to persons domiciled in the U.S., regardless of whether there are excess funds in segregation in a foreign currency-denominated account.

As stated above, when the Commission issued Interp. 12, it noted that the change in the Commission's interpretation concerning appropriate depositories for segregated customer funds was appropriate "in light of the growing internationalization of the futures and option markets."⁷ In the more than a dozen years since Interp. 12 was issued, the futures and options markets, along with almost all other segments of the business world, have seen greater internationalization. As a result, there is an increased need and desire of certain customers to be able to more easily conduct business in currencies other than the U.S. dollar.

In the Commodity Futures Modernization Act of 2000 (the "CFMA"),⁸ Congress noted that "regulatory impediments to the operation of global interests can compromise the competitiveness of [U.S.] business" and that regulatory policy should be "flexible to account for rapidly changing derivatives industry practices."⁹ Due to restrictions placed on holding segregated funds offshore, U.S. markets and futures professionals may find themselves at a disadvantage

² See Commodity Exchange Authority Administrative Determination No. 238 (Sep. 4, 1974); see also Foreign Options and Foreign Futures Transactions, 51 FR 12104, note 36 (Apr. 8, 1986); Leverage Transactions, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,742 at p. 26,952, note 52 (May 25, 1983).

³ Financial and Segregation Interpretation No. 12—Deposit of Customer Funds in Foreign Depositories, 53 FR 46911 (Nov. 21, 1988). The document was published in the *Federal Register* as a Statement of Agency Interpretation. It was also published in the Commodity Futures Law Reporter at ¶ 7122 together with a series of Financial and Segregation Interpretations issued by the Commission's Division of Trading and Markets.

⁴ *Id.* at 46913.

⁵ Commission Rules referred to herein are found at 17 CFR Ch. I (2001). Rule 30.7(c) provides that the funds of foreign futures or foreign options customers maintained in a separate account be with a depository that is: "(1) A bank or trust company located in the United States or as designated; (2) Another person registered as a futures commission merchant; (3) The clearing organization of any foreign board of trade; (4) Any member of such board of trade; or (5) Such member or clearing organization's designated depositories." See also CFTC Advisory 87-5, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,997 (Dec. 3, 1987) (discussing Rule 30.7(c)).

⁶ 53 FR at 46913.

⁷ *Id.* at 46912.

⁸ Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

⁹ Section 126(a) of the CFMA.

¹ 7 U.S.C. 1 *et seq.* (2000).

to their foreign competitors. One of the purposes of the CFMA is to "enhance the competitive position of [U.S.] financial institutions and financial markets."¹⁰ Based upon the foregoing, the Commission is now proposing a rule to permit FCM obligations owed to customers to be denominated in currencies other than the U.S. dollar and to permit FCMs and derivatives clearing organizations ("DCOs") to hold segregated customer funds in certain foreign depositories, subject to certain restrictions, but without requiring customers to sign a subordination agreement. The Commission previously solicited comments on possible rulemaking in this area.¹¹

II. The Proposed New Rule and Amendments

A. Proposed New Rule 1.49

1. Permissible Currencies

The Commission is proposing to adopt Rule 1.49 to provide that FCM obligations owed to customers shall be held in: (1) U.S. dollars; (2) a currency in which funds were deposited by the customer, or converted to at the request of the customer, to the extent of such deposits and conversions; or (3) a currency in which funds have accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility ("DTF"). Any customer would be able to deposit foreign currency with an FCM if the FCM permits it, not just those customers trading contracts priced and settled in a foreign currency.

As noted above, the internationalization of the futures markets has resulted in customers who, for many different reasons, want funds denominated in currencies other than the U.S. dollar. If a customer or prospective customer of an FCM prefers to deposit funds with an FCM in a currency other than the U.S. dollar, or to convert funds from one currency to another, the FCM should not be prevented from accepting or holding funds in the preferred currency of the customer or prospective customer. An FCM may not convert customer funds from one currency to another without customer authorization. An account agreement could provide, however, that by placing an order in a contract settled in a particular currency, a customer agrees to convert to the appropriate currency funds sufficient to meet the applicable margin requirement. Under the proposed rule, an FCM would be

required to prepare and maintain a written record each time customer funds were converted from one currency to another. The record must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

The FCM will also be required to make the information contained in this record available to the customer upon the customer's request. The FCM may provide this information through any means agreed upon by the customer and FCM. Additionally, the Commission notes that, pursuant to Rule 1.33(a), the FCM must include this information in the monthly statements provided to the customer.

