

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 30****Foreign Futures and Options Transactions**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; Interpretative statement.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is clarifying its interpretation of the foreign futures or foreign options secured amount requirement set forth in Commission Rule 30.7 ("secured amount requirement"). The Commission previously interpreted Rule 30.7 to require futures commission merchants ("FCMs") and certain firms exempt from such registration to perform an inquiry with respect to the treatment of the foreign futures or foreign options secured amount by any depository handling those funds. Under that interpretation, if a firm determines that any depository, including those beyond the initial depository, would not hold the funds set aside to cover the secured amount in a manner consistent with the provisions of the rule, then the firm must set aside funds with an acceptable depository in order to include such funds in the daily computation of the secured amount. As part of the Commission's ongoing program of regulatory reform, the Commission is revising its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation set forth herein is a revised appendix to our Rules.

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION: The current Appendix B to Part 30 sets forth option contracts permitted to be offered or sold in the U.S. pursuant to Rule 30.3(a).¹ The Commission previously amended Rule 30.3(a) to eliminate the requirement that the Commission authorize the offer and sale of a

particular foreign exchange-traded commodity option before it can be offered or sold in the U.S., except for those involving stock indices or foreign government debt futures.² That action rendered existing Appendix B to Part 30 generally irrelevant. Accordingly, the Commission proposed to remove the current Appendix B and replace it with the Interpretative Statement to Rule 30.7 contained herein.³

The Commission received one favorable comment on the proposed Interpretative Statement. The commenter noted that "the extra requirements imposed by the current interpretation effectively compel FCMs to choose between becoming insurers of funds their customers knowingly commit to foreign markets or refusing to accept those trades[.]" and stated that the revised interpretation "is a more logical approach to balancing the desire of U.S. customers to trade on foreign exchanges with the increased insolvency risks involved in trading in some of those jurisdictions."

Administrative Procedures Act

The Administrative Procedures Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction." The Interpretative Statement to Rule 30.7 set forth in revised Appendix B will relieve the obligation of FCMs and certain foreign firms exempt from registration as an FCM under Rule 30.10 to set aside their own funds to satisfy the secured amount requirement set forth in Rule 30.7. Accordingly, the Commission has determined to make Appendix B effective immediately.

List of Subjects in 17 CFR Part 30

Consumer protection, Definitions, Foreign futures, Foreign options, Treatment of foreign futures or foreign options secured amount.

Accordingly, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

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

² 61 FR 10891 (March 18, 1996).

³ 65 FR 53946 (September 6, 2000). Persons concerned with what options on foreign stock index or government debt futures can be lawfully offered or sold to customers located in the U.S. may consult the foreign instruments approval background on the Commission's website at <http://www.cftc.gov/opa/background/part30.htm>.

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

2. Appendix B is revised to read as follows:

Appendix B to Part 30—Interpretative Statement With Respect to the Secured Amount Requirement Set Forth in § 30.7

1. Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts such money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers.¹ This amount is denominated as the "foreign futures or foreign options secured amount" and that term is defined in Rule 1.3(rr). The separate accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c). Further, each FCM must obtain and retain in its files for the period provided in Rule 1.31 an acknowledgment from the depository that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

2. In a series of orders issued pursuant to Rule 30.10, the Commission required that certain foreign firms exempt from registration as FCMs essentially comply with the standards of Rule 30.7.² Specifically, the

¹ "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 1.3] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7]." Rule 30.1(c). "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). "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).

² Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Commodity Exchange Act ("Act") and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization ("SRO"). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief (referred to herein as "Rule 30.10 firms") must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. For a list of those foreign regulators and SROs that have been issued a Rule 30.10 order, see Appendix C to Part 30. In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction be granted broader relief to engage in

¹ Commission rules referred to herein are found at 17 CFR Chapter I.

Commission stated that "[the secured amount] requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations."³ The Commission further interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to take appropriate action (i.e., set aside funds in a "mirror" account) in the event that it becomes aware of facts leading it to conclude that foreign futures and foreign options customer funds are not being handled consistent with the requirements of Commission rules or relevant order for relief by any subsequent intermediary or exchange clearing organization.

