

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-AGL-65." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Steubenville, OH, to accommodate aircraft executing the proposed GPS Rwy 14 SIAP, and GPS Rwy 32 SIAP, at Jefferson County Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriated aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September

10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

##### AGL OH E5 Steubenville, OH [New]

Steubenville, Jefferson County Airport, OH (Lat. 40° 21' 34" N., long. 80° 42' 00" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Jefferson County Airport,

excluding that airspace within the Wheeling, WV, Class E airspace area.

\* \* \* \* \*

Issued in Des Plaines, Illinois on December 24, 1998.

**Michelle M. Behm,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 99-494 Filed 1-8-99; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Representations and Disclosures Required by Certain IBs, CPOs and CTAs

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is proposing to adopt certain amendments to Commission Rules 30.5 and 30.6.<sup>1</sup> The proposed amendments will revise the procedure by which persons may obtain an exemption from registration under Rule 30.5 and will require CPOs and CTAs to provide U.S. customers with certain disclosures, regardless of whether they are trading on United States markets or foreign markets. **DATES:** Comments must be received by March 12, 1999.

**ADDRESSES:** Interested person should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20481. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-552, or by electronic mail to secretary@cftc.gov. Reference should be made to "Commission Rules 30.5 and 30.6.

**FOR FURTHER INFORMATION CONTACT:** Laurie Plessala Duperier, Special Counsel, or Leanna L. Morris, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

#### SUPPLEMENTARY INFORMATION:

#### I. Background—Current State of the Rules

In 1987, the Commission adopted a new part 30 to its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered

<sup>1</sup> Commission rules referred to herein are found at 17 CFR Ch. I 1998).

into or on subject to the rules of a foreign board of trade.<sup>2</sup> These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vest the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

Part 30 sets forth regulations governing foreign futures<sup>3</sup> and foreign option<sup>4</sup> transactions executed on behalf of foreign futures or foreign options customers.<sup>5</sup> For example, Rule 30.4 requires any person engaged in the activities of a futures commission merchant ("FCM"), introducing broker ("IB"), commodity pool operator ("CPO") and commodity trading advisor ("CTA"), as those activities are defined within the rule, to register with the Commission unless such persons claims relief from registration under part 30. The transactions which are subject to regulation and require registration under part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract; acceptance of money, securities or property to margin, guarantee or secure any foreign futures of foreign option trades or contracts; and any agreement to direct or to guide U.S. customer accounts.<sup>6</sup>

The part 30 rules allow certain persons located outside the United States to obtain an exemption from registration and certain other requirements. Commission Rule 30.5 provide that any person located outside of the United States, its territories or possessions who is required to be registered with the Commission, other than a person required to be registered as an FCM—i.e., an IB, CPO or CTA—will be exempt from such registration

requirement, provided he or she appoints an agent for service for process in accordance with paragraph (a) of the rule. Rule 30.5(a) provides that any person claiming an exemption under the rule must enter into a written agency agreement with the FCM through which business is done in accordance with the provisions of Rule 3.3(b), with any registered futures association or any other person located in the United States in the business of providing agency services. The agency agreement authorizes such FCM or other person to serve as the agent for the Rule 30.5 exempt firm for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer.<sup>7</sup>

All persons who are required to be registered under Rule 30.4, including persons who are exempt under Rule 30.5, must comply with the disclosure requirements of Rule 30.6.<sup>8</sup> Rule 30.6(a) states that an IB claiming exemption under Rule 30.5 must provide foreign futures or options customers with the Risk Disclosure Statement required by Commission Rule 1.55. CPOs and CTAs claiming exemption under Rule 30.5 must, pursuant to Rule 30.6(b), provide the Risk Disclosure Statement set forth in Rule 4.24(b) in the case of CPOs, or Rule 4.34(b) in the case of CTAs.

