

to be harmed in appearance by the requirement for a permanent label. Such petitions have been filed only rarely in recent years.

In the NPR, the Commission preliminarily concluded that the proposed amendments to the Rule, if enacted, would not increase the paperwork burden associated with these paperwork requirements. The Commission stated that the proposed amendment to change the numerical definitions of the words "hot," "warm," or "cold," when they appear on care labels, would not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses would not be burdened with determining what temperature ranges should be included within the terms "hot," "warm," or "cold" because the Rule would provide the appropriate numerical temperatures. OMB regulations, at 5 CFR 1320.3(c)(2), provide that "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information]."

The Commission concludes on the basis of the information now before it that the amendments to the Care Labeling Rule adopted herein will not increase the paperwork burden associated with Rule compliance.

#### VI. Environmental Assessment

In the NPR, the Commission noted that it had prepared a proposed Environmental Assessment in which it analyzed whether the proposed amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary.<sup>135</sup>

In the NPR, the Commission requested comment on this issue. Consumers Union stated that it believed the proposed amendment to permit labeling for professional wetcleaning (as opposed to requiring labeling for

professional wetcleaning) would be a disincentive to the widespread adoption and use of wetcleaning, and therefore the Rule as proposed in the NPR would require an environmental impact statement for its potential negative impacts on the increase of wetcleaning technology.<sup>136</sup> Greenpeace also stated that an environmental impact statement "would be helpful in deciding how to finally amend the proposed Care Labeling Rule."<sup>137</sup>

The Commission has concluded that a final Environmental Assessment and an Environmental Impact Statement are not necessary. The Commission is not amending the Rule at this time to include an instruction for professional wetcleaning. Even if the Commission were deciding to include professional wetcleaning in the Rule, the main effect of that decision would be to provide consumers with additional information rather than directly to affect the environment. With respect to the final amendments of the Rule that are adopted herein, the Commission concludes that there is no discernible effect on the environment.

#### List of Subjects in 16 CFR Part 423

Clothing; Labeling, Reporting and recordkeeping requirements; Textiles; Trade practices.

#### VII. Final Amendments

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter D of the Code of Federal Regulations, as follows:

#### PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

1. The authority for part 423 continues to read as follows:

**Authority:** 38 Stat. 717, as amended; (15 U.S.C. 41, *et seq.*)

2. In § 423.1, the last sentence of paragraph (d) is revised to read as follows:

##### § 423.1 Definitions.

\* \* \* \* \*

(d) \* \* \* When no temperature is given, e.g., *warm* or *cold*, hot water up to 145 degrees F (63 degrees C) can be regularly used.

3. In § 423.6, paragraphs (b)(1)(i) and (c)(3) are revised to read as follows:

##### § 423.6 Textile wearing apparel.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Washing*. The label must state whether the product should be washed by hand or machine. The label must also state a water temperature—in terms such as *cold*, *warm*, or *hot*—that may be used. However, if the regular use of hot water up to 145 degrees F (63 degrees C) will not harm the product, the label need not mention any water temperature. [For example, *Machine wash* means hot, warm or cold water can be used.]

\* \* \* \* \*

(c) \* \* \*

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole; or

\* \* \* \* \*

4. In Appendix A to Part 423—Glossary of Standard Terms, paragraphs 1.d. through 1.o. are redesignated as paragraphs 1.e. through 1.p., paragraphs 1.a. through 1.c. are revised, and a new paragraph 1.d. is added to read as follows:

#### Appendix A to Part 423—Glossary of Standard Terms

1. Washing, Machine Methods:
  - a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold," hot water up to 145 degrees F (63 degrees C) can be regularly used.
  - b. "Hot"—initial water temperature ranging from 112 to 145 degrees F [45 to 63 degrees C].
  - c. "Warm"—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].
  - d. "Cold"—initial water temperature up to 86 degrees F [30 degrees C].

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–19491 Filed 8–1–00; 8:45 am]

BILLING CODE 6750–01–P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

RIN 3038–AB46

#### Exemption From Registration for Certain Foreign FCMs and IBs

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

<sup>135</sup> The proposed Environmental Assessment is on the public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, Washington, DC. It can also be obtained at the FTC's web site at <http://www.ftc.gov> on the Internet.

