

conducted beginning with fiscal year 2009 and every fifth year thereafter. More detailed instructions are given on the report forms and instructions.

(b) *Who must report*- (1) *Mandatory reporting*. A report is required from each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of \$3,000,000 during its fiscal year covered by the survey on an accrual basis. The \$3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting*. If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are \$3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. However, submission of this information is voluntary. Because the \$3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply to sales, to purchases, or to both.

(3) *Exemption claims*. Entities that receive the BE-180 survey but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must file an exemption claim by completing pages one through

five of the BE-180 survey and returning them to BEA.

(c) *BE-180 definition of financial services provider*. The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2007, Sector 52-Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55-Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services*. The BE-180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial companies and foreign persons: Brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services;

financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to firms designated by Bursa Malaysia Derivatives Berhad (Bursa Derivatives), a subsidiary of Bursa Malaysia Berhad (Bursa Malaysia), from the application of certain of the Commission's foreign futures and options regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

**DATES:** *Effective Date:* June 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Andrew V. Chapin., Associate Director or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418-5430 or (202) 418-5167. *E-mail:* [achapin@cftc.gov](mailto:achapin@cftc.gov) or [amusalem@cftc.gov](mailto:amusalem@cftc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

*Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of*

*Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein.*

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.<sup>1</sup> These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S., and subject to a comparable regulatory structure in the jurisdiction in which they were located, to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.<sup>2</sup> These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the

program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.<sup>3</sup>

On July 13, 2009, Bursa Malaysia Berhad (Bursa Derivatives' holding company) originally petitioned the Commission on behalf of its member firms, located and doing business in Malaysia, for an exemption from the application of the Commission's Part 30 Regulations to those firms. Subsequently, however, and due to the corporate restructuring following the joint venture between Bursa Malaysia and the CME Group, Inc., Bursa Malaysia amended its original petition by withdrawing the request for Part 30 relief on behalf of Bursa Malaysia. The amended petition, submitted by letter to the Commission on December 30, 2009, was filed by and requests Regulation 30.10 relief solely to Bursa Derivatives and all eligible Bursa Derivatives Trading Participants. In support of its petition, Bursa Derivatives states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest nor to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act (Act) and the regulations thereunder.

Based upon a review of the petition, supplementary materials filed by Bursa Derivatives and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A thereof, have been met and that compliance with

applicable Malaysian law and Bursa Derivatives rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by Bursa Derivatives as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;

—The requirement in Commission Regulation 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);

—The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;

—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and

—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Malaysia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in Malaysia who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. I (2009).

<sup>2</sup> 52 FR 28990, 29001 (Aug. 5, 1987).

<sup>3</sup> 52 FR 28980, 28981 and 29002.

requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, Bursa Derivatives, and the Malaysian regulatory authorities on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Malaysia, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of Bursa Derivatives and accompanying exhibits, that Malaysia's regulation of futures and options exchanges is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the regulations of Bursa Derivatives for products that customers located in the U.S. may trade.<sup>4</sup> The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.<sup>5</sup> Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.<sup>6</sup> The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the

Regulation 30.10 petition must represent in writing to the Commission<sup>7</sup> that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Malaysia; such firm is engaged in business with customers in Malaysia as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers resident in the U.S. will be made on or subject to the regulations of Bursa Derivatives and the Commission will receive prompt notice of all material changes to the relevant laws in Malaysia, any regulations promulgated thereunder and Bursa Derivatives regulations;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Malaysian customers under all relevant provisions of Malaysian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (*e.g.*, banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5, 17 CFR 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Malaysia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be

reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Malaysian laws and Bursa Derivatives regulations that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted; and

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.<sup>8</sup> Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that Bursa Derivatives members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.<sup>9</sup> The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated Bursa Derivatives firm when the consents set forth in paragraphs (2)(a)–(g) have been filed. Upon filing of the notice required under paragraph (1)(b) as to any such firm, the

<sup>8</sup> 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

<sup>9</sup> See 57 FR 49644 (November 3, 1992) (permitted limited marketing of foreign futures and foreign option products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994) (expanding the relief set forth in the 1992 release to conduct directed towards "accredited investors", as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

<sup>4</sup> See, *e.g.*, Sections 2(a)(1)(C) and (D) of the Act.

<sup>5</sup> See, *e.g.*, 17 CFR Part 18 (2009).

<sup>6</sup> See, *e.g.*, 17 CFR Parts 17 and 21 (2009).

<sup>7</sup> As described below, these representations are to be filed with NFA.

relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and Bursa Derivatives.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Dated: June 15, 2010.

By the Commission.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2010-15021 Filed 6-21-10; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0512]

RIN 1625-AA00

#### Safety Zone; Marquette 4th of July Fireworks, Marquette Harbor, Lake Superior, Marquette, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Marquette Harbor, Lake Superior, Marquette, MI. This zone is intended to restrict vessels from a portion of Marquette Harbor during the Marquette 4th of July Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

**DATES:** This rule is effective from 9 p.m. on July 4, 2010, until 11 p.m. on July 5, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0512 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0512 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone: 906-635-3222, e-mail: [Gregory.C.Ford@uscg.mil](mailto:Gregory.C.Ford@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards

associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only two hours on the day of the zone enforcement. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

##### Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft, piers and shore areas presents a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water presents a significant risk of serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at this event and help minimize the associated risks.

##### Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Marquette 4th of July fireworks display. The fireworks display is planned to occur between 9:45 p.m. and 10:15 p.m. on July 4, 2010. If the fireworks event is postponed for any reason, the fireworks display would occur between 9:45 p.m. and 10:15 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11 p.m. on July 4, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. to 11 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all waters of Marquette Harbor within a 1,000-foot radius of the