(c) (1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19–30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers. The airport operator and the carrier(s) shall, by no later than (a date nine months from the effective date of this section), sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than (a date 18 months from the effective date of this section). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) When boarding assistance cannot be provided as required by this paragraph for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(4) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend the Commission's regulations to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: those that carry customer omnibus accounts for U.S. FCMs; those that carry U.S. affiliate accounts which are proprietary to the foreign futures and options broker; and those that carry U.S. accounts which are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to ''Commission Rules 30.1, 30.4 and 30.10—Registration and Exemption.''.

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Susan A. Elliott, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

In 1987, the Commission adopted a new Part 30 to its regulations.[1] Part 30 governs, generally, the solicitation and sale of foreign futures[2] and foreign

[1] 52 FR 28980 (August 5, 1987). CFTC regulations may be found at 17 CFR Ch. I (1999).

[2] ''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).

option[3] contracts to customers[4] located in the United States. These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act (''Act''), which vested 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.

When it adopted Part 30, the Commission recognized that many complexities would need to be addressed by the staff in the years after adoption of these rules.[5] Soon after the final rulemaking for Part 30 was published, the staff of the Division of Trading and Markets (the ''Division'') published several interpretative letters and no-action positions regarding the application of the registration requirements of Part 30 to foreign firms, and their ability to obtain an exemption from certain of the requirements of Part 30, pursuant to Rule 30.10. The Commission now proposes to codify some of those interpretations and positions. Each of the interpretative letters discussed below will cease to have any prospective applicability if the proposed rules are adopted. Those who properly relied on interpretative statements in the past must henceforth comply with the proposed rules if adopted. Since no-action letters may only be relied on by the entity seeking the no-action position, the entities who received the no-action letters discussed below may continue to rely on the relief provided. All other persons were, and are, required to comply with Commission rules.

A. Registration Required by Rule 30.4(a)

Rule 30.4(a) requires anyone who solicits or accepts orders and/or money for foreign futures and options contracts from foreign futures and options U.S. customers to register as an FCM. Rule 30.4(e) requires registered FCMs to maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person (''AP''). Rule 30.10 allows any person to seek exemption form any provision of Part 30.

Shortly after Part 30 was adopted, it became clear that it might not be necessary for certain conduct to trigger the registration requirements of Rule 30.4(a). For example, foreign futures and options brokers that did nothing more than carry the customer omnibus account of a U.S. FCM fell within the registration provisions of Rule 30.4(a). As a result, the staff issued an interpretation in CFTC Letter 87–7 to make clear that a member of a foreign board of trade (or an affiliate of a U.S firm that is authorized to carry accounts under relevant foreign law), whose only contact with foreign futures and option customers was limited to carrying the customer omnibus account of a U.S. FCM, would not be required to register as an FCM under Rule 30.4(a). The Division reasoned that registration should not be required in that circumstance because of the presence of an ''intervening registrant [i.e., a U.S. FCM] to whom the rules would be fully applicable.''[6] In other words, U.S. foreign futures and option customers would continue to have a relationship with and be clients of the U.S. FCM for which the foreign firm was carrying the omnibus account, and would not have direct contact with the foreign futures and options broker. Specifically, the Division stated:

> [W]here an FCM transfers its customer omnibus account to an offshore firm which is either a member or a foreign exchange or is an offshore affiliate of a U.S. FCM licensed or authorized by the offshore jurisdiction where it is located, and such foreign exchange member's or affiliate's contact with foreign futures and options customers is limited to carrying the customer omnibus account of a U.S. FCM for execution on the foreign exchange, such activity should not bring it within the scope of the foreign futures and options rules.[7]

The Division sought to resolve other issues through the no-action process. For instance, CFTC Letter 87–7 was limited to the transfer of customer omnibus accounts to foreign firms and the existence of U.S. branches resulted in the bank being characterized as ''present'' in the United States.[8] Thus, despite the relief offered in CFTC Letter 87–7, foreign banks that, as brokers, carried US FCMs' customer omnibus accounts, could not take advantage of that relief if the banks had bank branches in the United States. In CFTC Letter 89–11, the Division stated that it would not recommend an enforcement action against a foreign bank with U.S. bank branches if the foreign bank availed itself of the relief of CFTC Letter 87–7.[9] The Division's no-action position was contingent upon three undertakings by the foreign bank: (1) the U.S. branches would not solicit or accept orders for foreign futures contracts or options or engage in any activities subject to regulation by the Commission, except in connection with proprietary trading conducted by its U.S. branches; (2) the foreign bank would provide upon request of the Commission or the National Futures Association, access to the books and records of the U.S. branches to ensure compliance with undertaking (1); and (3) the bank would designate an agent for the purpose of accepting delivery and service of any communication from the Commission relating to the foreign firm's activities in carrying the omnibus accounts.[10]

