

balancing of traffic flow between Brigham City One arrivals into Salt Lake City International Airport; and (3) the addition of this route will improve the overall management of air traffic operations and thereby enhance safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the order.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

#### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 2004 Jet Routes*

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#### **J-713 [New]**

From Billings, MT, via Boysen Reservoir, WY; Big Piney, WY; to Salt Lake City, UT.

\* \* \* \* \*

Issued in Washington, DC, on June 20, 2001.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 01–16181 Filed 6–26–01; 8:45 am]

**BILLING CODE 4910–13–P**

### **COMMODITY FUTURES TRADING COMMISSION**

#### **17 CFR Parts 1 and 30**

#### **Treatment of Customer Funds**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is issuing an Order regarding the treatment of customer funds carried by a futures commission merchant ("FCM") for the purpose of margining, guaranteeing or securing customers' trades executed on or through a board of trade located outside the U.S. but cleared by a derivatives clearing organization located in the U.S. Subject to the terms and conditions set forth herein, certain designated members of the Chicago Mercantile Exchange ("CME") may commingle in a single account the funds received from customers trading on or through designated contract markets or derivatives trading execution facilities with those funds received in connection with the CME's clearing of certain products traded on or through the MEFF Sociedad Recotra de Productos Financieros Derivados de Renta Variable ("MEFF"), a board of trade located in Spain. This Order is issued pursuant to Sections 4(b) and 4d of the Commodity Exchange Act and Commission Rule 30.10.

**EFFECTIVE DATE:** June 20, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order: Order Regarding the Treatment of Customer Funds Carried in Connection with Transactions Entered into on or through MEFF Sociedad Rectora de Productos Financieros Derivados de

Renta Variable and Cleared through the Chicago Mercantile Exchange.

#### **A. The CME–MEFF Arrangement**

The CME has entered into a clearing arrangement with MEFF involving the trading and clearing of certain stock index futures products based on the Standard and Poor's ("S&P") Euro Index, the S&P Europe 350 Index, and certain sector indices from the S&P Europe 350 Index (collectively, "Designated Future Contracts" or "DFC").<sup>1</sup> Pursuant to the arrangement, referred to as the Master Agreement, MEFF will list these products for trading on its electronic trading platform, MEFF S/MART, execute these trades subject to MEFF rules, and submit these transactions for clearing to the CME. In accordance with part 30 of the Commission's rules, any DFC transaction involving a customer located in the U.S. will be intermediated by an FCM or a firm exempt from such registration pursuant to Rule 30.10.<sup>2</sup> MEFF has received previously from the Commission an order issued pursuant to

<sup>1</sup> Receipt of a no-action position from Commission staff is a necessary prerequisite to the offer and sale of foreign futures and option contracts on non-narrow foreign stock indices in the U.S. On June 13, 2001, the Commission's Office of General Counsel issued a no-action letter to MEFF permitting the offer and sale in the U.S. of futures and options contracts on the S&P Euro and S&P Europe 350 stock indices. MEFF has not sought similar relief with respect to any of the Europe 350 sector indices.

<sup>2</sup> Rule 30.10 permits a person affected by the requirements contained in Part 30 of the Commission's rules to petition the Commission for an exemption from such requirements. Appendix A to the Part 30 rules provides an interpretative statement that clarifies that a foreign regulator or self-regulatory organization ("SRO") can petition the Commission under Rule 30.10 for an order to permit firms that are members of the SRO and subject to regulation by the foreign regulator to conduct business from locations outside of the United States for United States persons on non-United States boards of trade without registering under the Commodity Exchange Act, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the Act.

Among the issues considered by the Commission in determining whether to grant Rule 30.10 relief to a foreign regulatory or self-regulatory authority are the authority's: (i) requirements relating to the registration, authorization, or other form of licensing, fitness review, or qualification of persons through whom customer orders are solicited and accepted; (ii) minimum financial requirements for those persons that accept customer funds; (iii) minimum sales practice standards, including risk disclosures, and the risk of transactions undertaken outside of the United States; (iv) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (v) standards for the protection of customer funds from misapplication; and (vi) arrangements for the sharing of information with the United States. Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of its Rules, 17 CFR Part 30, Appendix A (2001).

Rule 30.10 and certain MEFF members have received confirmation of such relief.<sup>3</sup>

For the purpose of clearing transactions involving DFCs, MEFF will be designated as a Special Clearing Member of the CME and generally will be required to comply with all CME rules.<sup>4</sup> As such, MEFF will open a special clearing account with CME. In the case of a trade intermediated by a MEFF clearing member, the CME will post the legs of the trade to the appropriate sub-account for each MEFF clearing member in the MEFF's special clearing account. In the case of a trade intermediated by a CME clearing member, the CME will post the trade directly into the appropriate clearing member's account at the CME. Customer funds will be held either by MEFF in its special clearing account or by a CME clearing member.