Another aspect of the internationalization of the futures and options markets is the increasing number of contracts offered on foreign financial instruments and indices. For example, the Chicago Mercantile Exchange offers a futures contract on the Nikkei Stock Average. These contracts are priced and settled in the currency of the underlying instrument or index. Accordingly, accruals resulting from trading in such instruments will be in currency other than U.S. dollars. Under the proposed rule, such accruals may be held in the applicable currency. A customer may, of course, request that such accruals be converted to U.S. dollars.

Currently, pursuant to Interp. 12, customers must authorize the deposit of foreign currency funds into foreign depositories as part of the subordination agreement. The Commission is proposing to eliminate this written authorization requirement.¹² If a customer deposits funds with an FCM in a currency other than U.S. dollars, or requests a conversion of funds to a non-U.S. dollar currency, the customer will be aware of the fact that the funds are being held in a currency other than U.S. dollars. With regard to funds other than U.S. dollars that have accrued to the customer as a result of trading in contracts priced and settled in a non-U.S. currency, the Commission notes that the specifications for contracts traded on designated contract markets are widely known and generally available.¹³ Accordingly, when a customer trades in a futures or options contract that is priced and settled in a currency other than U.S. dollars, a customer should be aware that the accruals from such trading may be made

in the applicable currency. If a customer has previously not traded in contracts that are priced and settled in a currency other than U.S. dollars, a firm should inform the customer if the accruals from the trades will be held in a currency other than U.S. dollars, at the time the customer places an order that might result in such accruals.¹⁴ FCMs and their associated persons ("APs") should also be ready to respond to inquiries that any customer may have about accruals or other issues arising in connection with monthly account statements.¹⁵

2. Location of Depositories

The proposed rule would permit an FCM or DCO to hold customer funds of any denomination in the United States or in any money center country (Canada, France, Italy, Germany, Japan, and the United Kingdom). Hence, customer funds of any denomination could be held in any of the Group of Seven ("G7") countries. The G7 countries represent the world's largest industrial democracies. Furthermore, representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the United States and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

An FCM or DCO also could hold any particular currency in the country of origin of that currency,¹⁶ except that customer funds may not be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets and Control ("OFAC") of the U.S. Department of the Treasury.¹⁷ The rule would further provide that funds could be held outside the United States only to the extent specifically authorized by the customer. Holding funds in each country may pose different risks and different operational costs and benefits.

¹⁴ See, *Clayton Brokerage Co. v. Commodity Futures Trading Commission*, 794 F.2d 573, 580 (11th Cir. 1986) (providing a customer with the risk disclosure statement does not relieve a broker of any obligation to disclose all material information about risk to customers). With respect to accounts controlled by a registered commodity trading advisor on behalf of a commodity or option customer, the FCM would not need to inform the customer about such accruals.

¹⁵ The basic risk disclosure statement required under Commission Rule 1.55 for customers contemplating trading foreign futures and options includes a warning about currency risks (see paragraph 8), as does the generic risk disclosure statement used internationally (Appendix A to Commission Rule 1.55(c), paragraph 9).

¹⁶ For the Euro, the country of origin includes any country that is a member of the European Union and has recognized the Euro as its official currency.

¹⁷ The list of restricted countries may be viewed on OFAC's web site at www.ustras.gov/ofac.

¹⁰ Section 2(8).

¹¹ 62 FR 67841 (Dec. 30, 1997).

¹² As discussed below, the proposal would also eliminate the need for a subordination agreement.

¹³ For example, the specifications for contracts traded on the Chicago Mercantile Exchange are available on its web site at: www.cme.com.

Therefore, the Commission believes that the customer must be able to choose whether, and to what extent, to incur such risks and costs. The Commission, however, is not establishing a particular format that such an authorization must follow. It is simply requiring that the FCM make and maintain a written record detailing the terms and conditions of any such authorization. No separate customer signature would be required.

FCMs and DCOs should also be aware that the Financial Action Task Force ("FATF") of the Organization for Economic Co-Operation and Development maintains a list of non-cooperative countries or territories with respect to anti-money laundering programs and that the Secretary of the Treasury may designate, in accordance with Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism ("USA PATRIOT") Act of 2001,¹⁸ certain countries as areas of primary money laundering concern.¹⁹ Before holding any customer funds in a depository in any of these countries or territories, FCMs and DCOs should undertake due diligence to assure themselves that the depository is reputable, has appropriate operational systems to safeguard customer funds, and has an adequate program to deter money laundering.

3. Qualifications of Depositories

Under the proposal, if the depository is located in the U.S., it must be: (1) A bank or trust company; (2) an FCM registered with the Commission; or (3) a DCO. If the depository is located outside the U.S., it must be: (1) A bank or trust company that has (a) in excess of \$1 billion in regulatory capital, or (b) commercial paper or long-term debt rated in the highest rating category by at least one nationally recognized statistical rating organization (where the bank or trust company is part of a holding company system, the holding company may satisfy the rating criterion); (2) an FCM registered with the Commission; or (3) a DCO.