<sup>136</sup> Consumers Union (21) p. 2.

<sup>137</sup> Greenpeace (27) p. 3.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is adopting amendments to Part 30 of the Commission's rules to include new Rule 30.12.<sup>1</sup> The new rule permits certain foreign firms acting in the capacity of FCMs and IBs to accept and to execute foreign futures and options orders directly from certain U.S. customers without having to register with the Commission. The Commission also is amending Rule 30.1 to include definitions of "foreign futures and options customer omnibus account" and "foreign futures and options broker."

**EFFECTIVE DATE:** September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Proposed Rules**

On August 26, 1999, the Commission published proposed amendments to Part 30 of its rules.<sup>2</sup> Part 30 sets forth rules governing the offer and sale of foreign futures<sup>3</sup> and foreign option<sup>4</sup> contracts. For example, with respect to foreign futures or foreign options customers,<sup>5</sup> Rule 30.4 requires any person engaged in the activities of a futures commission merchant ("FCM") or introducing broker ("IB"), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The activities that are subject to regulation and that 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,

<sup>1</sup> Commission rules referred to herein are found at 17 CFR Ch. I (2000).

<sup>2</sup> 64 FR 46613 (August 26, 1999); 64 FR 46618 (August 26, 1999).

<sup>3</sup> "Foreign futures" 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." Rule 30.1(a).

<sup>4</sup> "Foreign option" 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." Rule 30.1(b).

<sup>5</sup> "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 [Rule 1.31] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7] of this part." Rule 30.1(c).

securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.<sup>6</sup> Rule 30.10 allows the Commission to exempt a firm from compliance with any or all of the requirements of Part 30.<sup>7</sup>

In response to requests from industry representatives, the Commission proposed to adopt Rule 30.12 to permit certain foreign firms acting in the capacity of FCMs and IBs (referred to herein as foreign futures and options brokers ("FFOBs"))<sup>8</sup> to accept and to execute foreign futures and options orders directly from certain, sophisticated U.S. customers without having to register with the Commission.<sup>9</sup> Prior to the amendment to Part 30 adopted herein, only those FFOBs that were foreign affiliates of U.S. FCMs were permitted, subject to certain terms and conditions set forth in advisories issued by the Division of Trading and Markets ("T&M"), to accept and to execute orders from certain sophisticated U.S. customers, known as "authorized customers," through the FCM's foreign futures and options customer omnibus account.<sup>10</sup> As set

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

<sup>7</sup> In particular, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Act and compliance with certain provisions of Part 30 based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator (referred to herein as "Rule 30.10 relief").

<sup>8</sup> As defined in amended Rule 30.1(e), "foreign futures and options broker" means any person located outside the United States, its territories or possessions that is a member of a foreign board of trade, as defined in Rule 1.3(ss), and is licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of U.S. futures commission merchant licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

<sup>9</sup> 64 FR 46618 (August 26, 1999).

<sup>10</sup> See CFTC Advisory No. 93-115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (T&M December 23, 1993)(permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief); CFTC Advisory No. 95-08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (T&M January 25, 1995)(extending the relief in Advisory No. 93-115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). For a list of "authorized customers," see CFTC Advisory No. 93-115, ¶ 25,932 at 41,052-053. For a list of the terms and conditions governing the direct foreign order transmittal process under CFTC Advisories Nos. 93-115 and 95-08, see ¶ 25,932 at 41,053-054; ¶ 26,300 at 42,490-491, respectively.

As defined in amended Rule 30.1(d), "foreign futures and options customer omnibus account" means an account in which the transactions of one or more foreign futures or foreign options customers are combined and carried in the name of the

forth in the final rule, any unregistered FFOB may accept orders directly from authorized customers for execution for or on behalf of such customers to be carried in the FCM's foreign futures and options customer omnibus account at the FFOB, or to be given up to another unregistered FFOB carrying the FCM's customer omnibus account. The Commission believes that permitting greater flexibility with respect to the direct foreign order transmittal process will provide authorized customers with more efficient access to international futures markets without requiring these customers to forfeit the operational and economic efficiencies that are the natural consequence of having all futures and options transactions carried by a well-capitalized U.S. FCM. The Commission also notes that such an arrangement affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.