Still other ambiguities arose with regard to foreign firms. In the Part 30 rules, there is no specific provision relating to registration requirements for foreign futures and options brokers handling proprietary accounts. Commission Rule 3.10(c) provides a general exemption from FCM registration for persons trading solely for proprietary accounts, which is arguably applicable to foreign futures and options brokers.[11] Shortly after the

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[3] ''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 in 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).

[4] Pursuant to Commission Rule 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 [Commission rule] 1.3 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.''

[5] ''The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and exemptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed.'' 52 FR at 28980–28981 (August 5, 1987).

[6] CFTC Letter 87–7, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,972 (November 17, 1987). The scope of CFTC Letter 87–7 was limited to foreign exchange members and US FCMs' offshore affiliates which were licensed, authorized or otherwise subject to regulation in the offshore jurisdiction. With regard to affiliates, CFTC Letter 87–7 required the affiliate to identify to the CFTC and to the National Futures Association (''NFA'') the foreign clearing member through which the affiliate conducts business in order to ensure an adequate audit trail so that transactions may be traceable to the foreign exchange.

[7] *Id.* at 34,407–8.

[8] See discussion of CFTC Letter 89–5, *infra.*

[9] CFTC Letter 89–11, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,516 (August 15, 1989).

[10] The letter emphasized: ''The Division further understands that each such U.S. Branch is subject to extensive regulation, including reporting and recordkeeping requirements and examinations, either under state banking laws or under federal law by the Office of the Comptroller of the Currency.''

[11] Rule 3.10(c) provides: ''A person trading solely for proprietary accounts, as defined in 1.3(y) of this chapter, is not required to register as a futures commission merchant: Provided that such person

Commission adopted Part 30, an interpretative letter was requested regarding foreign firms soley carrying U.S. customer foreign futures and options accounts that would be proprietary accounts to the foreign firm. In CFTC Letter 88–15,[12] Division staff determined that, subject to certain conditions, ''in instances where a foreign firm *solely* carries accounts on behalf of customers in the United States which may be deemed to be proprietary accounts of the foreign firm, such foreign firm should not be subject to the registration requirement of Rule 30.4, or be required to apply for exemptive relief therefrom pursuant to Rule 30.10 based on comparability of regulation in the foreign jurisdiction.'' [13] The Division further stated that such a firm would, however, remain subject to all other applicable provisions of the Act and rules, regulations and orders thereunder.

While the staff previously has addressed the situation where a foreign firm carries its own ''proprietary'' account, it has not issued an interpretative letter relating to the applicability of the Rule 30.4 registration requirement to a foreign futures and options broker when the foreign futures and options broker carries the proprietary account of a U.S. FCM that is not proprietary to the foreign firm. Pursuant to Rule 30.4a, a U.S. FCM trading its proprietary account through a foreign futures and options broker is a ''U.S. foreign futures and options customer,'' requiring the foreign futures and options broker to register in order to carry the firm's proprietary account.[14] The logic of CFTC Letter 87–7, however, suggests that certain foreign futures and options brokers carrying FCM proprietary accounts similarly should not be required to register or to obtain a Rule 30.10 exemption.

The registration relief in CFTC Letter 87–7 was limited by its terms to a foreign firm which either was a member of a foreign board of trade or was an offshore affiliate of a U.S. FCM licensed, authorized or otherwise subject to regulation in the offshore jurisdiction where it was located. The staff took this position because, among other things, there would be no contact by a foreign firm with the FCM's customers and the U.S. FCM will have engaged in all sales practices and remain responsible for compliance with the Part 30 rules. Similarly, sales practice considerations are not of particular concern where an FCM opens a firm account (i.e., noncustomer account) with a foreign board of trade member. U.S. FCMs are professionals in the commodities industry and therefore should be familiar with the risks of trading foreign commodity futures and options contracts. The FCM does not need the added protections afforded by requiring the foreign firm to register as an FCM, provided of course that the foreign firm is a member of a foreign board of trade or a registered affiliate of the U.S. FCM. Moreover, where the foreign firm carries the proprietary account of a U.S. FCM, the requirement of registration and the attendant capital and customer funds rules are not necessary because the foreign jurisdiction generally has already imposed rules to protect the foreign clearing house.