## II. Proposed Amendments

The Commission has re-evaluated the provisions of part 30 in light of the changes in the futures and option industry since 1987 and its experience with implementing part 30. As the Commission noted in its adoption of part 30, "the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex."<sup>9</sup> With the advances in technology and accessibility to futures and option markets around the world, the Commission believes that it is appropriate to amend provisions of part 30 at this time to further the regulatory goals of customer protection and to continue the Commission's efforts to update and to modernize its regulations. Specifically, the Commission proposes

amendment Rule 30.5 to clarify which customers Rule 30.5 exempt persons may solicit and from whom they may accept orders, to specify who may serve as an agent for service of process, to clarify who may carry the customer accounts of Rule 30.5 firms, and to require that applicants for a Rule 30.5 exemption make certain representations in order to obtain the exemption. The Commission also proposes amendment Rule 30.6 to ensure that U.S. customers receive appropriate disclosures concerning their investments in foreign futures and foreign option contracts.

The proposed amendments will not be retroactive, but will apply to all regulated activities with all new foreign futures and foreign options customers as of the effective date of the new rules. Thus, an IB, CPO or CTA currently exempt under Rule 30.5 will not be required to file a new Rule 30.5 petition for exemption. However, a CPO or CTA currently exempt under Rule 30.5 will be required to provide all new prospective pool participants or new prospective customers with a disclosure document or risk disclosure statement, whichever applies, in accordance with Rule 30.6. The Commission also invites comment on whether currently exempt Rule 30.5 CPOs and CTAs should be required to make the disclosure document available for currently existing participants and customers.

Further, these proposed rule amendments do not alter any existing regulatory obligations to the Securities and Exchange Commission or state securities administrators.

The Commission seeks comments on the following proposed amendments at this time and invites comment regarding any other amendments to these rules that may be necessary in light of industry developments during the past decade.

### A. Rule 30.5

As noted above, an exemption from registration pursuant to Rule 30.5 currently is effective when a person enters into a written agency agreement with any of the enumerated persons or entities provided for by the rule and files the agreement with National Futures Association ("NFA"). In practice, few individuals or firms have chosen to obtain an exemption under Rule 30.5. CPOs and CTAs who have obtained a Rule 30.5 exemption were requested by Commission staff to make certain representations, including the representation that they would solicit only qualified eligible participants ("QEPs") and qualified eligible clients ("QECs"), as those terms are defined in Rule 4.7. Pursuant to the Commission's

<sup>2</sup> 52 FR 28980 (August 5, 1987).

<sup>3</sup> "Foreign futures" as defined in part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a).

<sup>4</sup> "Foreign option" as defined in part 30 means "any transaction or agreement which is or is held out to be of the character of, or it commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Commission Rule 30.1(b).

<sup>5</sup> Pursuant to Commission Rules 30.1(c), "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

<sup>6</sup> See Commission Rule 30.4.

<sup>7</sup> "Communications" includes "any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document for correspondence relating to any activities of such person subject to regulation under this part." Commission Rule 30.5(a).

<sup>8</sup> Person claiming exemption pursuant to Rule 30.5 must also comply with Commission Rules 1.37 and 1.57. Rule 30.5(c).

<sup>9</sup> 52 FR at 28980.

September 11, 1997 delegation order to the NFA,<sup>10</sup> NFA has continued to request these representations from Rule 30.5 firms. Thus, most Rule 30.5 exempt firms have solicited QEPs and QECs, not U.S. "retail customers," defined as U.S. customers that do not meet the definition of a QEP or QEC.

As business continues to become more global and technology facilitates international communication, foreign CPOs and CTAs may wish to do business with not only QEPs and QECs, but U.S. retail customers as well. While the current disclosure requirements of Rule 30.6 do not afford enough protection to U.S. retail customers, the amendments to the disclosure requirements under Rule 30.6 proposed herein eliminate the need to restrict Rule 30.5 exemptions to QEPs and QECs. The Commission, therefore, wishes to make clear that exempt IBs, CPOs and CTAs may solicit U.S. customers who are not QEPs and QECs, so long as the exempt persons comply with the other provisions of part 30, as proposed to be amended herein.