Only depositories that provide the FCM or DCO with the written acknowledgment required under Commission Rules 1.20 or 1.26 may hold customer funds required to be

segregated.²⁰ However, a DCO acting as a depository does not need to provide an acknowledgment letter to an FCM where the DCO's rules provide for the segregation of funds held on behalf of customers.²¹

4. Segregation Requirements

As noted above, protection of customer funds is one of the most important purposes of the Act and the Commission's regulations. Customer funds must be segregated so as to assure that the obligations owed to customers will be met. Through segregation, customer funds are readily identifiable in the event that a registrant becomes insolvent. Accordingly, the proposed rule requires that the FCM or DCO, at the close of each business day, have in segregated accounts on behalf of its customers sufficient U.S. dollars held in the U.S. to meet all U.S. dollar obligations and sufficient funds in each other currency to meet obligations in such currency with certain permitted substitutions. The segregation requirements of the proposed rule are meant to ensure that FCMs and DCOs maintain enough funds, and in the appropriate currency, to meet the obligations owed to customers.

As noted, the proposed rule would permit limited substitutions among currencies. U.S. dollars held in the U.S. may be used to meet obligations denominated in any other currency. Money center currencies and U.S. dollars held in money center countries may be held to meet obligations denominated in currencies other than the U.S. dollar. In essence, three tiers of currencies would be established, U.S. dollars held in the U.S. ("Tier I"), U.S. dollars and money center currencies held in money center countries or money center currencies held in the U.S. ("Tier II"), and non-money center currencies ("Tier III"). Tier I currency could be used for any obligation. For U.S. dollar obligations to customers only Tier I currency could be used. Tier

II currencies could be used for any obligation except U.S. dollars. Tier III currencies could only be used for obligations denominated in that particular currency.

B. Recordkeeping

The Commission is also proposing to amend Rule 1.32 to require FCMs to compute segregated funds on a currency-by-currency basis if they are held in other than U.S. dollars, in accordance with proposed new Rule 1.49. Under proposed Rule 1.49, customer funds may be held in the United States, a money center country, or the country of origin of the currency. Proposed Rule 1.49 also would require FCMs and DCOs that hold funds in foreign currency or offshore to maintain records sufficient to demonstrate compliance with the additional segregation requirements set forth in proposed paragraph 1.49(e).

C. Bankruptcy

In Interp. 12, the Commission noted two types of risk associated with holding funds offshore that might result in customers failing to fully recover segregated funds, either upon demand or in a bankruptcy or receivership, (1) currency risk and (2) location risk.²²

Currency risk is the risk of currency exchange rate fluctuations. This can be a concern where an FCM is in bankruptcy or receivership and it holds deposits denominated in currencies other than U.S. dollars. Due to changes in currency exchange rates, the size of the pool of funds available for distribution to customers and the size of claims against the funds may vary from day to day while the bankruptcy is pending, thereby exposing customers with U.S. dollar-denominated claims to currency risk.²³

Location risk is the risk that funds held in a foreign depository might not be fully recoverable by a customer upon demand or in the event of bankruptcy or receivership. It includes the risk that foreign depositories may not be cooperative with the Commission concerning questions of compliance with segregation requirements, or that a foreign court might refuse to enforce provisions of the Commission's rules that prohibit a foreign depository from offsetting obligations of an FCM against customer funds. There is also a risk that, in the event of an FCM becoming insolvent, deposits at a foreign depository might be subject to an insolvency regime that is different from

¹⁸ Pub. L. No. 107-56.

¹⁹ The list of non-cooperative countries and territories may be viewed on FATF's web site at: www1.oecd.org/fatf/. The Secretary of the Treasury has not yet designated any countries as being of primary money laundering concern; however, if such designations are made, the Commission understands that they will be publicly available on the Department of the Treasury web site at: www.ustreas.gov.

²⁰ Commission Rule 1.20 provides that when an FCM or DCO deposits customer funds with a depository the FCM or DCO must obtain and retain a written acknowledgement from the depository that it was informed that the funds are subject to the provisions of the Act and regulations. Rule 1.26 requires an FCM or DCO to obtain such an acknowledgment in regard to the deposit of instruments purchased with customer funds as described under Rule 1.25.