**II. Final Rule 30.12**

The Commission received seven comment letters on the proposed rulemaking: One from a U.S. commodity exchange; one from the National Futures Association; two from futures industry professional associations; two from U.S. FCMs; and one from a global investment banking firm. The commenters generally supported the relief provided by proposed Rule 30.12, but suggested that the relief did not go far enough with respect to the participants in the direct foreign order transmittal process and the means by which orders may be transmitted. A discussion of the comments follows.

*A. Authorized Customers*

Proposed Rule 30.12 restricted the direct foreign order transmittal process to certain sophisticated U.S. customers, known as "authorized customers." The Commission derived its definition of "authorized customers" from the list of "eligible swap participants" ("ESPs") in Part 35 of the Commission's rules and the list of customers eligible to participate in the limited foreign order transmittal process set forth in prior advisories issued by T&M. As requested by industry representatives, the Commission also included in its definition certain commodity trading

originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer. The Commission notes that a foreign futures and options customer omnibus account may contain one or more accounts of persons located outside the U.S. (*i.e.*, persons excluded from the definition of "foreign futures or foreign options customer"), provided that all customer funds are treated in a manner consistent with Commission rules.

advisors ("CTAs") and those foreign persons performing a similar function.

Commenters on the proposed rulemaking recommended that the Commission's definition of "authorized customer" be modified in two ways. First, the commenters sought uniformity in defining the class of sophisticated U.S. customers to which less regulatory protections apply. Currently, there exist within Commission rules six definitions of sophisticated U.S. customers: qualified eligible participants, qualified eligible clients, ESPs, eligible participants for exchange transactions under § 4(c) of the Commodity Exchange Act ("Act"), eligible customers for post-execution allocation, and customers for which FCMs and IBs are not required to provide the Rule 1.55 risk disclosure statement. One commenter stated, "[t]his new definition [of "authorized customer"], along with the others, subjects firms to unnecessary compliance burdens without adding any real regulatory benefit." Second, the commenters specifically questioned why the category of persons who are eligible to engage in direct foreign order transmittal should be any more restrictive than the category of persons who are eligible to engage in complex, over-the-counter swap transactions addressed in Part 35.<sup>11</sup>

Upon review of these comments and its own reconsideration of the issue, the Commission has determined to revise the definition of "authorized customer" in the final rule to incorporate those changes recommended by the commenters. The Commission notes, however, that certain characteristics unique to the direct foreign order transmittal process prevent the Commission from merely cross-referencing the definition of an ESP (or any other current class of sophisticated customer) in the definition for "authorized customer." For example, Part 30 generally does not govern the offer and sale of foreign futures and foreign options contracts to persons located outside the U.S.<sup>12</sup> As such, rules

<sup>11</sup> From the list of ESPs, the definition of "authorized customers" in proposed Rule 30.12 excluded: floor brokers, floor traders, employee benefit plans, individuals with net worth in excess of \$10,000,000, state and local governments, and non-U.S. persons trading on their own behalf (the latter do not come within the definition of foreign futures or foreign options customer in Rule 30.1(c)).

<sup>12</sup> *But see, e.g.,* Rule 30.9(a) ("It shall be unlawful for any person \* \* \* in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction: (a) To cheat or defraud or attempt to cheat or defraud any other person." (emphasis added)); *In re Sogemin Metals*, CFTC Docket No. 00-04 (February 7, 2000) (Commission order instituting administrative proceedings against and accepting an offer of settlement from respondent

regulating the conduct of an FCM (or any firm exempt from such registration) are generally limited to the firm's interaction with U.S. customers or to customers engaged in transactions on U.S. markets. In light of the obligations, discussed below, that will be required of an FCM (or a firm exempt from such registration) flowing from a customer's classification as an "authorized customer," the definition of "authorized customer" does not include persons located outside the U.S. Additionally, at the request of futures industry representatives, Rule 30.12, unlike Part 35, will focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA. As such, Rule 30.12 will permit certain domestic and foreign trading advisors to place orders directly for foreign futures and foreign options contracts for customers that do not otherwise qualify as ESPs. The inclusion of advisors in this context thus provides for greater participation in direct foreign order transmittal than is permitted in swaps.<sup>13</sup>

