



U.S. COMMODITY FUTURES TRADING COMMISSION

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Market Participants
Division

Amanda L. Olear
Director

Thomas J. Anderson
Senior Vice President
ADM Investor Services, Inc.
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Re: No-Action Position Regarding the Deposit and Holding of Customer Funds by ADM Investor Services, Inc. with Taiwan Banks

Dear Mr. Anderson:

This is in response to your letter dated March 6, 2023, to the Market Participants Division (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”). You submitted your letter on behalf of ADM Investor Services, Inc. (“ADMIS”), a registered futures commission merchant (“FCM”). By your letter, you request confirmation from the Division that it will not recommend an enforcement action to the Commission if ADMIS receives and holds funds deposited by Taiwan-based customers to margin, guarantee, or secure futures and options on futures contracts listed on CFTC-designated contract markets (referred to in this letter as

“U.S. futures contracts”) and cleared by ADMIS in a manner that does not comply with Commission Regulation 1.20.¹

I. Regulatory Background

Section 4d(a)(2)² of the Commodity Exchange Act (“CEA”) imposes obligations on FCMs regarding the receipt and holding of “futures customer funds”³ (referred to in this letter as “customer funds”) deposited to margin, guarantee, or secure U.S. futures contracts in order to safeguard such funds. In this regard, Section 4d(a)(2) requires an FCM to separately account for customer funds, and prohibits an FCM from commingling customer funds with the FCM’s own funds or using the customer funds belonging to one customer to margin positions of, or extend credit to, any other person. Section 4d(a)(2) further provides that an FCM may, for convenience, commingle customer funds deposited by futures customers in one or more accounts with any bank, trust company, CFTC-registered derivatives clearing organization (“DCO”), or another FCM.

Commission regulations 1.20 through 1.30, 1.32, and 1.49 implement the customer funds segregation provisions of Section 4d(a)(2) of the CEA. Commission regulation 1.20(a) requires an FCM to deposit customer funds with a bank, trust company, DCO, or another FCM under an account name that clearly identifies the funds as customer funds and shows that the funds are segregated as required by the CEA and Commission regulations. Commission regulation 1.20(d)

¹ 17 CFR § 1.20. Commission regulations may be found at 17 CFR Ch. I and are available at the Commission’s website, <http://www.cftc.gov>.

² 7 U.S.C. § 6d(a)(2).

³ The term “futures customer funds” means all money, securities, and property received by an FCM from, for, or on behalf of, “futures customers” to margin U.S. futures contracts. The term “futures customer” is defined to mean any person who uses an FCM as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or an option on such contract. See Commission regulation 1.3 (17 CFR § 1.3).

requires an FCM to obtain a standard written acknowledgment letter from each bank, trust company, DCO, or FCM prior to, or contemporaneously with, the opening of the futures customer account by the FCM. Pursuant to the terms of the written acknowledgment letter, the depository must: (i) acknowledge that the FCM is opening the account for the purpose of depositing customer funds received from futures customers to trade U.S. futures contracts; (ii) agree to separately account for the customer funds and to hold the customer funds separate from the depository's own funds in accordance with Section 4d(a)(2) of the CEA; (iii) agree that the FCM may not use the customer funds to secure or guarantee any obligation that the FCM may have to the depository, or use the customer funds to secure any credit from the depository; (iv) agree that the accounts holding customer funds may be examined at any reasonable time by Commission staff; (v) agree to reply promptly and directly to any request for confirmation of account balances or other information related to the account from Commission staff; and (vi) agree to provide Commission staff with direct, read-only access to the account. Commission regulation 1.20(d) further requires the FCM to file a copy of the executed acknowledgment letter with the Commission. Additionally, Commission regulation 1.22 prohibits an FCM from using or permitting the use of the customer funds of one futures customer to margin or settle trades or contracts of any person other than such futures customer.

II. Requested No-Action Position

ADMIS is a Commission-registered FCM. In your letter, you state that ADMIS also operates an unincorporated branch office in Taiwan (“ADMISTB”)⁴ that is registered with the

⁴ You represent that ADMISTB has operated in Taiwan for more than 25 years, supporting Taiwan-based customers trading U.S. futures contracts in XXXX products that are cleared by ADMIS. ADMISTB's Taiwan customers are principally XXXX.

Taiwan Securities and Futures Bureau (“SFB”) as a “futures commission merchant”.⁵ You assert that the registration of ADMIS with both the CFTC and SFB results in certain conflicting laws regarding the holding of customer funds as discussed below.