²¹ See 65 FR 77993, 78009-13 (Dec. 13, 2000) (amending, among other things, Rules 1.20 and 1.26 to provide that a DCO acting as a depository does not need to provide an acknowledgment letter where the DCO's rules provide for the segregation of funds held on behalf of customers); 65 FR 82270 (Dec. 28, 2000) (moving forward the effective date of the amendments to Rule 1.20 and 1.26 to December 28, 2000).

²² 53 FR at 46912.

²³ See 53 FR at 46915 (providing an example of currency risk).

U.S. bankruptcy law. Additionally, a foreign government might limit the availability of funds by freezing or confiscating assets held within its jurisdiction or taking actions that affect their currency, even if the assets are located in the U.S.²⁴

Currently, pursuant to Interp. 12, before placing a customer's funds offshore, an FCM must obtain from the customer a subordination agreement. In the agreement, the customer consents to the subordination of claims concerning funds held offshore or in a foreign currency to the claims of customers whose funds are held in U.S. dollars in the U.S. or in other currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in that particular currency to satisfy customer claims against those funds. The subordination agreement was meant to protect customers whose funds are held in the U.S. and denominated in U.S. dollars from both currency and location risk that might result in customers receiving less than their pro-rata share of funds.

In Interp. 12, the Commission stated that "currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value," using the example of Treasury securities.²⁵ The Commission noted, however, that there were distinctions between price risk and currency risk, such that it was more equitable to spread the price risk among all customers in the event of a bankruptcy than it was the currency risk. First, the Commission indicated that all customers had the opportunity to post Treasury securities as margin, but under Interp. 12 only customers trading certain contracts could post foreign currency. Second, shortfalls in foreign currency accounts were more likely because of sovereign or location risk. Third, it would be easier and quicker for a trustee or receiver to convert Treasury securities held in the U.S. to cash than to convert foreign currency held offshore into U.S. dollars.

Under proposed rule 1.49, subject to exchange margin rules, any customer may deposit foreign currency with an FCM, not just those trading certain contracts. Additionally, as discussed below, the proposed rule and the amendment to Appendix B of the Commission's bankruptcy rules limit sovereign risk and protect customers who deposit U.S. dollars from being adversely affected due to the sovereign action of a foreign government or court, including the effect of a non-U.S. insolvency regime. While converting Treasury securities held in the U.S. to cash may be quick and easy, converting foreign currency into U.S. dollars or transferring U.S. dollars held offshore to the U.S. is not extremely difficult. This is particularly true in the money center countries. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers.

In this proposal, the Commission has sought to address many aspects of currency and location risks through the safeguards discussed above. One aspect of location risk that remains, however, is sovereign risk. This is the risk that the actions of a foreign government or court might result in a shortfall in segregated funds.

To address sovereign risk, the Commission is proposing to amend Framework 2 of Appendix B of its bankruptcy rules to govern the distribution of customer funds segregated pursuant to the Act and Commission rules thereunder, held by an FCM or DCO in a depository outside the U.S. or in a foreign currency.²⁶ The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency would result, in certain circumstances, in the reduction of customer claims for such funds.

For purposes of the proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency.

If an FCM filed, or had filed against it, a petition in bankruptcy and maintained customer funds in a depository located in the U.S. in a currency other than U.S. dollars, or in a depository outside the U.S., the following allocation procedure would be used to calculate the claim of each customer. After reducing each customer's claim by the percentage of the shortfall that is not attributable to sovereign action, certain customer claims will be further reduced based upon their exposure to loss attributable to sovereign action. This framework is designed to prevent a shortfall in funds held outside the U.S. or in a currency other than U.S. dollars resulting from the sovereign action of a foreign government or court from adversely affecting customers whose funds are held in U.S. dollars or in the U.S. or in a currency or a country other than the one undertaking the sovereign action resulting in the shortfall.

The proposed rule and the proposed framework to the bankruptcy appendix address the risks associated with holding customer funds outside the U.S. or in currencies other than U.S. dollars. Accordingly, the requirement that each customer who seeks to have funds held outside the U.S. must execute a separate subordination agreement would be eliminated.

III. Request for Comments Regarding the Location of Foreign Futures or Foreign Options Secured Amount

The rule proposed herein would expand the permitted depositories at which customer funds for trading on designated contract markets and registered DTFs could be held. The proposed rule, however, would not be applicable to the funds of U.S. customers for purposes of trading on a foreign board of trade; Commission Rule 30.7 would still govern in that situation.