In order to determine whether persons qualify for an exemption pursuant to Rule 30.5, the Commission proposes revising the rule to require an applicant to make certain representations to establish that he or she is qualified for the exemption. Paragraph (a) of the rule currently states that in order to be eligible for a Rule 30.5 exemption, the applicant must be a non-domestic person soliciting U.S. customers to trade in foreign futures and foreign option contracts and must designate an agent for service of process in the United States. Under proposed Rule 30.5(e), a Rule 30.5 exemption will no longer be self-effectuating—all petitions will be granted or denied based upon the information filed by the applicant with NFA, including the agent for service of process agreement required under Rule 30.5(a). An applicant would be required to show affirmatively that he or she qualifies for an exemption by representing that (i) the applicant is located outside of the United States, its territories or possessions; (ii) the applicant does not trade contracts on behalf of any U.S. customer on any market regulated by the Commission; and (iii) the applicant irrevocably consents to jurisdiction in the United States with respect to transactions subject to part 30 of the regulations promulgated under the Commodity Exchange Act.<sup>11</sup> To ensure the fitness of

applicants who conduct business with U.S. customers, the applicant also must represent that he or she would not be statutorily disqualified from registration under section 8a(2) or 8a(3) of the Act and has not been and would not be disqualified from registration or licensing by the home country regulator. If the applicant or its activities are regulated by any government entity or self-regulatory organization, the name and address of such government entity or self-regulatory organization must be provided. In addition, the applicant must specify whether he or she is applying for an exemption based on activities as an IB, CPO or CTA and provide the name, address and telephone number of the main business. Finally, the petition must be in writing and signed as follows: if the IB, CPO or CTA is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person with legal authority to bind the corporation. The Commission recognizes that, due to potential differences in business structures in certain foreign jurisdictions, the above qualified signatories may be too restrictive. Thus, the Commission seeks comment on how the rule might otherwise be written to recognize an appropriate signatory for a Rule 30.5 petition.

In the proposed amendments, the Commission also wishes to clarify who may carry foreign futures and foreign options customers' accounts in connection with solicitation by and acceptance of orders by persons who have obtained an exemption under Rule 30.5. The Division of Trading and Markets ("Division") has interpreted Rule 30.5 to permit an exempt IB, CPO or CTA to carry customer accounts with a registered futures commission merchant or with a foreign broker who has received confirmation of Rule 30.10 relief on a fully-disclosed basis as required by Rule 30.3(b).<sup>12</sup> Persons exempt under Rule 30.5 have been permitted to conduct business through Rule 30.10 exempt firms because such firms, in order to receive confirmation of Rule 30.10 relief, have represented to the Commission that they will provide access to the firm's books and records related to transactions under part 30 and adequate arrangements exist with these firms and their regulator(s) to share information, including firm-specific and

transaction-specific information. The Commission wishes to codify the policy set forth in Interpretative Letter 89-3. Thus, the proposed rule states specifically that persons exempt under Rule 30.5 must use either U.S. registered futures commission merchants or foreign brokers who have received confirmation of Rule 30.10 relief to carry foreign futures or foreign options customer accounts. Rule 30.5 exempt persons are not permitted to use foreign brokers who have not received confirmation of Rule 30.10 relief to carry foreign futures or foreign options customer accounts, nor have they been permitted to do so in the past.

The proposed rule also clarifies that, although Rule 30.5 exempt persons may use Rule 30.10 firms to carry U.S. customer accounts, they may not designate such firms as their agent for service of process under Rule 30.5(a), since such firms are not located in the United States. The purpose of requiring designations of an agent for service of process is to make communications with foreign persons or entities easier by designating a recipient in the United States. Rule 30.5, as currently written might have caused people to believe that Rule 30.10 firms could act as an agent for service of process because the rule states that an agency agreement may be entered into with "the futures commission merchant through which business is done in accordance with the provisions of § 30.3(b) of this part \* \* \*" Rule 30.3(b) provides that, "except as otherwise provided in § 30.4 of this part or pursuant to an exemption granted under § 30.10 of this part," the offer and sale of foreign futures and foreign option contract on behalf of U.S. customers must be by or through a registered FCM. Thus, Rule 30.5 could be read to mean that a Rule 30.10 exempt firm could act as an agent for service of process. The intent behind Rule 30.5, however, was to allow registered FCMs or other appropriate persons located in the United States to act as an agent for service of process. Thus, the proposed rule clarifies that a Rule 30.5 exempt person must designate either a U.S. futures commission merchant through which business is done, a registered futures association or any other person located in the United States in the business of providing services as an agent for service of process to act as the agent for service of process in accordance with Rule 30.5(a).