As previously stated, Rule 30.12 defines an authorized customer, in part, as a foreign futures or foreign options customer that the carrying FCM has authorized to place orders for the account of the FCM's foreign futures and foreign options customer omnibus account. Since non-U.S. persons cannot, by definition, be foreign futures or foreign options customers, Rule 30.12 does not regulate the manner in which they execute foreign futures and option transactions through an FCM's foreign futures and options customer omnibus account. Non-U.S. persons, however, may act on behalf of authorized customers, provided that the non-U.S. persons independently qualify as an eligible direct foreign order transmittal participant. To clarify that non-U.S. persons may act on behalf of authorized customers, the Commission has determined to define "authorized customer" as "[a]ny foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1, or its designated representative," that the FCM has authorized to place orders for the account of the FCM's foreign futures and options customer omnibus account.

As noted, the Commission also is incorporating the request from industry representatives to focus on the financial sophistication of the person managing the assets and not on the sophistication of the individual contributors to the

located in the U.S. dealing with non-U.S. customers for trading on a non-U.S. exchange).

<sup>13</sup> See Rule 35.1(b)(2).

clients of a CTA. The Commission is adopting Rule 30.12 to include in the definition of "authorized customer" any person whose investment decisions with respect to foreign futures and foreign option transactions are made by a CTA, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a CTA under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, provided that the CTA has total assets under management exceeding \$50,000,000 and that the CTA places the foreign futures or foreign options order. The Commission recognizes that, under this scenario, the contact with the unregistered FFOB is limited to contact with the individual with the demonstrated financial sophistication, *i.e.*, the CTA. For the sake of consistency, the \$50,000,000 asset under management test will apply to those CTAs providing the investment decisions for employee benefit plans subject to the Employee Retirement Income Security Act of 1974 that do not independently have total assets exceeding \$5,000,000.

#### B. Carrying FCMs

##### 1. Capital Requirements

In the proposed rulemaking, the Commission proposed to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds certain minimum requirements. As discussed in the rule proposal, a participating FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated FFOB.<sup>14</sup> Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thereby mitigate the increased systemic risk.<sup>15</sup> Accordingly, as set forth in paragraph (b)(1) of the proposed rule, the Commission proposed to require FCMs whose authorized customers use

<sup>14</sup> Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the rules of the exchange or clearing organization governing such a transaction.

<sup>15</sup> While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and floor traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

direct foreign order transmittal to maintain either \$50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5), or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).<sup>16</sup> In the alternative, the proposed rule stated that any FCM not satisfying either standard could seek relief from the capital requirement in accordance with the petition process described in Rule 140.99.

Three of the seven commenters addressed the capital requirements for carrying FCMs. One commenter agreed with the Commission that capital requirements are a necessary element of direct foreign order transmittal, but suggested that the standard for adjusted net capital be \$50,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B) (and not just paragraph (a)(1)(i)(B)). The commenter noted that, under certain circumstances, an FCM possessing adjusted net capital of three times the amount set forth in paragraph (a)(1)(i)(B), i.e., three times four percent of the required segregated and secured amounts, but not (a)(1)(i)(A), i.e., three times \$250,000, or \$750,000, may not possess sufficient capital to provide the necessary cushion in the event of a systemic failure. The second commenter requested that the Commission more specifically describe the type of showing an FCM would be required to make in order to obtain relief from the capital requirement and recommended that the petition for relief from the capital requirement be made in accordance with Rule 30.10, instead of Rule 140.99. The third commenter questioned whether "less onerous [capital] requirements" for FCMs that cannot satisfy either capital standard are justified.

