

regulations. NMFS received an application for an EFP from the AFDF on April 19, 1999. If approved, the EFP would be used to test artificial longline bait fabricated from seafood wastes in the Gulf of Alaska. The AFDF reports that the potential benefits of using artificial bait for longline fisheries include higher catches, enhanced species and size selectivity, consistent product quality and size, enhanced safety, and lower bait loss.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation by forwarding the application to the Council. The Council will consider the EFP application during its June 9–14, 1999, meeting which will be held at the Best Western Kodiak Inn, Kodiak, Alaska, and public comment on the application will be requested at this meeting. The applicant has been invited to appear in support of the application if the applicant desires.

A copy of the application is available for review from the NMFS Regional Administrator (see ADDRESSES).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Those Foreign Firms Acting in the Capacity of a Futures Commission Merchant

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and order.

SUMMARY: The Commodity Futures Trading Commission (“Commission”) is authorizing National Futures Association (“NFA”) to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with the terms and conditions on which relief was confirmed. In addition, the Commission is authorizing NFA to withdraw the confirmation of Rule 30.10 relief from any firm that notifies NFA of its decision to forfeit such relief.

EFFECTIVE DATE: July 8, 1999.

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, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

United States of America

Before the Commodity Futures Trading Commission

Order Authorizing the Performance of Certain Functions by National Futures Association With Respect to Firms That Have Received Confirmation of Rule 30.10 Relief

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act¹ (“Act”) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act² and subject to the provisions of the Act applicable to registrations granted by the Commission. NFA has confirmed its willingness to perform certain functions now performed by the Commission.³

Upon consideration, the Commission has determined to authorize NFA, effective July 8, 1999, to revoke or withdraw exemptive relief granted to firms acting in the capacity of futures commission merchants (“FCMs”) that are members of regulatory or self-regulatory bodies to which an order under Commission Rule 30.10⁴ has been issued and that have received confirmation of relief.

Rule 30.10 allows the Commission to exempt a foreign firm acting in the capacity of an FCM from compliance with certain Commission rules and regulations based upon the firm’s compliance with comparable regulatory requirements imposed by the firm’s home-country regulator. The Commission has established a process whereby a foreign regulator or self-regulatory organization (“SRO”) can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction’s regulatory structure offers comparable regulatory oversight,⁵ the

Commission may issue an Order granting general relief subject to certain conditions.⁶ Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm’s home country.⁷

On September 11, 1997, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms’ fitness and compliance with the conditions of the appropriate Rule 30.10 Order, and to grant exemptive relief from registration to qualifying firms pursuant to Rule 30.10.⁸ The Commission stated that, once it had examined the foreign jurisdiction’s regulatory structure and issued an Order under Rule 30.10 granting general relief based upon the comparability of that structure to the structure under the Act, the steps

provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission Rule 30.10 are set forth in Appendix A to Part 30. See 52 FR 28990, 29001 (August 5, 1987).

⁶ These conditions require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. customers, and the exchange of information with the Commission. See 62 FR 47792, 47793, n.7 (September 11, 1997).

⁷ A firm seeking confirmation of Rule 30.10 relief is generally required to:

(1) consent to jurisdiction in the United States and designate an agent for service of process in the United States in accordance with the requirements set forth in Rule 30.5;

(2) agree to make its books and records available upon the request of any representative of the Commission or the U.S. Department of Justice;

(3) agree that all futures or regulated option transactions with respect to U.S. customers will be made on or subject to the rules of the applicable exchanges and will be undertaken consistent with rules and codes under which such firm operates;

(4) represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and notify the Commission promptly of any change in that representation;

(5) disclose the identity of each U.S. affiliate or subsidiary;

(6) agree to be subject to NFA arbitration;

(7) consent to the release of certain financial information;

(8) segregate customer funds from the firm’s proprietary funds, even if that option is not generally available under local law;

(9) consent to report the value of funds required to be segregated on behalf of U.S. customers; and

(10) undertake to comply with the provisions of law and rules which form the basis for granting the exemption. 62 FR 47792, 47793, n.8. The terms and conditions vary from order to order depending upon the regulatory structure of the firm’s home country. *Id.*

⁸ 62 FR 47792–47793. The Commission also authorized NFA to serve as the official custodian for all filings, acknowledgments and records produced pursuant to this undertaking. *Id.*

¹ 17 U.S.C. 12a(10)(1998).