Rule 30.7 provides, among other things, that an FCM must maintain the funds of foreign futures or options customers, in a separate account, with: (1) A bank or trust company located in the U.S. or as designated; (2) another person registered as an FCM; (3) the clearing organization of a foreign board of trade; (4) any member of such board of trade; or (5) such member or clearing organization's designated depository. To the extent that an FCM wishes to maintain customer funds at a bank or trust company outside the U.S., pursuant to Rule 30.7(c)(1), the Commission must first recognize the depository. The Commission's Division of Trading and Markets, in CFTC

²⁴ Part of the impetus for Interp. 12 was the fact that, historically, U.S. banks could not pay interest on deposits of foreign currency. Shortly after the issuance of Interp. 12, however, the Board of Governors of the Federal Reserve System permitted U.S. banks to pay interest on foreign currency deposits, increasing the likelihood of such deposits. Presumably, certain sovereign action of a foreign government could affect foreign currency even if held in the U.S. Any discussion of sovereign risk herein pertains to non-U.S. currency, wherever held.

²⁵ 53 FR at 46915, note 22.

²⁶ The current Framework 2 sets forth a plan for distribution in the case of trades made on the Chicago Board of Trade-London International Financial Futures and Options Exchange Link ("Link"). Since the Link ceased operations in 1997, there is no need to maintain the existing Framework 2. Accordingly, the Commission is proposing to replace the existing Framework 2 related to Link with a new Framework 2 that addresses U.S. held segregated funds and non-U.S. held segregated funds.

Advisory 87-5,²⁷ indicated that 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 & Poor's Corporation or Moody's Investors Service, Inc., is automatically deemed recognized. With regard to a bank or trust company located outside the U.S. that is not rated in one of the two highest rating categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., an FCM must file an application for recognition of the subject depository, as set forth in Advisory 87-5.²⁸

The Commission seeks comment on whether, in light of the proposed rules herein, Rule 30.7 should also be amended to expand the types of depositories at which an FCM may hold the funds of foreign futures or options customers. In particular, the Commission seeks comment on whether such amendments should permit the holding of customer funds in the same depositories as those permitted under proposed Rule 1.49, or whether there are special circumstances regarding foreign futures and options customers that would require a unique approach.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")²⁹ requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.³⁰ The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.³¹ Additionally, the Commission has determined that DCOs are not small entities for purposes of the RFA.³² Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA³³ that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")³⁴ imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information or collection requirements. The Commission has submitted a copy of this part to the Office of Management and Budget ("OMB") for its review.

Collection of Information

Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038-0024.

The effect of the proposed rules would be to increase the burden previously approved by OMB by 120 hours. The burden associated with the proposed new rule is estimated to be 120 hours, which will result from new recordkeeping requirements for FCMs that, at the request of the customer, convert customer funds to a currency other than that deposited with the FCM and for FCMs that, as authorized by the customer, hold customer funds outside the United States.

The estimated burden of the proposed new rule was calculated as follows:

Estimated number of respondents:

120.

Reports annually by each respondent:

100.

Total annual responses: 12,000.

Estimated average number of hours

per response: .01.

Estimated total number of hours of annual burden in fiscal year: 120.

Persons wishing to comment on the information collection requirements that would be required by the proposed rule should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

- Enhancing the quality, utility, and clarity of the information to be collected; and

- Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418-5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rule and amendments are intended to provide greater flexibility for FCMs, DCOs, and their customers in their methods of doing

²⁷ See note 5, *supra*. As of July 1, 2002, a reorganization of Commission staff became effective. The Division of Trading and Markets is the predecessor to the Division of Clearing and Intermediary Oversight.

²⁸ CFTC Advisory 87-5, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 34,496-34,497.

²⁹ 5 U.S.C. 601 *et seq.*

³⁰ 47 FR 18618 (April 30, 1982).

³¹ 47 FR 18619.

³² 47 FR 45604, 45609 (Aug. 29, 2001).

³³ 5 U.S.C. 605(b).

³⁴ 44 U.S.C. 3501 *et seq.*

business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. *Protection of market participants and the public.* To protect market participants and the public, the proposal requires that depositories used to hold customer funds meet certain requirements to assure that customer funds are dealt with properly. Additionally, the proposal includes a new framework to the bankruptcy appendix to protect customer funds held in U.S. dollars in the U.S. from being diluted if there is an insufficiency in the funds held outside the U.S. or in a currency other than U.S. dollars due to the sovereign action of a foreign government or court.

2. *Efficiency and competition.* The proposed rules are expected to benefit competition and market efficiency. The proposed rule will help to facilitate continued international growth of the futures industry by permitting customer funds to be denominated in currencies other than U.S. dollars and to be held in offshore depositories.

3. *Financial integrity of futures markets and price discovery.* The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The Commission in proposing the rule and amendments has included risk-limiting features, such as requiring FCMs and DCOs to maintain sufficient funds to meet obligations in each currency, and requiring depositories to meet certain criteria, including signing an acknowledgment regarding the segregation requirements under the Act and Commission rules, to minimize the risks to customer funds.