### B. Request for Relief

By letter dated May 24, 2001, the CME requested, on behalf of its clearing members, an exemption from certain requirements set forth in Section 4d of the Commodity Exchange Act ("Act"), and Commission Rules 1.20 and 30.7.<sup>5</sup>

Section 4d of the Act provides, *inter alia*, that FCMs shall "treat and deal" with funds deposited by a customer to margin or settle trades or contracts "as belonging to such customer."<sup>6</sup> Further, an FCM must segregate and separately account for customer funds and property but may, for purposes of convenience, deposit such funds and property in the same account or accounts with any one of the listed depositories. Section 4d(a)(2) further states that it shall be unlawful for any depository to hold, dispose or use any money, securities or property deposited by customers as belonging to the depository or any person other than the customers of said depository. Section 4d also prohibits a depository from commingling funds attributable to trading on or through a designated contract market ("DCM") or derivatives transactions execution facility ("DTF") with those funds on deposit for the purpose of trading on or through a board of trade other than a DCM or DTF.

Commission Rules 1.20–1.30, 1.32, 1.35 and 1.36 implement section 4d.

Rule 30.7 sets forth similar, but not identical, requirements with respect to the treatment of funds held on deposit for foreign futures or foreign options customers, *i.e.*, customers located in the U.S. trading on or subject to the rules of a foreign board of trade.<sup>7</sup> Unlike section 4d and Rule 1.20, Rule 30.7 requires an FCM to maintain in a separate account only an amount sufficient to cover or satisfy all of its current obligations to foreign futures and foreign options customers, defined in Rule 1.3(rr) as the foreign futures and foreign options secured amount, and not an amount equal to all money, securities or property on deposit. Like section 4d and Rule 1.20, however, Rule 30.7 requires an FCM to separate customer funds from non-customer funds and permits an FCM to commingle all customer funds into one account. In addition, Rule 30.7(d) also states that "[I]n no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder."

Notwithstanding the previously cited provisions, however, Section 4d provides further;

in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such FCM may be commingled and deposited as provided in this section with any other money, securities, and property received by such FCM and required by the Commission to be separately accounted for and treated and dealt with as belonging to customers of such FCM.

In addition, Rule 30.10 permits any party adversely affected by any requirement under Part 30 of the Commission's rules to petition the Commission for relief from such requirement.

Absent any relief, CME clearing members would be required to hold U.S. customer funds in accordance with the Rule 30.7 secured amount requirement and would not be permitted to commingle customer funds associated with DFCs in a Section 4d segregated account along with customer funds associated with domestically-traded contracts.

The CME has represented that it believes that existing protections and protections afforded by the Master

Agreement are sufficient to protect the funds of customers trading domestic products (and held in a Section 4d segregated account) in the event of a default by MEFF or a CME clearing member as a result of trading in DFCs. The CME notes that MEFF, as a special clearing member, will be subject to essentially the same capital requirements and financial reporting obligations of other CME clearing members. In addition, CME notes that the clearing of DFCs will be subject to CME oversight and risk management polices. The CME further notes that the Commission previously examined the regulatory structure governing transactions entered on or subject to the rules of MEFF and determined that compliance with applicable Spanish law and MEFF rules may be substituted for compliance with certain provisions of the Act and Commission rules.<sup>8</sup>

### C. Terms and Conditions

Upon due consideration, the Commission has determined to issue an Order pursuant to Sections 4(b) and 4d of the Act and Rule 30.10. Subject to the following terms and conditions, clearing members of the CME may commingle customer funds used to margin, secure, or guarantee transactions in DFCs with funds used to margin, secure, or guarantee transactions in domestically-traded contracts in a segregated account or accounts maintained in accordance with Section 4d of the Act and Rule 1.20. The terms and conditions for relief are as follows:

1. CME will maintain a clearing system that will perform the following functions:

- a. mark-to-market the prices of DFCs on a daily basis;
- b. pay settlement variation and option premium to, and collect settlement variation and option premium from, MEFF and CME clearing members on a daily basis;
- c. verify and post matched trades;
- d. hold the initial margin deposits of MEFF and CME clearing members;
- e. determine and record MEFF's gross open positions;
- f. maintain sub-accounts for each MEFF clearing member on CME's books;
- g. determine and record margin requirements, exercise and assignment, and final cash settlement records;
- h. determine and report daily price fluctuations, total open interest and trading volume for each contract traded pursuant to the Master Agreement for each trading session; and

<sup>3</sup> See 62 FR 16687 (April 8, 1997).

<sup>4</sup> For example, MEFF will be required to: (i) deposit with CME the initial margin equal to the account required of other CME clearing members; (ii) comply with certain CME capital requirements; (iii) file monthly financial reports; (iv) submit an annual certified audit; and (v) provide CME with access to its books and records.

<sup>5</sup> Letter from Stephen M. Szarmack, Director and Associate General Counsel, CME, to John C. Lawton, Acting Director, Division of Trading and Markets, Commission, dated May 24, 2001.