You represent that ADMISTB, as an SFB-registered broker, is required to comply with Taiwan law and SFB requirements with respect to the receipt and holding of funds deposited by its Taiwan customers for trading U.S. futures contracts. Specifically, you represent that Article 42 of the Taiwan Financial Supervisory Commission’s (“FSC”) Regulations Governing Futures Commission Merchants (“Article 42”) requires ADMISTB to deposit funds received from Taiwan customers trading U.S. futures contracts in designated customer margin accounts only with Taiwan banking institutions that have been authorized by the FSC (“Taiwan Customer Margin Accounts”).⁶ You also represent that Article 70 of the Taiwan Futures Trading Act (“Article 70”) requires ADMISTB to segregate funds received from Taiwan customers trading U.S. futures contracts from ADMISTB’s own funds, and to deposit the Taiwan customers’ funds in Taiwan Customer Margin Accounts.⁷ You further represent that Article 70 generally prohibits ADMISTB’s creditors, including the Taiwan banks holding the Taiwan Customer Margin Accounts, from filing an attachment suit or claiming any right to funds held by ADMISTB in Taiwan Customer Margin Accounts. In addition, you represent that Article 71 of the Taiwan

⁵ Entities registered under Taiwan laws as “futures commission merchants” will be referred to in this letter as “SFB-registered brokers” to distinguish them from Commission-registered FCMs.

⁶ See Article 42, Regulations Governing Futures Commission Merchants, Laws & Regulations Database of The Republic of China (Aug. 2, 2016), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400106>. You represent that ADMISTB maintains Taiwan Customer Margin Accounts with **XXXX**. Each bank has in excess of \$1 billion in regulatory capital and ADMISTB deposits and maintains the Taiwan customers’ funds in the Taiwan Customer Margin Accounts in accordance with applicable Taiwan laws and regulations for SFB-registered brokers.

⁷ See Article 70, Futures Trading Act, Laws & Regulations Database of the Republic of China (Jan. 16, 2019), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400100>.

Futures Trading Act (“Article 71”) prohibits ADMISTB from withdrawing any funds from a Taiwan Customer Margin Account except: (1) in accordance with instructions from a customer to deliver excess margin; (2) for payment of margin due or to settle customer balances; (3) for payment to cover certain fees or expenses, such as brokerage commissions; or (4) for certain other items approved by the FSC.⁸

You state that ADMISTB’s compliance with Taiwan laws and regulations regarding the receipt and holding of funds for Taiwan customers trading U.S. futures contracts results in ADMIS failing to comply with certain aspects of the Commission’s regulations governing the segregation of customer funds. In this regard, you state that although Articles 42, 70, and 71 have regulatory objectives consistent with the Commission’s customer funds segregation requirements, ADMISTB’s adherence to the Articles results in ADMIS failing to comply with specific requirements of the Commission’s customer funds segregation regulations. Specifically, you state that the requirements under Commission regulation 1.20(a) for an FCM to deposit customer funds under an account name that clearly identifies the funds as futures customers funds and shows that the funds are being segregated as required by Section 4d(a) of the CEA and Commission regulations are in conflict with Article 42 and Article 70, which require Taiwan customer funds to be deposited by an SFB-registered broker in Taiwan Customer Margin Accounts rather than in compliance with Commission segregation requirements. You also state that ADMISTB cannot obtain from Taiwan banks the standard, signed acknowledgment letter required by Commission regulation 1.20(d) identifying the Taiwan Customer Margin Accounts held under Article 42 and Article 70 as being subject to the segregation requirements of Section

⁸ See Article 71, Futures Trading Act, Laws & Regulations Database of the Republic of China (Jan. 16, 2019), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400100>.

4d(a)(2) of the CEA and Commission regulations. You further state that ADMISTB cannot ensure that a Taiwan bank will provide the Commission with direct, read-only access to the Taiwan Customer Margin Accounts or permit Commission staff to examine the Taiwan Customer Margin Accounts as required under Commission regulation 1.20(d).

To mitigate the impact of the conflicting regulatory requirements, you state that ADMISTB generally transfers an amount of funds equal to or in excess of the margin required by the applicable DCO clearing the U.S. futures contracts for each Taiwan customer from a Taiwan Customer Margin Account to an ADMIS Section 4d(a)(2) segregated customer funds account held at a U.S. bank (“ADMIS Segregated Account”). In addition, you state that ADMIS has written policies and procedures that limit the amount of excess Taiwan customer funds (*i.e.*, the amount of funds in excess of required DCO margin) that are held in Taiwan banks. In this regard, pursuant to the written policies and procedures, ADMISTB initiates a transfer of funds from a Taiwan Customer Margin Account to an ADMIS Segregated Account whenever the balance of the funds held for a Taiwan customer in a Taiwan Customer Margin Account exceeds **XXXX** on an intra-month basis. Specifically, when a Taiwan customer’s balance exceeds **XXXX** on an intra-month basis, ADMISTB transfers all but **XXXX** from a Taiwan Customer Margin Account to an ADMIS Segregated Account.