#### *B. Rule 30.6*

The Commission believes that U.S. customers who trade foreign futures and foreign options should receive disclosures similar to those provided to

<sup>10</sup> 62 FR 47792 (September 11, 1997).

<sup>11</sup> These representations are consistent with the representations required of foreign firms claiming exemption from registration pursuant to

Commission Rule 30.10. (See Commission Rule 30.10, Appendix A-Part 30, Interpretative Statement with Respect to the Commission's Exemptive Authority under § 30.10 of its rules).

<sup>12</sup> CFTC Interpretative Letter No. 89-3 (1989 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶24,416 (April 4, 1989).

U.S. customers who trade on domestic markets. Currently, IBs and FCMs, whether registered or exempt from registration, are required to provide the same disclosures to U.S. customers, regardless of whether the customer is trading on domestic or foreign markets.<sup>13</sup> There are, however, disparate disclosure requirements for domestic and foreign trading solicited by CPOs and CTAs, as explained below.

Rules 4.21 and 4.31 require registered CPOs and CTAs trading on U.S. contract markets to provide prospective customers or participants with a Disclosure Document containing the information set forth in Rule 4.24 for CPOs and Rule 4.34 for CTAs. The Disclosure Document includes, among other things, information concerning business background, fees past performance and material litigation. CPOs and CTAs who solicit sophisticated and institutional investors who meet the definition of a QEP or QEC pursuant to Rule 4.7, however, are exempt from the Disclosure Document requirements of Rules 4.21, 4.24, 4.25, 4.26, 4.31, 4.34, 4.35 and 4.36.<sup>14</sup> They need only provide QEPs and QECs with the statement prescribed in Rule 4.7(a)(2)(i)(A) for CPOs and Rule 4.7(b)(2)(i)(A) for CTAs, which explains that an offering memorandum is not required to be filed with and has not been reviewed by the Commission pursuant to an exemption.

Part 30, specifically Rule 30.6(b), governs the disclosure requirements for CPOs and CTAs who invest in foreign futures or foreign option contracts on behalf of U.S. customers. It does not distinguish between retail customers and sophisticated customers because the QEP and QEC categorization was not established until the development of Rule 4.7 in 1992. Rule 30.6(b) currently requires all CPOs and CTAs registered or required to be registered under part 30, including those exempt from registration pursuant to Rule 30.5, to

<sup>13</sup> Pursuant to Rule 30.5(c), exempt IBs must comply with Rule 30.6. Rule 30.6(a) requires FCMs and IBs to provide foreign futures and foreign options customers with the Risk Disclosure Statement prescribed by Rule 1.55(b)—the same disclosure required of registered FCMs and IBs trading in domestic markets.

<sup>14</sup> As provided in the final rulemaking of Rule 4.7, QEPs and QECs are deemed to be sophisticated investors that possess "either the investment expertise and experience necessary to understand the risks involved, \* \* \* or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investment" and, therefore, require fewer disclosure protections than retail customers. 57 FR 34853, at 34854 (August 7, 1992).

provide prospective participants or clients with only the Risk Disclosure Statement prescribed by Rule 4.24(b) for CPOs or Rule 4.34(b) for CTAs. In contrast, CPOs and CTAs who solicit or accept orders from U.S. customers for trading on U.S. markets are required to provide the extensive firm-specific information contained in a Disclosure Document required by part 4 of the regulations. Thus, U.S. retail customers who trade on U.S. markets receive more extensive disclosures than do U.S. retail customers who trade only foreign futures and foreign option contracts.

#### 1. U.S. Retail Investors

To ensure adequate risk disclosures are provided to all U.S. investors trading in foreign futures and option contracts, the Commission proposes amending Rule 30.6(b) to provide that CPOs or CTAs registered or required to be registered under part 30, including those exempt from registration pursuant to Rule 30.5, may solicit or accept order from U.S. retail customers for trading in foreign futures or foreign option contracts only if the CPO or CTA first provides each prospective participant or prospective client with the Disclosure Document required by Rule 4.21 for CPOs and Rule 4.31 for CTAs, containing the disclosures required by Rules 4.24 and 4.34, respectively. These Disclosure Documents should be filed in compliance with Rule 4.26 for CPOs and Rule 4.36 for CTAs.<sup>15</sup> By this amendment, U.S. retail customers will receive similar disclosures whether they trade on domestic or foreign markets.