B. Availability of Rule 30.10 Exemptions to Foreign Firms With U.S. Bank Branches

Those persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located [15] may apply under Appendix A to Rule 30.10 for relief from the registration requirements of Rule 30.4. Rule 30.10 and Appendix A thereto have been the basis for exemptions granted to a number of foreign firms that, along with their governmental agency or self-regulatory organization, have demonstrated that their particular foreign regulatory program is comparable to that of the Commission.

Although the Commission orders granting general Rule 30.10 exemptive relief from FCM registration have applied only with respect to persons located outside of the United States, the Division has permitted foreign futures and options brokers with U.S. bank branches to obtain a Rule 30.10 exemption under certain conditions. In CFTC Letter 89–5,[16] the Division stated that it would not recommend enforcement action if a division or branch of a foreign bank is *de facto* treated as a separate entity by the Office of the Comptroller of the Currency (OCC) and has no involvement with U.S. foreign futures and options customers. Under those circumstances, the branch could be treated by the bank as though it were a subsidiary or affiliate,[17] and the foreign firm would be eligible for an exemption under Rule 30.10. The Division staff has required foreign firms with U.S. bank branches that are seeking confirmation of Rule 30.10 relief to make representations which ensure that the U.S. branch does not solicit or otherwise have contact with U.S. customers for transactions governed by Commission rules. In so doing, the Division noted that the bank branch ''is viewed as a separate legal entity in many respects under the federal bank regulatory scheme.'' [18]

In the ten years following the issuance of CFTC Letter 89–5, staff has issued several no-action letters to foreign firms with U.S. bank branches permitting them to obtain confirmation of Rule 30.10 relief. Since that time, the staff has not become aware of problems with foreign firms using their U.S. bank branches inappropriately. Therefore, the Commission proposes to codify the procedure by which foreign firms with U.S. bank branches may obtain 30.10 relief. Doing so will obviate the need for affected persons to seek interpretative relief or a non-action position, and will

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remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.''

[12] CFTC Letter 88–15, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,296 (August 10, 1988).

[13] The requestor of the letter had a U.S. affiliate whose account it carried; both firms were in turn wholly owned by a parent company. The term ''proprietary account'' as defined in rule 1.3(y), 17 CFR 1.3(y) (1998), includes an account carried on the books and records of a corporation or other type of association for a ''business affiliate that directly or indirectly is controlled by or is under common control with, such . . . corporation or association.''

[14] Rule 30.1(c) exempts an owner or holder of a proprietary account from the definition of foreign futures and options, cutomer only with regard to the disclosure requirements of Rule 30.6 and the secured amount requirement of Rule 30.7. Owners or holders of proprietary accounts currently are not excluded from the definition for purposes of Rule 30.4, thereby triggering the registration requirement for foreign futures and options brokers who do business with them.

[15] Appendix A, ''Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules,'' CCH ¶ 2707, 57 FR 49644 (November 2, 1992) (Emphasis added.)

[16] CFTC Letter 89–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,271 (December 5, 1988).

[17] In CFTC Letter 88–3, the Division distinguished between a foreign firm having U.S. divisions (which are ''legally part of the firm itself''), and a foreign firm with a U.S. subsidiary or affiliate (which ''is a separate legal entity.'') [1987–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,085 (January 15, 1988). The letter stated that while a foreign firm with a U.S. branch or division would not be eligible for Rule 30.10 relief, a foreign firm with a U.S. subsidiary or affiliate would be eligible for a 30.10 exemption. *Id.* The Division modified that position in CFTC Letter 89–5 by recognizing that branches and divisions are often operated separately and in a manner analogous to a subsidiary. CFTC Letter 89–5 at 36,071. Foreign firms with separately incorporated U.S. subsidiaries or affiliates must follow the guidelines in CFTC Advisory 41–93 (July 26, 1993) when petitioning for Rule 30.10 relief. *See* CFTC Letter 93–65, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,784 (July 26, 1993).