5. *Other public interest considerations.* The proposed rules and amendments contained herein offer greater opportunity for taking full advantage of contracts being offered by domestic designated contract markets and registered DTFs and the ever increasing internationalization of the futures industry, while establishing safeguards for customer funds.

After considering these factors, the Commission has determined to propose the rule and amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity Futures, Consumer protection.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4d, 8a(5), and 20, 7 U.S.C. 2(i), 6d, 12a(5), and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, the Commission hereby proposes to amend chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2001, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

* * * * *

3. Section 1.49 is added to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(3) *Non-money center country.* This term means any country other than a money center country or the United States.

(4) *Non-money center currency.* This term means any currency other than a money center currency or the United States dollar.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;
(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Subject to paragraphs (c)(2) and (c)(3) of this section, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;
(ii) In a money center country; or
(iii) In the country of origin of the currency.

(2) Customer funds may not be held in a restricted country subject to sanctions by the Office of Foreign Assets and Control of the U.S. Department of Treasury.

(3) Customer funds may be held outside the United States only to the extent specifically authorized by the customer. A futures commission merchant must make and maintain a written record detailing the terms and conditions of any such authorization.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

(i) A bank or trust company;
(ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company:
(A) That has in excess of \$1 billion of regulatory capital, or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in the highest rating category by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

(i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and

(ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

PART 190—BANKRUPTCY RULES

4. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

5. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds Are Held in a Depository Outside of the United States or in a Foreign Currency

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant (“FCM”) or derivatives clearing organization (“DCO”) in a depository outside the United States

(“U.S.”) or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. Reduction in Claims for General Shortfall

A. Determination of Losses Not Attributable to Sovereign Action

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in § 190.01(s) (the “Exchange Rate”).

2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}} \right] \right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim by the Shortfall Percentage.

II. Reduction in Claims for Sovereign Loss

A. Determination of Losses Attributable to Sovereign Action (“Sovereign Loss”)

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claim exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in

a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of funds authorized to be kept in that location or currency (calculated in accord

with Section II.1 above) ("Total Excess Sovereign Loss") will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\text{(This customer's total claim - The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.)}}{\text{Total customer claims - Total of all customer claims required to be kept in U.S. dollars, in the U.S.}} \right]$$

The following examples illustrate the operation of this convention. 1. No shortfall in any location:

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	50	U.K.
C	50	Germany.
D	£300	U.K.

Location	Actual asset balance
U.S.	\$50
U.K.	£300
U.K.	50
Germany	50

Conversion Rates: 1 = \$1; £1=\$1.5

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion Rate	Claim in US\$
A	\$50	1.0	\$50
B	50	1.0	50
C	50	1.0	50
D	£300	1.5	450
Total			600

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$50	1.0	\$50	.....	.....	\$50
U.K.	£300	1.5	450	.....	.....	450
U.K.	50	1.0	50	.....	.....	50

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Germany	50	1.0	50	.....	.....	50
Total .....	.....	.....	600	.....	0	600

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$50	\$0	\$50
B	50	0	50
C	50	0	50
D	450	0	450
Total	600	0	600

2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$100	U.S.
B	50	U.K.
C	100	U.K., Germany, or Japan.

Location	Actual asset balance
U.S.	\$50
U.K.	100
Germany	50

Conversion Rates: 1 = \$1.

Reduction in Claims for General Shortfall

There is a shortfall in the funds held in the U.S. such that only $\frac{1}{2}$ of the funds are available. Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$100	1.0	\$100
B	50	1.0	50
C	100	1.0	100
Total .....	.....	.....	250

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$50	1.0	\$50	.....	.....	\$50
U.K.	100	1.0	100	.....	.....	100
Germany	50	1.0	50	.....	.....	50
Total .....	.....	.....	200	.....	.....	200

Determine the percentage of shortfall that is not attributable to sovereign action:

Shortfall Percentage = $(1 - 200/250) = (1 - 80\%) = 20\%$.

Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in U.S.\$	Allocated Shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$100	\$20.00	\$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250	50	200

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$80	.....	\$80.00
B	40	.....	40.00
C	80	.....	80.00
Total	200	0	200.00

3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	\$50	U.S.
B	50	U.K.
C	50	Germany
D	\$100	U.S.
D	100	U.K. or Germany.