#### 2. U.S. QEP and QEC Customers

As discussed above, Rule 30.6 currently requires CPOs and CTAs to provide the entire Risk Disclosure Statement of Rule 4.24(b) for CPOs and Rule 4.34(b) for CTAs to all customers, including QEPs and QECs. In contrast, Rule 4.7 does not require CPOs and CTAs to provide QEPs and QECs who trade in U.S. markets with the Risk Disclosure Statement of Rules 4.24(b) and 4.34(b). It only requires CPOs and CTAs to give QEPs and QECs the limited notices in Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively. To make the disclosures to QEPs and QECs more uniform, whether they invest in U.S. markets or foreign markets, the Commission proposes amending Rule 30.6 as follows.

As proposed, Rule 30.6 would require CPOs and CTAs to provide QEPs and QECs with only the risk disclosures

<sup>15</sup> If this provision were to be adopted, it would be necessary for the Commission to issue an order delegating to NFA the function of reviewing Disclosure Documents filed pursuant to Rule 30.6.

contained in Rules 4.24(b)(2) and 4.34(b)(2), respectively, which are the disclosures that specifically address the risks of trading in foreign futures and foreign options. CPOs and CTAs would no longer provide the entire Risk Disclosure Statement.<sup>16</sup> In addition, CPOs and CTAs who solicit and accept orders from QEPs and QECs would be required to provide foreign futures and foreign options customers with the statements in Rules 4.7(a)(2)(i)(A) and 4.7(b)(2)(i)(A), respectively.

Thus, the net effect of these amendments is that CPOs and CTAs who solicit foreign futures and options customers who are QEPs and QECs will be required to provide slightly more disclosure than they do to QEPs and QECs who trade on domestic markets, but will be allowed to disclose less than Rule 30.6 currently requires.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in proposing rules, consider the impact of those rules on small business. 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.<sup>17</sup> The Commission previously has determined that CPOs are not small entities for the purpose of the RFA.<sup>18</sup> With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.<sup>19</sup> In this regard, the Commission notes that the regulations being proposed herein with respect to CTAs' and IBs' activities relating to foreign futures and foreign option contracts are essentially the same as those governing CTAs and IBs in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. The Commission has

<sup>16</sup> CPOs and CTAs who solicit only QEPs and QECs for trading on domestic markets presently are not required by Part 4 to provide the Risk Disclosure Statements in Rules 4.24 and 4.34. The Commission believes that the specific risk disclosure statements in Rules 4.24(b)(2) and 4.34(b)(2) should be provided to all U.S. customers solicited to trade foreign futures and foreign options, including QEPs and QECs, due to the difference in regulatory protections available when trading on foreign exchanges.

<sup>17</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>18</sup> 47 FR 18619-18620.

<sup>19</sup> 47 FR 18618-18620.

previously determined that the disclosure requirements governing these categories of registrant will not have a significant economic impact on a substantial number of small entities.<sup>20</sup> In fact, Rule 4.31, which governs the disclosure requirements for CTAs, was revised in 1995 for the purpose of reducing the number of disclosures required and focusing on succinct disclosure of material information. The Commission determined that the revised rule reduced rather than increased the requirements of former Rule 4.31. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

#### B. Paperwork Reduction Act

When publishing proposed rule, the Paperwork Reduction Act of 1995<sup>21</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize 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 submission of responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with the entire new collection 3038-0023, of which these proposed rules are a part, is as follows:

Average burden hours per response. 16.13.

Number of respondents ..... 73,435.  
Frequency of response ..... On occasion.

The burden associated with these specific proposed rules is as follows:

Rule 30.5—  
Average burden hours per response. 1.00.  
Number of Respondents ..... 65.  
Frequency of response ..... On occasion.

Rule 30.6(b)(1)—  
Average burden hours per response. .5.  
Number of Respondents ..... 40.  
Frequency of response ..... On occasion.