You also represent that the written policies and procedures require ADMISTB to transfer all but **XXXX** of the excess margin funds held for each Taiwan customer in a Taiwan Customer Margin Account to an ADMIS Segregated Account at a U.S. bank on the last business day of each month, regardless of the total balance held by ADMISTB in a Taiwan Customer Margin

account for the Taiwan customer.⁹ You further represent that ADMISTB retains excess margin funds in Taiwan Customer Margin Accounts so that ADMISTB may meet Taiwan customers' requests to withdraw excess margin funds from their accounts on a same-day-basis.¹⁰

You represent that the written policies and procedures are consistent with ADMISTB's executed customer account agreements with its Taiwan customers, which grant ADMISTB standing authority, in its sole and absolute discretion, to transfer funds from ADMISTB's Taiwan Customer Margin Accounts to ADMIS Segregated Accounts. You also state that this transfer is a permitted transfer of customer funds under Article 71 of the Taiwan Futures Trading Act.¹¹

You also note that ADMIS takes steps to ensure that it maintains at all times a sufficient amount of funds in ADMIS Segregated Accounts to meet the total net liquidating equity of each ADMIS futures customer, including the total net liquidating equity of each ADMISTB Taiwan customer. Specifically, you represent that ADMIS holds, at all times, proprietary funds in ADMIS Segregated Accounts in an amount in excess of the total amount of Taiwan customer funds held by ADMISTB in Taiwan Customer Margin Accounts. In this connection, Commission regulation 1.32 requires each FCM to compute, as of the close of business each day, the total amount of funds due to all futures customers and to demonstrate that the FCM holds a sufficient amount of customer funds with Section 4d(a)(2) qualifying depositories to meet the

⁹ For example, if ADMISTB holds **XXXX** in a Customer Margin Account for a Taiwan customer as of the last business day of a month, ADMISTB will transfer **XXXX** of that customer's balance to an ADMIS Segregated Account.

¹⁰ Due to the 13-hour time difference between Chicago and Taiwan, ADMISTB would not be able to process a Taiwan customer's withdrawal request on a same-day basis if it did not hold some customer funds with Taiwan banks.

¹¹ As noted above, Article 71 permits SFB-registered brokers to withdraw funds from a customer margin account with a Taiwan bank in accordance with the customer's instructions.

full amount due to all customers. The FCM is required to file a copy of its computation with the Commission on a daily basis,¹² and also must provide notification to the Commission if it fails to hold a sufficient amount of funds in Section 4d(a)(2) segregated accounts to meet the aggregate amount due to all futures customers.¹³

In performing its daily segregated funds calculation required by Commission regulation 1.32, you represent that ADMIS excludes all funds held in Taiwan Customer Margin Accounts from the amount of customer funds held in ADMIS Segregated Accounts. You further represent that ADMIS, however, includes the total amount of funds held in Taiwan Customer Margin Accounts in the calculation of the total amount of funds required to be held in ADMIS Segregated Accounts. Excluding the funds maintained in Taiwan Customer Margin Accounts from the amount of funds held in ADMIS Segregated Accounts, while also including the funds held in Taiwan Customer Margin Accounts as amounts owed to customers and required to be held in ADMIS Segregated Accounts, results in ADMIS effectively using its own funds to cover all funds held by Taiwan banks. You further state that ADMIS also takes a 100 percent capital charge for the full balance of any Taiwan Customer Margin Account funds in computing its adjusted net capital under Commission regulation 1.17 to reflect that the Taiwan bank deposits are held under Taiwan law for the exclusive use and benefit of Taiwan customers and may not be used by ADMIS for its own purposes.

You also note that the total amount of funds held in ADMISTB Taiwan Customer Margin Accounts is not material to ADMIS's net capital or excess segregation deposits and does not present a material risk to the firm's financial standing or other customers. You state that

¹² Commission regulation 1.32(e); 17 CFR § 1.32(e).

¹³ Commission regulation 1.12(h); 17 CFR § 1.12(h).

ADMISTB held an average daily balance of **XXXX** in Taiwan Customer Margin Accounts for all Taiwan customers with Taiwan banks during 2022. The average daily balance of **XXXX** represents approximately **XXXX** percent and **XXXX** percent of ADMIS's \$512 million of adjusted net capital and \$134 million of excess net capital, respectively, as of December 31, 2022.

You also state that as of December 31, 2022, ADMIS held approximately **XXXX** in Taiwan Customer Margin Accounts, which represented **XXXX** percent of the approximate \$8.6 billion of customer funds held in ADMIS Segregated Accounts and **XXXX** percent of ADMIS's residual interest of approximately \$332 million as of December 31, 2022. You further represent that the **XXXX** held in ADMISTB Taiwan Customer Margin Accounts represented approximately **XXXX** percent of ADMIS's adjusted net capital of \$512 million and **XXXX** percent of ADMIS's excess net capital of \$134 million as of December 31, 2022.

