6351-01-P

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 certain member firms designated by the Korea Exchange ("KRX") from the application of certain of the Commission's foreign futures and option 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. The Commission notes that this Order does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Commodity Exchange Act ("Act").

DATES: Effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin, Associate Director, (202) 418-5465, achapin@cftc.gov, or Scott W. Lee, Special Counsel, (202)

418-5090, slee@cftc.gov, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by the Korea Exchange (KRX) From the Application of Certain of the Foreign Futures and Option Regulations as of the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and KRX, as Appropriate, to the Terms and Conditions of the Order Herein; and Confirming that Designated Members of KRX May Engage in Limited Marketing Conduct with Qualified Customers Located in the U.S., as Set Forth in Prior Commission Orders.

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.[1] 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 impact of such a program.

[1] Commission regulations referred to herein are found at 17 CFR Chapter I.

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.[2]

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.[3] 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

[2] "Foreign Futures and Foreign Options Transactions," 52 FR 28290 (Aug. 5, 1987).

[3] 52 FR 28990, 29001.

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 the Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[4]

On January 23, 2009, KRX petitioned the Commission on behalf of its member firms, located and conducting a financial investment business in the Republic of Korea, for an exemption from the application of the Commission's Part 30 Regulations to those firms. KRX amended its petition on May 3, 2013 with additional information. In support of its petition, KRX stated 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 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 Act and the regulations thereunder.

Based upon a review of the petition and supplementary materials filed by KRX, 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 Korean law and KRX rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

[4] 52 FR 28980, 28981 and 29002.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by KRX 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 Korea.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in Korea 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, KRX and the Korean 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 Korea, position data, and data on firms’ standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of KRX and accompanying exhibits, that KRX's regulation of financial futures and options intermediaries 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 entered on or subject to the rules of KRX for products that customers located in the U.S. may trade.[5] The relief does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges, and does not pertain to any transaction in swaps, as defined in Section 1a(47) of the Act. For example, a KRX member trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[6] 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.[7] 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.

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

[6] See, e.g., 17 CFR part 18.

[7] See, e.g., 17 CFR parts 17 and 21.

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 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 Korea; such firm is engaged in business with customers located in Korea 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 located in the U.S. will be made subject to the regulations of KRX, and the Commission will receive prompt notice of all material changes to the relevant laws in Korea, any rules promulgated thereunder and KRX rules;

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

(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 Korea 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; provided, however, that the firm may require its customers located in the U.S. to execute a consent concerning the exhaustion of certain mediation or conciliation procedures made available by KRX prior to bringing an NFA arbitration proceeding; and

(f) Undertakes to comply with the applicable provisions of Korean laws and KRX rules that form the basis upon which this exemption from certain provisions of the Act and regulations thereunder is granted.

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.[8] 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 KRX 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.[9] The

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[8] 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.

[9] See 57 FR 49644 (Nov. 3, 1992) (permitted limited marketing of foreign futures and foreign options products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (Aug. 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).

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 KRX firm the later of the date of publication of the Order in the Federal Register or the filing of the consents set forth in paragraphs (2)(a)-(f). 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 KRX.

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.

Issued in Washington, DC, on February 8, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendix to Foreign Futures and Options Transactions – Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.