[18] CFTC Letter 89–5, *id.* at p. 36,071.

thus utilize Commission resources more efficiently.

II. The Proposed Amendments

The Commission believes it can provide clarity to its registration requirements under Part 30 by specifically addressing, in Rule 30.4, when registration by a foreign futures and options broker is not required. As discussed earlier, the Commission proposes to amend Rule 30.4(a) to clarify that it does not require registration by certain foreign futures and options brokers that carry U.S. foreign futures and foreign options customer omnibus accounts of U.S. FCMs and have no customer contact, including foreign brokers with U.S. bank branches. The Commission also proposes to amend Rule 30.4(a) to clarify that a foreign firm that carries a U.S. FCM's proprietary account, or a foreign firm which trades for its own proprietary account (including U.S. affiliates whose accounts are ''proprietary'' to the foreign firm), need not register as an FCM so long as certain conditions are met. Such foreign firms would, however, otherwise remain subject to provisions of Part 30 that are not dependent upon registration as an FCM, such as the antifraud provision of Rule 30.9. While the Commission is proposing to permit foreign brokers to carry ''proprietary'' accounts in the broader sense of the term (as defined in Rule 1.3(y)), not just firm trading accounts or ''house'' accounts [19], the Commission invites comment on the advisability of limiting the exemption to house accounts only.[20]

In addition, the Commission proposes to amend Rule 30.10 to clarify that foreign firms with U.S. bank branches may be eligible for Rule 30.10 relief if certain representations are made. A foreign firm with U.S. bank branches would be able to obtain a Rule 30.10 exemption without requesting a no-action position if it files the following representations with the NFA Vice-President, Registration & Membership:

(1) No U.S. bank branch, office of division of the foreign futures and options broker will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office of division of the foreign futures and options broker will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division of the foreign futures and options broker will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under Part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign futures and options broker will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign futures and options broker and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the NFA or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; [21] and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign futures and options broker will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Similarly, any foreign futures and options broker that would not be required to register under the proposed Rule 30.4(a) because it solely carries a U.S. customer omnibus account, its own proprietary account, or a U.S. FCM's proprietary account, will not be required to register solely because it has U.S. bank branches provided that it files with the NFA, Vice President, Registration & Membership, the above representations in accordance with Rule 30.10(b).

The Commission solicits comment regarding the number of foreign futures or options brokers' non-bank branches located in the United States, as well as information concerning their activities.[22] The Commission also requests comment on the advisability of expanding the relief provided by the proposed rule amendments to foreign futures and options brokers with any type of U.S. branch, not just bank branches.

Finally, the proposed rule defines ''foreign futures and options customer omnibus account'' in Rule 30.1(d), and ''foreign futures and options broker'' in Rule 30.1(e).

II. 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 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.[23] The proposed rules discussed herein would affect foreign members of foreign boards of trade who perform the functions of an FCM, some of which may be foreign affiliates of U.S. FCMS. The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. Therefore, the

[19] Firm trading or ''house'' accounts are defined as ''proprietary'' in Rule 1.17(b)(3) for regulatory capital purposes, while ''proprietary accounts'' comprise a broader category in the Rule 1.3(y) definition.

[20] When an FCM executes trades for its proprietary account with a foreign firm, funds other than those of the FCM are at risk (e.g., of affiliates and employees as per CFTC Rule 1.3(y)). One can assume that the class of persons defined by Rule 1.3(y) is in a relationship of trust and confidence to the FCM and thus the same considerations that would permit the FCM to open an account with foreign firm registering as an FCM also apply to the FCM's proprietary accounts.

[21] The Commission has recognized that Japanese and Hong Kong laws require that original books and records of any firm located within either country be maintained within the local jurisdiction. *See* CFTC Letter 95–83 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,559 at 43,490 (September 20, 1995) (no-action position permitting the Japanese and Hong Kong affiliates of a U.S. FCM to accept directly foreign futures and options orders from certain sophisticated U.S. customers); 62 FR 47792 (September 11, 1997) (extending the relief under CFTC Letter 95–83 to the Japanese and Hong Kong affiliates of all U.S. FCMs). For the purpose of this rulemaking, the Commission proposes to allow foreign futures and options brokers in Japan and Hong Kong to satisfy the books and records requirement by: (1) providing within 72 hours authenticated copies of its books and records upon request of a Commission representative; (2) providing within 72 hours access to original books and records in the foreign jurisdiction; (3) waiving objection to the admissibility of the copies as evidence in a Commission action against the foreign futures and options broker; and (4) agreeing in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission.