The Commission has determined to adopt Rule 30.12 by incorporating certain comments regarding the capital requirement for carrying FCMs. As adopted, Rule 30.12 will require that FCMs maintain adjusted net capital of

\$20,000,000, or the greater of three times the FCM's capital requirement under Rule 1.17(a)(1)(i)(A) or three times the FCM's capital requirement under Rule 1.17(a)(i)(B). After careful consideration, the Commission has determined that \$20,000,000 in adjusted net capital provides sufficient cushion to protect against the risk of defaulting authorized customers. Accordingly, the Commission is adopting, for those FCMs who do not meet the requirement to maintain at least triple their minimum capital requirement under Rule 1.17, a \$20,000,000 minimum adjusted net capital figure rather than the proposed \$50,000,000. The decrease in the minimum capital requirement is consistent with the Commission's recent proposal to permit FCMs with at least \$20,000,000 in adjusted net capital to act as intermediaries for non-institutional customers on derivatives transaction facilities.<sup>17</sup>

The Commission believes that the decrease in the required minimum capital for FCMs under Rule 30.12 as amended as compared to proposed Rule 30.12 should reduce the need for relief from this requirement. The Commission further believes that any request for relief from this capital requirement must be addressed on a case-by-case basis and believes that a petition for relief from this requirement should be made in accordance with Rule 140.99. The Commission expects that any FCM seeking relief from the Rule 30.12 capital requirement shall be required to likewise demonstrate its ability to mitigate the risk associated with the activities of its authorized customers, including, but not limited to, the use of internal controls to evaluate on an ongoing basis the risk of default for any given authorized customer.

## 2. Internal Controls

The proposed rulemaking also required carrying FCMs to institute internal controls designed to regulate the direct foreign order transactions entered into by authorized customers (or their designated representatives), including procedures to determine which customers qualify as authorized customers and to monitor the FCM's risk relative to its authorized customers' risk aggregated across all markets. The Commission did not receive any comments dealing with these aspects of the proposed rule.

## 3. Disclosure

The Commission received one comment regarding the requirement that carrying FCMs furnish a written

disclosure to each authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with an FFOB. The commenter inquired whether the FCM may provide the disclosure as a separate document or as additional text in the customer account agreement. Either method will be acceptable. The Commission also has determined to eliminate from the final rule the requirement that the written disclosure be "in a form acceptable to the Commission." In light of the existing requirement for written disclosures to track the language set forth in the rule, the requirement as to form is superfluous. Accordingly, paragraphs (b)(3)(i) and (ii) have been combined into one paragraph for the final rule.

## C. Eligibility Requirements for Foreign Futures and Options Brokers

Proposed Rule 30.12 would have required participating foreign brokers to be FFOBs, as defined in Amended Rule 30.1(e), and either a clearing member of the foreign exchange on which the trade is executed, a majority-owned affiliate of such a clearing member, or an affiliate of the FCM carrying the authorized customer's account. Amended Rule 30.1(e) defines FFOB to mean a non-U.S. person that is a member of a foreign board of trade, as defined in Rule 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located, or a foreign affiliate of a U.S. FCM, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

Two commenters addressed the eligibility requirements for foreign brokers. While one commenter recommended that Rule 30.12 require a participating foreign broker to be an FFOB and either a clearing member on any foreign exchange (or its majority-owned affiliate) or an affiliate of any FCM, another commenter stated that any FFOB should be eligible to participate in the direct foreign order transmittal process.

In light of these comments and the foreign order transmittal-specific risk disclosure to be distributed by each authorized customer's FCM, combined with the sophisticated nature of the participating customers and the required internal controls for FCMs, the Commission has determined that the additional layer of protection set forth in the eligibility requirements for foreign brokers is not necessary. Accordingly, the adopted rule only will require participating foreign brokers to

<sup>16</sup> Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various defined amounts, including:

(A) \$250,000, or

(B) Four percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

<sup>17</sup> 65 FR 39008 (June 22, 2000).

be FFOBs, as defined in Amended Rule 30.1(e).

Commenters also requested that the Commission clarify the application of Rule 30.12 with respect to FFOBs that carry the customer account for any foreign futures and options customer directly rather than on an omnibus basis. The Commission confirms that an FFOB that directly carries the customer account for any foreign futures and options customer may permit that customer to place orders directly with another FFOB in accordance with the procedures set forth herein, provided that: (i) The carrying FFOB has registered as an FCM, or has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures; (ii) the carrying FFOB complies with the terms and conditions set forth in the rule; and (iii) the foreign futures and options customer qualifies as an authorized customer. Additionally, the Commission confirms that authorized customers of FCMs that maintain a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with clearing brokers at foreign exchanges also may participate in the direct foreign order transmittal process described in Rule 30.12.

