

out of the no-entry zones. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Sanctuary staff on the water within the area. This rule is effective upon filing at the Office of the Federal Register.

Executive Order 12866

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of section 3(f) of Executive Order 12866.

Executive Order 12612

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

Because this rule is not required to be issued with prior notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, it is not subject to the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

Dated: June 26, 2003.

Ted I. Lillestolen,

Captain/NOAA, Associate Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03-16615 Filed 6-26-03; 4:24 am]

BILLING CODE 3510-NK-M

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 the ASX Futures Exchange Party Limited ("ASXF") from the application of certain of the

Commission's foreign futures and option rules based on 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 Rule 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the rules 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.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Esq., Deputy Director, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Clearing and Intermediary Oversight, 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 Under CFTC Rule 30.10 Exempting Firms Designated by the ASX Futures Exchange Party Limited ("ASXF") From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein; and Granting Expanded Relief for Otherwise Permitted Transactions on all non-U.S. exchanges where ASXF Firms are authorized by Exchange Regulations to Conduct Futures Business for Customers, Subject to Certain Conditions.

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in part 30 of the Commission's rules.¹ These rules 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 rules 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 Rule 30.10.² 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 Rule 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.³

¹ Commission rules referred to herein are found at 17 CFR Ch. I (2002).

² 52 FR 28990, 29001 (August 5, 1987).

³ 52 FR 28980, 28981 and 29002.

By letter dated March 6, 2002, ASXF petitioned the Commission on behalf of its Participants ("firms"), located and doing business in Australia, for an exemption from the application of the Commission's part 30 rules to those firms. In support of its petition, ASXF states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or 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 rules thereunder.

Based upon a review of the petition, supporting materials filed by ASXF and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have been met and that compliance with applicable Australian law and ASXF rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

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

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Rule 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 Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;
- Those sections of part 1 of the Commission's financial rules 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 rules 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 Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's

finding that the regulatory scheme governing persons in Australia 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 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, ASXF, and the Australian 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 Australia, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, such as the antifraud provision in Rule 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 rules of ASXF for products that customers located in the U.S. may trade.⁴ The relief does not extend to rules 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.⁵ Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to

foreign brokers.⁶ 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 Rule 30.10 petition must represent in writing to the CFTC⁷ 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 Australia; such firm is engaged in business with customers in Australia 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 rules of ASXF and the Commission will receive prompt notice of all material changes to the relevant laws in Australia, any rules promulgated thereunder and ASXF rules;

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

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the part 30 rules, 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.⁸

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

⁶ See, e.g., 17 CFR Parts 17 and 21 (2002).

⁷ As described below, these representations are to be filed with NFA.

⁸ ASIC represented to the Commission that the existing Memorandum of Understanding governing the sharing of information between ASIC and the Commission "will extend to activities of the ASXF and its members." See Letter from Greg Tanzer, Executive Director, Regional Coordination & International Relations for ASXF, to Jane Kang Thorpe, Director for the Division of Clearing and Intermediary Oversight, dated May 16, 2003.

⁴ See, e.g., Sections 2(a)(1)(C) and (D) of the Act.

⁵ See, e.g., 17 CFR Part 18 (2002).

(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 Rule 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 Australia 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 Australian laws and ASXF rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and

(g) Maintains the greater of regulatory capital as required by ASXF or four percent of funds segregated on behalf of customers resident in the United States.

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.⁹ Among other duties, 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. 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.

Expanded Relief

As requested in the ASXF Petition,¹⁰ this order also grants expanded relief to

permit ASXF firms to trade on other non-U.S. exchanges where such firms are authorized by the Australian Corporations Law (CL) to conduct futures business for customers, contingent upon compliance with the prior provisions of this Order and with these conditions, to the extent they impose duties additional to those already specified:¹¹

(1) ASXF will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated ASXF members of U.S. customers for futures business on Recognized Futures Exchanges, as defined in section 9(b) of the CL,¹² other than a contract market designated as such pursuant to section 5 of the Act or a derivatives transaction execution facility registered as such pursuant to section 5a of the Act, to the same extent that it conducts such activities in regard to ASXF business;

(2) ASXF will cooperate with the Commission with respect to any inquiries concerning any activity that relates to expanded relief, including sharing the information specified in Appendix A to the part 30 rules on an "as needed" basis, on the same basis as set forth in the part 30 relief conditions of this Order; and

(3) Each ASXF member firm confirmed for rule 30.10 relief seeking to engage in activities that are the subject of this Order must agree to provide the books and records related to such transactions required to be maintained under the applicable statutes, regulations, and Exchange rules in effect in Australia, on the same basis as set forth in the part 30 relief conditions of this Order.

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than SFE and ASXF, whether by the ASXF firm directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, each ASXF firm must use the following procedures,

Corporation Limited ("SFE") (formerly Sydney Futures Exchange Limited) market. This is particularly relevant given many of the participants who would seek to solicit and accept orders from U.S. customers are participants on both the SFE and the ASXF market." ASXF Petition at p. 1. SFE was given expanded relief by Orders of April 13, 1993 (58 FR 19209), March 1, 1997 (62 FR 10445) and October 11, 2000 (65 FR 60560, 60562).