Location	Actual asset balance
U.S.	\$150
U.K.	100
Germany	100

Conversion Rates: 1 = \$1; ¥1=\$0.01, £1=\$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in U.S.\$
A	\$50	1.0	\$50
B	50	1.0	50
C	50	1.0	50
D	\$100	1.0	100
D	100	1.0	100
Total .....	.....	.....	350

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$150	1.0	\$150	.....	.....	\$150
U.K.	100	1.0	100	.....	.....	100
Germany	100	1.0	100	50	\$50	50

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Total			350	.....	50	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 350/350) = (1 - 100\%) = 0\%$. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	\$0	\$50.00
B	50	0	50.00
C	50	0	50.00
D	200	0	200.00
Total	350	0	350.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, only $\frac{1}{2}$ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$50	.....	.....
B .....	.....	\$50	.....
C .....	.....	.....	\$50
D	100	.....	100
Total	150	50	150

Calculation of the allocation of the shortfall due to sovereign action.
Germany (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$150	33.3% of \$50	\$16.67
D	\$100/\$150	66.7% of 50	33.33
Total .....	.....	.....	50.00

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	\$50	.....	\$50
B	50	.....	50
C	50	\$16.67	33.33
D	200	33.33	166.67
Total	350	50.00	300.00

4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$100	U.S.
B	50	U.K.
C	150	Germany
D	\$100	U.S.
D	£300	U.K.
D	150	U.K. or Germany.

Location	Actual asset balance
U.S	\$100
U.K	£300
U.K	200
Germany	150

Conversion Rates: 1=\$1; £1=\$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US \$
A	\$100	1.0	\$100
B	50	1.0	50
C	150	1.0	150
D	\$100	1.0	100
D	£300	1.5	450
D	150	1.0	150
Total .....	.....	.....	1000

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$100	1.0	\$100	.....	.....	\$100
U.K.	£300	1.5	450	.....	.....	450
U.K.	200	1.0	200	.....	.....	200
Germany	150	1.0	150	100	150	0
Total .....	.....	.....	900	.....	150	750

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 900/1000) = (1 - 90\%) = 10\%$. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$100	\$10.00	\$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	630.00
Total	1000	100.00	900.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$100	.....	.....
B .....	.....	50	.....
C .....	.....	.....	150
D	100	450	150
Total	200	500	300

Calculation of the allocation of the shortfall due to sovereign action.
Germany (\$150 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$150/\$300	50% of \$150	\$75

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	\$150/\$300	50% of \$150	75
Total .....	.....	.....	150

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	\$90	.....	\$90
B	45	.....	45
C	135	\$75	60
D	630	75	555
Total	900	150	750

5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held	Customer	Claim	Location(s) customer has consented to having funds held	Location	Actual asset balance
A	\$150	U.S.	D	\$100	U.S.	U.S.	\$250
B	100	U.K.	D	100	U.K. or Germany.	U.K.	50
C	50	Germany.				Germany	100
						Conversion Rates: 1 = \$1.	

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$150	1.0	\$150
B	100	1.0	100
C	50	1.0	50
D	\$100	1.0	100
D	100	1.0	100
Total .....	.....	.....	500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$250	1.0	\$250	.....	.....	\$250
U.K.	50	1.0	50	.....	.....	50
Germany	100	1.0	100	.....	.....	100
Total .....	.....	.....	400	.....	0	400

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 400/500) = (1 - 80\%) = 20\%$. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$150	\$30.00	\$120.00
B	100	20.00	80.00
C	50	10.00	40.00

Customer	Claim in U.S.\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	40.00	160.00
Total	500	100.00	400.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$120.00	.....	\$120
B	80.00	.....	80
C	40.00	.....	40
D	160.00	.....	160
Total	400.00	0	400

6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	50	U.K.
C	\$20	U.S.
C	50	Germany.
D	\$100	U.S.
D	£300	U.K.
D	100	U.K., Germany, or Japan.
E	\$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S.	\$200
U.K.	£200
U.K.	100
Germany	50
Japan	¥1000

Conversion Rates: 1 = \$1; ¥1=\$0.01, £1=\$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$50	1.0	\$50
B	50	1.0	50
C	\$20	1.0	20
C	50	1.0	50
D	\$100	1.0	100
D	£300	1.5	450
D	100	1.0	100
E	\$80	1.0	80
E	¥10,000	0.01	100
Total .....	.....	.....	1000

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actual available
U.S	\$200	1.0	\$200	.....	.....	\$200
U.K	£200	1.5	300	.....	.....	300
U.K	100	1.0	100	.....	.....	100
Germany	50	1.0	50	100	\$50	0
Japan	¥10000	0.01	100	50	50	50
Total .....	.....	.....	750	.....	100	650