#### D. Automated Order Routing Systems

Proposed Rule 30.12 permitted qualifying FFOBs to accept orders directly from authorized customers only via telephone, facsimile and email. The relief from registration under proposed Rule 30.12 did not extend to orders placed directly with FFOBs via automated order routing systems ("AORSs"). With one exception, the commenters generally requested that the Commission modify proposed Rule 30.12 to permit FFOBs to accept orders placed via AORSs.

The Commission has determined to revise Rule 30.12 to permit qualifying FFOBs to accept orders directly from authorized customers via an AORS.<sup>18</sup> The Commission notes that the requirement for each carrying FCM to establish control procedures governing the direct contacts between authorized customers and FFOBs and to have in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets applies regardless of whether the authorized

customer places the order via telephone, facsimile, e-mail or an AORS.

#### E. Effect of the Adopted Rule

In the proposed rulemaking, the Commission noted that Rule 30.12, if adopted, would replace prior T&M advisories as the sole source of authorization for unregistered FFOBs to accept orders directly from foreign futures and options customers. The Commission invited comment from any party adversely affected by that determination. Having received no comment on this issue, the Commission hereby rescinds CFTC Advisories Nos. 93-115 and 95-08. Adopted Rule 30.12 will apply to all regulated activities with all current and new foreign futures and foreign options customers as of the effective date of the new rule. As a point of clarification, adopted Rule 30.12 will not apply to brokerage activities originating with non-U.S. customers. Additionally, this rule does not amend, abrogate or otherwise alter the transactional relationship between any U.S. foreign futures and foreign options customer and any non-U.S. firm that has received confirmation of Rule 30.10 relief. With respect to U.S. customers, a firm with Rule 30.10 relief must continue to abide by the local laws, rules and regulations deemed acceptable for substituted compliance by the Commission, as well as the Commission laws and regulations outlined in orders issued by the Commission.

#### III. Amendments to Rule 30.1

In the **Federal Register** notice issued concurrently with proposed Rule 30.12, the Commission proposed, among other things, to amend Rule 30.1 to include definitions for "foreign futures and options customer omnibus account" and FFOBs.<sup>19</sup> Currently, for purposes of Parts 15 through 21 of the Act, Rule 15.00(a)(1) defines the term "foreign broker" to mean "any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person." For the sake of clarity, the Commission believes that a formal definition of FFOB is necessary to distinguish it from the definition of "foreign broker." Having gradually expanded the relief associated with direct foreign order transmittal by reference to customer omnibus accounts, it is also appropriate to define the term "foreign futures and options customer omnibus account." The Commission did not receive any comments regarding either of the

proposed definitions. Accordingly, the Commission is adopting the proposed definitions of "foreign futures and options customer omnibus account" and "foreign futures and options brokers" as Rules 30.1(d) and (e), respectively.

#### IV. Related Matters

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in adopting 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.<sup>20</sup> The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.<sup>21</sup> With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.<sup>22</sup> Due to the minimum requirements for the amount of money under management for eligible CTAs under Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the final rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

##### B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rules contain information collection requirements. As required by the PRA, the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)). In response

<sup>18</sup> For purposes of Rule 30.12, an AORS generally means any system of computers, software or other devices that allows entry of orders through another party for transmission to a board of trade's computer or other automated device where trade matching or execution takes place.

<sup>19</sup> 64 FR 46613.

<sup>20</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>21</sup> 47 FR 18619-18620.

<sup>22</sup> 47 FR 18618-18620.

to the Commission's invitation in the proposed rulemakings to comment on any potential paperwork burden associated with these rules, no comments were received.

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

Definitions, Foreign futures, Consumer protection, Foreign options, 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 8a 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 amends 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 30.1 is amended by adding paragraphs (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 foreign 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 or foreign 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) of this chapter, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the foreign board of trade is located; or a foreign affiliate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction in which the affiliate is located.

