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TRADING FOREIGN COMMODITY FUTURES AND OPTIONS BY U.S. PERSONS

U.S. customers may only trade foreign exchange-traded broad-based index futures contracts if the contracts (and options thereon) meet certain criteria and may only trade foreign exchange-traded security futures contracts if they adhere to the terms of an SEC order and CFTC advisory. In this article, the authors discuss the specific rules applicable to these products and several related subjects, including requirements for intermediaries (brokers). They close with a discussion of cross-border enforcement considerations.

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In this article, we examine the requirements relating to the trading of foreign futures and commodity options by U.S. customers. The requirements are set forth in the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (“CEA”) and in rules promulgated by the Commodity Futures Trading Commission (“CFTC”).

As a general rule, the CEA and the CFTC’s rules do not prohibit or restrict the offer or sale of foreign exchange-traded (i.e., listed on an exchange for trading) futures and commodity option products to customers located in the U.S. The exceptions to the general rule apply to three types of products: (i) foreign exchange-traded broad-based security index futures contracts (and options thereon); (ii) foreign exchange-traded security futures contracts (and options thereon); and (iii) futures contracts on foreign government debt obligations (and options thereon).

In summary, U.S. customers may only trade foreign broad-based index futures contracts if those contracts provide for cash settlement and are deemed by the CFTC

to be not readily susceptible to manipulation. To trade foreign security futures contracts, U.S. customers must adhere to the terms of an order issued by the Securities and Exchange Commission and an advisory issued by the CFTC. Futures contracts on foreign government debt obligations are available to U.S. customers only if the SEC has deemed the underlying debt an exempt security. Moreover, an intermediary (i.e., a broker) that facilitates a U.S. market participant’s trading of foreign futures and commodity options contracts is subject to registration requirements, unless an exemption applies.

The specific rules applicable to these products and intermediaries are discussed in detail below.

As long as a market participant neither seeks nor exercises direct access to any foreign boards of trade (“FBOT”), the rules applicable to the U.S. customer’s trading activity are limited to those restrictions on foreign products available to U.S. customers under U.S. law and rules. But notwithstanding such rules (discussed below), the offer and sale of foreign futures

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