<sup>6</sup> 7 U.S.C. § 6d (2001).

<sup>7</sup> See Rule 30.1.

<sup>8</sup> See *infra*, n.3.

i. ensure the timely and orderly flow of funds in settlement of MEFF's trading profits and losses.

2. MEFF will become and remain a special clearing member of CME subject to all of the rules and policies of CME that govern the rights and responsibilities of other clearing members at the CME including, but not limited to, meeting required security deposit requirements and being subject to CME assessment powers.

3. For each trade executed pursuant to the Master Agreement, MEFF will submit to CME a clearing record submission containing information as CME may require, including, at a minimum, the following information:

a. an indication that the trade is being made pursuant to the Master Agreement;

b. identification of the executing clearing member(s);

c. identification of the terms of the contract being traded, including the delivery month, put/call indicator, strike price, underlying futures contract, if applicable, house or customer origin, whether the trade was a buy or sell transaction, and the date the trade was executed;

d. the number of contracts and the price at which the contracts traded; and

e. an indication as to whether each side of a matched trade will clear in the MEFF special clearing account or in a CME clearing member's account.

4. Upon receipt of each clearing record submission, CME will validate the transaction to ensure the trades are for DFCs and for the existence of two offsetting legs with a trade price that is within a reasonable price range for the contract, and, where necessary, inform MEFF as soon as practicable of any reason validation failed and return the trade to MEFF for correction or nullification.

5. Upon acceptance of a trade for clearing and guarantee, the CME will post the legs of the trade to the appropriate clearing member sub-account of the MEFF special clearing account or to the appropriate CME clearing member's account.

6. CME will retain the right to adjust the marking price for clearing purposes to be different from the settlement price in cases where the settlement prices vary significantly from the theoretical market value of the instruments as determined by the CME.

7. For the purpose of making and receiving margin and daily settlement payments in connection with the clearing of DCFs, CME and MEFF will establish separate accounts at a mutually-agreed upon bank located

outside the U.S. authorized to effectuate transfers between accounts.

8. CME will determine the initial and variation margin levels for each DFC required to be maintained by MEFF and calculate MEFF's margin requirements based upon MEFF's net positions with respect to each delivery month, taking into account any applicable spread margin reductions.

9. In the event of a MEFF default, as defined by the Master Agreement, CME may, in addition to all other rights and remedies contained therein, or otherwise permitted by applicable law:

a. apply margin deposits to the obligations of MEFF to make payments to the CME when and as they become due;

b. liquidate the positions and collateral of MEFF, including but not limited to its security and seat assignment deposits and apply other assets of MEFF available to the CME to discharge the obligations of MEFF to make payments to the CME when and as they become due;

c. by notice to MEFF, suspend the operation of the MEFF special clearing account as to all subsequent trades;

d. establish an alternative market for DFCs through electronic means or otherwise; and

e. allow MEFF clearing members to transfer their positions to a CME clearing member.

Notwithstanding the above, if a MEFF default exists because of a failure by MEFF to make a payment required by the Master Agreement, the CME may liquidate the positions in the MEFF special clearing account.

10. CME will receive from MEFF the following information on an ongoing basis:

a. upon written request and within three business days, all information relating to the markets in DFCs that may assist the CME in its efforts to maintain the integrity of the marketplace;

b. periodic reports listing all large trade positions setting forth positions equal to or exceeding a threshold to be determined jointly by CME and MEFF; and

c. upon a special call and within 24 hours, a report that contains, at a minimum, information required to be included in large trader reports and account identification information.

11. All money, securities, and property received by a participating FCM to margin, guarantee, or secure DCFs, or accruing as a result of DCFs, and held subject to the terms of this Order, shall be deemed to have been received by the participating FCM and shall be accounted for and treated and dealt with as belonging to the customers

of the participating FCM consistently with Section 4d of the Act.

12. Subject to the terms and conditions of this Order, notwithstanding any provision to the contrary in the Commission's rules (including, but not limited to, Rules 1.20(a), 1.22 and 1.24), the money, securities, and property described in the preceding paragraph of this Order may be commingled with money, securities, and property received by a participating FCM to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts on a DCM or DTEF, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, the registration provision of Rule 30.4 applicable to the offer and sale of foreign futures and foreign options to customers located in the U.S. Moreover, the relief granted is limited to the contracts and activities described in the Master Agreement and does not extend to the clearing of transactions entered into on or subject to the rules of any other board of trade located outside the U.S. The relief also does not extend to the use of electronic devices by persons located in the U.S. to access MEFF directly.

This Order is issued pursuant to Sections 4(b) and 4d of the Act and Rule 30.10 based upon the representations made and supporting material provided to the Commission by the CME. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the relief set forth herein is appropriate. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to or the public interest, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

Issued in Washington, DC on June 20, 2001.

**Jean A. Webb,**

*Secretary of the Commission.*

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