3. Section 30.12 is added to read as follows:

##### § 30.12 Direct Foreign Order Transmittal.

(a) *Authorized customers defined.* For the purposes of this section, an "authorized customer" of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in § 30.1(c), or its designated representative, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission

merchant's foreign futures and options customer omnibus account; and

(2)(i) Is an eligible swap participant, as defined in § 35.1(b)(2) of this chapter, or

(ii) Whose investment decisions with respect to foreign futures and foreign option transactions are made by a commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a commodity trading advisor under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that the commodity trading advisor has total assets under management exceeding \$50,000,000 and that the commodity trading advisor places the foreign futures or foreign options order.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the futures commission merchant's most recent required filing of a Form 1-FR-FCM with the Commission:

(i) Possesses \$20,000,000 in adjusted net capital, as defined by § 1.17(c)(5) of this chapter; or

(ii) Possesses the greater of three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(A) of this chapter or three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(B) of this chapter; and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraphs (c) or (d) of this section, and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3) Furnishes a written disclosure statement to each such authorized customer advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker. The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers<sup>1</sup> of [FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an "Executing Firm") that execute transactions on behalf of [FCM's] foreign futures and options customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] foreign futures and options customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.

- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.

- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.

- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the

<sup>1</sup> You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program may be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

- Unless you object within five (5) days, by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, notwithstanding that such person accepts orders for foreign futures and foreign options transactions from authorized customers of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section, provided, that:

(1) The orders are executed for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant;

(2) The person does not solicit or accept any money, securities or property (or extend credit in lieu thereof) directly from any U.S. foreign futures and options customer to margin, guarantee or secure any trades or contracts that result or may result therefrom; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

(d) *Exemption for foreign futures and options brokers carrying a foreign futures and options customer omnibus account.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will be exempt from such registration, notwithstanding that such person:

(1) Carries the foreign futures and options customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section;

(2) Accepts orders for foreign futures and foreign options transactions from authorized customers for the execution of the trades for or on behalf of the foreign futures and options customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement; and

(3) The person is a foreign futures and options broker, as defined by § 30.1(e).

Dated: July 27, 2000.

By the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00-19444 Filed 8-1-00; 8:45 am]

BILLING CODE 6351-01-U

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 231, and 271

[Release Nos. 33-7877; IC-24582; File No. S7-14-00]

RIN 3235-AH93

#### Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Securities and Exchange Commission is adopting, as an interim final rule, rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act ("Electronic Signatures Act") prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Consistent with Commission interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the prospectus. The Commission also is clarifying its interpretation on the responsibility of registered investment companies for hyperlinks to third-party web sites from their advertisements or sales literature.

**DATES:** *Effective Date:* October 1, 2000, except for the amendments to parts 231 and 271, which are effective July 27, 2000.

*Comment Date:* We are publishing interim final regulations, rather than a notice of proposed rulemaking, for the reasons given below in the section entitled "Waiver of Proposed Rulemaking and Request for Comments." We will, however, consider any comments received on or before September 1, 2000, and will revise rule 160 if necessary.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G.

Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0609.

Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-14-00; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549-0102. Electronically submitted comment letters will be posted on the Commission's Internet site (<http://www.sec.gov>).<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Maura S. McNulty, Senior Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942-0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549-0506.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") is adopting rule 160 [17 CFR 230.160] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") as an interim final rule pursuant to Section 104(d)(2) of the Electronic Signatures Act.

#### I. Exemption from Consumer Consent Requirements of the Electronic Signatures Act

##### A. Discussion

We are adopting, as an interim final rule, rule 160 under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures Act prospectuses of registered investment companies ("funds") that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. The rule implements Section 104(d)(2) of the Electronic Signatures Act, which directs the Commission to provide this exemption within 30 days after the date of enactment.<sup>2</sup> Rule 160, consistent with Commission interpretations of existing law, permits a fund to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining

<sup>1</sup> We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

<sup>2</sup> Electronic Signatures in Global and National Commerce Act, Pub. L. 106-229, § 104(d)(2).