Lastly, you also represent that although you have considered alternative approaches to addressing the segregation issues, such approaches are either inconsistent with the expectations of the Taiwan customers or cost prohibitive. Specifically, you represent that although ADMIS could address the segregation issues by establishing a separate incorporated subsidiary in Taiwan, such an approach would not meet the business needs and expectations of the Taiwan customers who want to maintain accounts directly with ADMIS through a Taiwan branch in order to have the full capital and operational support of ADMIS for their trading as opposed to a separately capitalized and operated subsidiary. You further represent that the costs of establishing and maintaining a separate subsidiary in Taiwan is not supportable given the relatively limited customer business from Taiwan. You represent that absent a no-action position, ADMIS may have to close the Taiwan branch or customers' accounts, which would

reduce the offerings of one of the few remaining US nonbank FCMs doing business in Taiwan and possibly other foreign markets.

Market Participants Division No-Action Position

Based on the facts and representations set forth in your letter and recited above, including that: (i) ADMIS maintains written policies and procedures regarding the transfer of Taiwan customer funds from Taiwan Customer Margin Accounts to ADMIS Segregated Accounts; (ii) ADMIS calculates its daily segregation computation under regulation 1.32 by excluding the balance of funds held in Taiwan Customer Margin Accounts as funds held in segregation and including the balance as funds required to be held in segregation for customers; and (iii) the de minimis level of the balance of funds held in Taiwan banks relative to the amount of funds held in ADMIS Segregated Accounts and ADMIS's adjusted net capital and excess net capital, the Division will not recommend enforcement action to the Commission under Commission regulations governing the segregation of customer funds against ADMIS if ADMISTB receives and holds funds from Taiwan customers for U.S. futures contracts in a customer margin account with a Taiwan bank that does not comply with Commission customer funds segregation requirements. This letter is conditioned on the following:

1. ADMISTB receives and deposits funds posted by Taiwan customers for trading U.S. futures contracts with a Taiwan bank in accordance with Article 42 of the Taiwan Financial Supervisory Commission's Regulations Governing Futures Commission Merchants and Article 70 of the Taiwan Futures Trading Act;
2. ADMISTB holds Taiwan customer funds for trading U.S. futures contracts in accordance with the customer segregation requirements set forth in Article 42 of the

- Taiwan Financial Supervisory Commission's Regulations Governing Futures Commission Merchants and Articles 70 and 71 of the Taiwan Futures Trading Act;
3. ADMISTB obtains and maintains the written authorization from each Taiwan customer to transfer its funds in ADMISTB's sole and absolute discretion from Taiwan Customer Margin Accounts in Taiwan to ADMIS Segregated Accounts in the U.S.;
 4. ADMISTB promptly transfers Taiwan customer funds from Taiwan Customer Margin Accounts to ADMIS Segregated Accounts in the U.S. consistent with its written policies and procedures for the transfer of such funds;
 5. ADMIS, in preparing its daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by Commission regulation 1.32, recognizes any funds maintained in Taiwan Customer Margin Accounts as a segregation requirement, and does not recognize such funds as funds held in segregated accounts in meeting the segregation requirement;
 6. ADMIS policies and procedures for determining a targeted residual interest amount under Commission regulations 1.11 and 1.23 separately consider ADMIS's practice of using its own funds to cover balances with Taiwan banks;
 7. ADMIS takes a capital charge in computing its regulatory capital under Commission regulation 1.17 equal to 100 percent of the amount of funds held in Taiwan Customer Margin Accounts; and
 8. ADMIS promptly notifies the Director of the Market Participants Division by email and by phone if, on any given business day, the amount of customer funds held in Taiwan Customer Margin Accounts exceeds \$XXXX and those Taiwan customer

funds are not withdrawn by Taiwan customers nor transferred from the Taiwan Customer Margin Accounts to ADMIS Segregated Accounts the next business day in Taiwan.¹⁴

This letter and the positions taken herein represent the views of this Division only, and do not necessarily represent the views of the Commission or any other office or division of the Commission. The positions taken in this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions contained herein, are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances might render this letter void.

Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of this letter in its discretion. If you have any questions regarding this letter, please contact Tom Smith, Deputy Director at 202-418-5495 or tsmith@cftc.gov, or Larry Eckert, Special Counsel, at 646-746-9704 or leckert@cftc.gov.

Sincerely,

Amanda L. Olear
Director

cc: Debbie Kokal, Executive Director, CME Group

¹⁴ MPD staff will monitor this condition via periodic communications with ADMIS and the review of periodic financial reports submitted by the firm.