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 750/1000) = (1 - 75\%) = 25\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	\$12.50	\$37.50
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000	250.00	750.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	\$50	.....	.....	.....
B .....	.....	\$50	.....	.....
C	20	.....	\$50	.....
D	100	450	50	\$50
E	80	.....	.....	100
Total	250	500	100	150

Calculation of the allocation of the shortfall due to sovereign action.
Germany (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$100	50% of \$50 ..	\$25
D	\$50/\$100	50% of \$50 ..	25
Total .....	.....	.....	50

Japan (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	\$50/\$150	33.3% of \$50	\$16.67
E	\$100/\$150	66.6% of \$50	33.33
Total .....	.....	.....	50.00

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claims after reductions
A	\$37.50	.....	.....	\$37.50
B	37.50	.....	.....	37.50
C	52.50	\$25	.....	27.50
D	487.50	25	\$16.67	445.83
E	135.00	.....	33.33	101.67
Total	750.00	50	50.00	650.00

7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	\$50	U.S.
B	50	U.K.
C	50	Germany
D	\$100	U.S.
D	100	U.K. or Germany
E	\$50	U.S.
E	50	U.K.

Location	Actual asset balance
U.S.	\$250
U.K.	50
Germany	200

Conversion Rates: 1 = \$1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$50	1.0	\$50
B	\$50	1.0	50
B	50	1.0	50
C	50	1.0	50
D	\$100	1.0	100
D	100	1.0	100
E	\$50	1.0	50
E	50	1.0	50
Total .....	.....	.....	500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$250	1.0	\$250	.....	.....	\$250
U.K.	50	1.0	50	.....	.....	50
Germany	200	1.0	200	100%	200	0
Total .....	.....	.....	500	.....	200	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 500/500) = (1 - 100\%) = 0\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	\$0	\$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500	0	500

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$50	.....	.....
B	50	\$50	.....
C .....	.....	.....	\$50
D	100	.....	100
E	50	50	.....
Total	250	100	150

Calculation of the allocation of the shortfall due to sovereign action. Germany (\$200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$150	33.3% of \$200.	\$66.67
D	\$100/\$150	66.7% of \$200.	133.33
Total .....	.....	.....	200.00

This would result in the claims of customers C and D being reduced below zero. Accordingly, the claims of customer C and D will only be reduced to zero, or \$50 for C and \$100 for D. This results in a Total Excess Shortfall of \$50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total Excess shortfall
\$200	\$50	\$100	\$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be in the U.S.	Allocation Share (Column B-C / Column B Total—All Customer Claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	\$100	\$50	\$50/\$200	25% of \$50 ..	\$12.50
C	50	0	(¹)	.....	0
D	200	100	\$100/\$200	50% of \$50 ..	25
E	100	50	\$50/\$100	25% of \$50 ..	12.50
Total	450	.....	.....	.....	50.00

¹ Claim already reduced to \$0.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of total excess shortfall	Claims after all reductions
Claims after reductions:				
A	\$50	.....	.....	\$50.00
B	100	.....	12.50	87.50
C	50	50	.....	0.00
D	200	100	25.00	75.00
E	100	.....	12.50	87.50
Total	500	150	50.00	300.00

Issued in Washington, DC, on August 7, 2002, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA-007-FOR]

Iowa Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa abandoned mine land reclamation plan (Iowa plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (DSC) proposes to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Iowa. DSC also proposes to revise its AMLR plan in response to a letter sent by OSM (Administrative Record No. AML-IA-39) and to update other portions of its AMLR plan to reflect current practices. Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations and to improve operational efficiency. In addition, we are including in this notice Iowa's proposal to revise its statute.

This document gives the times and locations that the Iowa plan and the amendment to that plan are available for

your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Centroid Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Centroid Regional Coordinating Center.

John W. Coleman, Mid-Centroid Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460, Internet: jcoleman@osmre.gov.

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone (515) 281-6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Centroid Regional Coordinating Center. Telephone (618) 463-6460. Internet: jcoleman@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Plan

The AMLR Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over

extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Iowa plan on March 28, 1983. You can find background information on the Iowa plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the March 28, 1983, **Federal Register** (48 FR 12711). You can find later actions concerning the Iowa plan and amendments to the plan at 30 CFR 915.25.

II. Description of the Proposed Amendment

By letter dated June 14, 2002 (Administrative Record No. AML-IA-44), Iowa sent us a proposed amendment to its AMLR plan under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment at its own initiative and in response to a letter dated September 26, 1994 (Administrative Record No. AML-IA-39), that we sent to Iowa in accordance with 30 CFR 884.15(d). Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations. In addition, Iowa proposes to revise its statute at Iowa Code, Chapter 207. Below is a summary of the changes proposed by Iowa. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.