[22] The rationale for providing relief to foreign firms with bank branches in the U.S. is that those branches are otherwise regulated by the banking authorities. Although this rationale would be inapplicable to non-bank branches, there may be other reasons why exemption from registration under Part 30 would be appropriate.

[23] 47 FR 18618–18621 (April 30, 1982).

Chairman, 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 rules, the Paperwork Reduction Act of 1995 [24] 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 this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection 3038–0023, including this proposed rule, is as follows:

Average burden hours per response: .1645.

Number of Respondents: 73,610.

Frequency of response: On occasion; annually, semi-annually; quarterly.

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response: .05.

Number of Respondents: 110.

Frequency of response: On occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, D.C. 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Registratiaon requirements, Reporting and recordkeeping requirements. Registration requirements,

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 OPTIONS AND FOREIGN FUTURES 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 30.1 is proposed to be amended by adding paragraph (d) and (e) to read as follows:

§ 30.1 Definitions.

* * * * *

(d) *Foreign futures and options customer omnibus account* is defined as an account in which the transactions of one or more foreign futures and options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures and options customer.

(e) *Foreign futures and options broker* (FFOB) is defined as a non-U.S. person that is a member of a foreign board of trade, as defined in § 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located; or a foreign affitiate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

3. Section 30.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.4 Registration required.

* * * * *

(a)(1) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money securities or property (or extend credit in lieu thereof), to margin, guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that,* a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as an FCM:

(i) In order to accept orders from or to carry a U.S. futures commission merchant foreign futures and options customer omnibus account, as that term is defined in § 30.1(d);

(ii) In order to accept orders from or to carry a U.S. FCM proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; or

(iii) In order to accept orders from or to carry a U.S. affiliate account which is proprietary to the foreign broker, as ''proprietary account'' is defined in paragraph (y) of § 1.3 of this chapter.

(2) Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the above-listed activity are not required to register as an FCM if they file with the National Futures Association, Vice-President, Registration and Membership, 200 West Madison Avenue, Suite 1600, Chicago, Illinois 60606, the representations in § 30.10(b)(1)–(6).

* * * * *

4. Section 30.10 is revised to read as follows:

§ 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank

[24] Pub. L. 104–13 (May 13, 1995).

branches, offices or divisions if, in conjunction with a petition for confirmation of § 30.10 comparability relief under an existing § 30.10 Commission order, it files the following representations with the National Futures Association, Vice-President, Registration & Membership:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22019 Filed 8–25–99; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Exemption from Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend the Commission's rules and regulations on Foreign Futures and Foreign Options Transactions to include new Rules 30.12.[1] The new rule will permit certain foreign firms acting in the capacity of FCMs and IBs to accept and execute foreign futures and options orders directly from certain U.S. customers via telephone, facsimile and electronic message without having to register with the Commission.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''Commission Rules 30.12.''

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew 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:

I. Background Information

A. Formal Rulemaking

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 into on or subject to the rules of a foreign board of trade.[2] 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[3] and foreign option[4] transactions executed on behalf of foreign futures or foreign options customers.[5] 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 person 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 and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.[6]

Under Part 30, certain persons located outside the United States may obtain an exemption from registration and certain other requirements. For example, under Rule 30.10 and Appendix A thereto, the Commission may exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers from compliance with certain Commission rules, including those rules pertaining to registration, provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. investors, including an information-sharing arrangement between the Commission and the firm's home country regulator.[7] In addition, under

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] 52 FR 28980 (August 5, 1987).

[3] ''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).

[4] ''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 is 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).

[5] Pursuant to Commission Rule 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.''

[6] *See* Commission rule 30.4.

[7] *See* Appendix A to Part 30; 62 FR 47792 (September 11, 1997) (''Delegation Order''). Note that persons located inside the United States may petition for an exemption under Rule 30.10 separate