3. Upon further analysis and reconsideration of this matter, the Commission has determined to revise its prior interpretation of the Rule 30.7 secured amount requirement. The Commission notes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating FCM or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whether the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.⁴

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer

transactions on exchanges other than in its home jurisdiction (referred to herein as "expanded relief"), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions. Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7. For the most recent order granting expanded relief, see 64 FR 50248 (September 16, 1999) (Singapore Exchange Derivatives Trading Limited).

³ 64 FR 50248, 50251, n.19 (emphasis added).

⁴ Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Appendix A to Part 30.

is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) ("Rule 1.55(f) customers").⁵ While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transactions.⁶

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7),⁷ or (2) Paragraphs 6 and 8 of Appendix A to Rule 1.55(c).⁸ Rule

⁵ 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of "eligible swap participants" in Rule 35.1.

⁶ *Id.* at 8569.

⁷ Rule 1.55(b)(7) reads as follows: Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. 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.

⁸ Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of Appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic

30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulatory) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. If an FCM receives from the initial depository the acknowledgment described in Rule 30.7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A of Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by its home regulator.

7. IF an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers and acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of October 11, 2000. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of Part 30.

Dated: Issued in Washington, D.C. on October 5, 2000.

Jean A. Webb,

Secretary of the Commission.

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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 amending the orders issued pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited. The amendment reflects the Commission's revised interpretation of the Rule 30.7 foreign futures or foreign options secured amount requirement ("secured amount requirement") as it applies to both futures commission merchants ("FCMs") and certain foreign firms exempt from such registration. Specifically, the Commission has determined to revise its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation of the secured amount requirement is set out in a revised appendix issued concurrently with this release and published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Amending Prior Orders Issued Pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited

I. Background

Part 30 of the Commission's rules sets forth rules governing foreign futures¹ and foreign option² transactions. Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of a futures commission merchant ("FCM") from registration under the Commodity Exchange Act ("Act") and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization ("SRO").³ Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions.⁴ Firms seeking confirmation of relief (referred to herein as "Rule 30.10 firms") must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.⁵

¹ "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a). Commission rules referred to herein are found at 17 CFR Ch. I (2000).

² "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'put,' 'call,' 'advance guaranty,' or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade." Rule 30.1(b).

³ The specific elements examined by the Commission in evaluating whether the particular foreign regulatory program provides a basis for issuing an order pursuant to Rule 30.10 are set forth in Appendix A to Part 30. See 52 FR 28990, 29001 (August 5, 1987).

⁴ 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).

⁵ For a list of representations typically required of each Rule 30.10 firm, see 62 FR 47792, 47793, n.8.

In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction to be granted broader relief to engage in transaction on exchanges other than in its home jurisdiction (referred to herein as "expanded relief"), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions.⁶ Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7.

The orders granting expanded relief require Rule 30.10 firms to either set aside funds constituting the secured amount requirement in a separate account: (1) As set forth in the relevant order for expanded relief (see below), (2) as set forth in Rule 30.7 (treating those funds in the manner prescribed by that rule), or (3) in compliance with either of the above procedures, with the amount required to be segregated under local law to be substituted for the secured amount. The alternative secured amount requirement described within each order for expanded relief states, in relevant part:

The separate account or accounts referred to [herein] may be deemed a good secured amount depository only if the [firm] obtains and retains in its files for the period required by applicable law and [exchange or SRO] rules, a written acknowledgment from such separate account depository that:

⁶ The Commission has issued orders granting expanded relief to the U.K. Investment Management Regulatory Organisation ("IMRO") 62 FR 10449 (March 7, 1997), the U.K. Securities and Futures Association ("SFA") 62 FR 10447 (March 7, 1997), New Zealand Futures and Options Exchange ("NZFOE"), 61 FR 64985 (December 10, 1996), the Montreal Exchange, 62 FR 8875 (February 27, 1997) and the Sydney Futures Exchange ("SFE"), 62 FR 10445 (March 7, 1997). In addition, the Commission has authorized members of the Singapore International Monetary Exchange, now known as the Singapore Exchange Derivatives Trading Limited ("SGX-DT"), to solicit and accept orders from U.S. customers for otherwise permitted transactions on Eurex Deutschland, 64 FR 50248 (September 16, 1999). Although applicants for Rule 30.10 orders generally have obtained relief from transactions entered into from within their home country before seeking expanded relief applicable to transactions entered into on an exchange located outside their borders, e.g., IMRO, the Commission has combined the two forms of relief into one single order, e.g., NZFOE.