Rule 30.6(b)(2)—  
Average burden hours per response. 3.0.  
Number of Respondents ..... 5.  
Frequency of response ..... On occasion.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. 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.

#### List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements, Reporting and recordkeeping requirements, Risk disclosure statements, Treatment of foreign futures and options secured amount.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.5 is proposed to be amended by adding introductory text, revising paragraph (a) and adding paragraph (e) to read as follows:

#### § 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who

is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing a petition for exemption with the National Futures Association and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must carry any accounts for or on behalf of any foreign futures or foreign options customer with a registered futures commission merchant or with a foreign broker who has received confirmation of an exemption pursuant to § 30.10 of this part in accordance with the provisions of § 30.3(b) of this part.

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 of this part with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term

<sup>20</sup> See 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

<sup>21</sup> Pub. L. 104-13 (May 13, 1995).

“communication” includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

\* \* \* \* \*

(e) *Petition for exemption.* Any person seeking an exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor under this section file a petition for exemption, which will be granted or denied based on compliance with § 30.5(a) and the provisions of this paragraph. The petition must:

- (1) Be in writing;
- (2) Provide the name, main business address and main business telephone number of the applicant;
- (3) Represent that: (i) The applicant is located outside of the United States, its territories or possessions; (ii) The applicant does not trade contracts on behalf of any U.S. person on any market regulated by the Commission; and (iii) The applicant irrevocably agrees to jurisdiction of the Commission and state and federal courts in the United States with respect to activities and transactions subject to this part;
- (4) Represent that the applicant would not be statutorily disqualified from registration under section 8a(2) or 8a(3) of the Commodity Exchange Act and that the applicant is not disqualified from registration pursuant to the laws or regulations of its home country;
- (5) If the applicant or its activities are regulated by any government entity or self-regulatory organization, state the name and address of such government entity or self-regulatory organization;
- (6) State whether the applicant is applying for a § 30.5 exemption from registration as an introducing broker, commodity pool operator or commodity trading advisor;
- (7) Be signed as follows: If the applicant is sole proprietorship, by the sole proprietor; if a partnership, by a general partner; if a corporation, by the chief executive officer or other person legally authorized to bind the corporation; and
- (8) Be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association.

\* \* \* \* \*

3. Section 30.6 is proposed to be amended by revising paragraph (b) to read as follows:

### § 30.6 Disclosure.

\* \* \* \* \*

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective qualified eligible participant in a foreign commodity pool that it operates or that it intends to operate, unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible participant with the Risk Disclosure Statement set forth in § 4.24(b)(2) and the statement in § 4.7(a)(2)(i)(A). With respect to qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not solicit or enter into an agreement with a prospective qualified eligible client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in such activities, first provides each qualified eligible client with the Risk Disclosure Statement set forth in § 4.34(b)(2) and the statement in § 4.7(b)(2)(i)(A).

(2) With respect to participants who do not satisfy the requirements of qualified eligible participants, as defined in § 4.7(a)(1)(ii) of this chapter, a commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may not, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate, unless the commodity pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or potential customers pursuant to § 4.21 of this chapter and files the Disclosure Document in accordance with § 4.26 of this chapter. With respect to clients who do not satisfy the requirements of qualified eligible clients, as defined in § 4.7(b)(1)(ii) of this chapter, a commodity trading advisor registered or required to be registered under this part,

or exempt from registration pursuant to § 30.5, may not solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to § 4.31 of this chapter and files the Disclosure Document in accordance with § 4.36 of this chapter.

\* \* \* \* \*

Dated: January 4, 1999.

By the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99-375 Filed 1-8-99; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106905-98]

RIN 1545-AW09

#### Allocation of Loss With Respect to Stock and Other Personal Property

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Partial withdrawal of notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; and notice of public hearing.

**SUMMARY:** This document contains proposed Income Tax Regulations relating to the allocation of loss recognized on the disposition of stock and other personal property. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance. Prior proposed regulations are withdrawn. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments must be received by May 5, 1999. Outlines of oral comments to be discussed at the public hearing scheduled for May 26, 1999, must be received by May 5, 1999.

**ADDRESSES:** Send submissions to CC:DOM:CORP:R (REG-106905-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station,