² 7 U.S.C. 21(j)(1998).

³ Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated August 27, 1997.

⁴ Commission rules referred to herein can be found at 17 CFR Ch. I (1999).

⁵ The specific elements examined in evaluating whether the particular foreign regulatory program

needed to determine if relief is appropriate for particular firms are similar to those undertaken in the course of fitness checks performed by NFA with respect to applicants under the Act.⁹ For example, the Commission previously delegated to NFA the authority to deny, condition, suspend, restrict or revoke the registration of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and associated persons of these registrants,¹⁰ and floor brokers and floor traders.¹¹

Upon consideration, the Commission believes that NFA can revoke or withdraw a firm's confirmation of Rule 30.10 relief in an efficient and cost-effective manner. As the custodian of all Rule 30.10 filings, NFA has developed an extensive database from which it may identify those firms that no longer maintain valid agency agreements.¹² Accordingly, the Commission directs NFA to identify on an ongoing basis those firms that no longer maintain a valid agreement with a U.S. agent for service of process and to notify those firms and their regulators in writing that their failure to maintain a valid agency agreement will result in the termination of the firms' confirmation of Rule 30.10 relief unless such deficiency is cured within thirty days. Further, the Commission authorizes NFA to revoke, after this thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in compliance with Rule 30.5. In addition, any firm seeking to withdraw voluntarily its confirmation of Rule 30.10 relief (or any foreign regulator providing notice that a member or regulatee has ceased business operations) currently sends that information to NFA. The Commission authorizes NFA to withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA, either directly or through its regulatory authority, of its decision to forfeit such relief and/or to cease business operations.

The Commission is also delegating to NFA the power to revoke confirmation of a firm's Rule 30.10 relief if the firm fails to comply with any of the representations and obligations on which the relief is based. While the Commission is not imposing on NFA

the duty to monitor activities of Rule 30.10 firms, NFA should note any non-compliance of which it becomes aware. For example, NFA will know if a Rule 30.10 firm has failed to comply with a representation that it will submit to NFA arbitration. If NFA becomes aware of a firm's failure to comply with a representation or consent contained in its Rule 30.10 petition, other than the failure to maintain a valid U.S. agent for the service of process, NFA should consult with the Commission's Division of Trading and Markets ("Division") to determine if it is appropriate to modify or terminate the firm's Rule 30.10 relief. After such consultation and the consent of the Division, NFA is authorized to revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to comply with any of the terms and conditions of such relief outlined in the appropriate Rule 30.10 Order.

II. Conclusion and Order

The Commission has determined, in accordance with Section 8a(10) of the Act, to authorize NFA to perform the following functions:

- (1) To revoke, after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that does not maintain a valid agreement with a U.S. agent for service of process in accordance with Rule 30.5;
- (2) To revoke, after consultation with and consent from the Commission's Division of Trading and Markets and after thirty days written notice, the confirmation of Rule 30.10 relief for any firm that fails to any of the other terms or conditions outlined in the appropriate Rule 30.10 Order; and
- (3) To withdraw the confirmation of Rule 30.10 relief for any firm that notifies NFA either directly or through its regulatory authority of its decision to forfeit such relief and/or to cease business operations.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and Commission orders issued thereunder and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for the effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Section 8a(10) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order shall affect the Commission's authority to review NFA's performance of the Commission functions listed above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of previous orders issued by the Commission under Parts 4 and 30.

Issued in Washington, DC, on June 1, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of expansion of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of an expansion of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Cancer Institute (NCI) clinical trials to include NCI sponsored cancer prevention clinical trials. Participation in these clinical trials will improve TRICARE/CHAMPUS eligible beneficiary access to emerging new therapies that have significant promise for the prevention and successful treatment of cancers. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the prevention and treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Expanding the current

⁹ *Id.* at 47793.

¹⁰ 50 FR 34885 (August 28, 1985).

¹¹ 59 FR 38957 (August 1, 1994).

¹² All firms seeking confirmation of Rule 30.10 relief must designate an agent for service of process in accordance with Rule 30.5.