¹¹ These conditions are the same as those specified in the SFE original expanded relief order of April 13, 1993, 58 FR 19209.

¹² The term "recognised futures exchange" or "RFE" is defined in section 9(b) of the Corporations Law to mean a body corporate that conducts a futures market outside Australia. Schedule 11 of the CL contains the list of RFEs, which currently includes over 40 U.S. and non-U.S. futures exchanges. For an exchange to be included on the Schedule 11 list of RFEs, the relevant lead regulator must have an information sharing arrangement with ASIC and the applicable regulatory program must provide a comparative level of regulation, similar to the requirements for an exemption under Commission Rule 30.10.

consistent with the requirements applicable to Commission registered FCMs concerning the protection of customer funds under the provisions of Commission rule 30.7:¹³

(a) Comply with the terms and procedures of Commission rule 30.7, with the amount required to be segregated under ASXF rules and Australian laws to be substituted for the secured amount requirement as set forth in such paragraphs.

OR

(b)(1) Maintain in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount in an amount sufficient to satisfy all of its current obligations to U.S. customers;

(2) Not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Deposit, if it wishes, together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (b)(1) above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. If the firm chooses to do so, the amount that must be deposited in such separate account or accounts must be no less than the greater of (i) the foreign futures and foreign options secured amount required by paragraph (b)(1) above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (ii) the foreign futures and foreign options secured amount required by paragraph (b)(1) above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintain the separate account or accounts referred to in paragraph (b)(1) above under an account name that clearly identifies them as such, with any of the following depositories:

(i) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(ii) The clearing organization of any foreign board of trade;

(iii) Any member and/or clearing member of such foreign board of trade; or

(iv) A bank or trust company which any of the depositories identified in (i)-(iii) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located;

(5) Obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a

¹³ These are the conditions imposed in the 1997 SFE Expanded Relief Order of March 1, 1997 (62 FR 10445) as amended by the Order of October 11, 2000 (65 FR 60560, 60562).

⁹ 62 FR 47792, 47793 (September 11, 1999).

¹⁰ ASXF "is essentially seeking the same level of relief as that afforded participants on the SFE

depository identified in paragraph b(4)(i)–(iv) above 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 provision of these regulations; and

(6) Provide each foreign futures and foreign options customer with one of the written disclosure statements in (A), (B), or (C) below:

(A) 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 in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections that 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 that will apply to your particular transaction.

OR

(B) 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 that 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.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation that 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.

OR

(C) A comparable disclosure statement prescribed by ASXF.

This Order will become effective as to any designated ASXF firm the later of the date of publication of the Order in

the **Federal Register** or the filing of the representations and consents set forth in paragraphs (2)(a)–(g), as verified by NFA. Upon filing of the notice required under paragraph (1)(b) as to any such firm, the 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 ASXF.

This Order is issued pursuant to Rule 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 Rule 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 and expanded relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive or expanded 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 rules and will make necessary adjustments if appropriate.

Issued in Washington, D.C. on June 25, 2003.

Jean A. Webb

Secretary of the Commission.

[FR Doc. 03–16516 Filed 6–30–03; 8:45 am]

BILLING CODE 6351–01–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 218, 220, 225

RIN 3220–AB54

Retirement Age

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Board amends its regulations to update the references regarding age required for eligibility for an annuity and for the application of work deductions.

Full retirement age is no longer age 65, but instead ranges from age 65 for those born before 1938 to age 67 for those born in 1960 or later. The Board amends its regulations to replace obsolete references to “age 65” with a reference to “retirement age”.

DATES: This rule is effective July 1, 2003.

FOR FURTHER INFORMATION CONTACT: For information specifically about this final rule, contact Michael C. Litt, General Attorney, Office of General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 106 of the Railroad Retirement Solvency Act of 1983, Public Law 98–76, amended the Railroad Retirement Act to replace references to “age 65” with “retirement age (as defined in section 216(l) of the Social Security Act).” Section 216(l) of the Social Security Act defines “retirement age” as follows: with respect to an individual who attains “early retirement age” before January 1, 2000, 65 years of age. “Early retirement age” is defined in the case of old-age, wife’s or husband’s insurance benefits, as age 62. With respect to individuals who attain early retirement age after December 31, 1999, the retirement age gradually increases.

The amended regulations replace references to “age 65” with the phrase “retirement age” in order to conform the regulations to the above-described amendment.

The Board published the proposed rule on June 17, 2002 (67 FR 41205), and invited comments by August 16, 2002. No comments were received. However, in preparing the rule for publication as a final rule, it was discovered that § 225.33(a)(1) of the Board’s regulations also contains a reference to “age 65” that should be replaced by a reference to “full retirement age.” Accordingly, the proposed rule has been redrafted as a final rule to include amendment of that section.

Collection of Information Requirements

The amendments to these parts do not impose information collection and record keeping requirements. Consequently, the final rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.