PART 401—[REMOVED]

The Commission, under its authority, section 18 of the Federal Trade Commission Act, as amended (15 U.S.C. 57a) amends chapter one of title 16 of the Code of Federal Regulations by removing part 401.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-13576 Filed 6-12-90; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: Pursuant to sections 2(a)(1), 4(b) and 4c of the Commodity Exchange Act ("Act"), 7 U.S.C. 2, 6(b) and 6c (1982), and part 30 of the Commission's rules and regulations promulgated thereunder, the Commission has entered into a Mutual Recognition Memorandum of Understanding ("MRMOU") with the French Commission des Operations de Bourse ("COB"). This arrangement generally will permit all products of one jurisdiction to be offered to customers located in the other jurisdiction, subject to certain conditions specified in the MRMOU intended to ensure adequate customer protection and the laws applicable to certain equity index and debt security products. Further, the arrangement will also permit brokers licensed in one jurisdiction to sell the products of that jurisdiction to customers located in the other jurisdiction, generally by complying with the rules of the licensing jurisdiction, and with requirements agreed to by the Commission and the COB to eliminate regulatory gaps. As a condition of these arrangements, and to reduce duplication and enhance cooperation, the MRMOU provides for information sharing on a routine and "as needed" basis in connection with monitoring and compliance matters, thus improving the Commission's and COB's ability to address financial or market disruptions that could affect their markets.

EFFECTIVE DATE: July 13, 1990.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. *Telephone*: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the Commodity Futures Trading Commission ("Commission") adopted final rules and regulations pertaining to the offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade.[1] These rules, which became effective on February 1, 1988, establish a regulatory framework for the offer or sale in the United States of futures and option contracts made or to be made on or subject to the rules of a foreign board of trade.[2] The part 30 rules bring foreign futures and option transactions undertaken by persons located in the United States within the Commission's existing framework of customer protections. These rules effect Congress' intent that such transactions be subject to regulatory standards comparable to those applicable to domestic transactions [3] and implement a concept of substituted compliance, such that compliance with a generally comparable foreign regulation will be considered sufficient to warrant exemption from what otherwise may be duplicative Commission regulation.

In this regard, the Commission adopted rule 30.10 which permits persons located outside the United States who solicit or accept orders directly from United States customers for foreign futures or option transactions and who are subject to a generally comparable regulatory scheme in the jurisdiction in which they are located to seek an exemption from the application of certain part 30 rules.[4] In effect, as set forth in appendix A to the part 30 rules, which sets forth the standards the Commission will consider in assessing comparability, the Commission will accept substituted compliance by the foreign firm with rules and regulations in effect in the jurisdiction deemed comparable to those in effect in the United States. The elements the Commission will examine in assessing comparability of regulation include registration or other form of fitness review, minimum capital requirements, protection of customer funds, sales practice requirements, recordkeeping and reporting requirements and compliance procedures.

Unlike foreign futures, which with two exceptions can be offered or sold to customers resident in the United States without prior approval [5] foreign option contracts have been banned since 1978.[6] The part 30 rules establish a mechanism pursuant to which this ban may be lifted on a market by market and product by product basis. Specifically, under Commission rule 30.3(a),[7] the Commission may lift the foreign option ban by the issuance of an authorization order. In assessing whether to grant a foreign option petition, the Commission has reviewed, among other things: The arrangements in place for deterring sales practice abuses, the ability of United States customers to redress grievances with respect to the offer or sale of such option products and the regulatory environment in which the products are traded.

Both the rule 30.10 and rule 30.3(a) orders are premised on the existence of appropriate information sharing arrangements between the Commission and the relevant foreign regulatory authority. In particular, both the rule 30.10 and rule 30.3(a) procedures acknowledge that interjurisdictional cooperation is a necessary prerequisite for an effective regulatory program which is to be applied to a person operating from outside the United States.

Based upon the foregoing, in particular, sections 2(a)(1), 4(b) and 4c of the Act and part 30 of the Commission's rules and regulations promulgated thereunder, the Commission has entered into the MRMOU with the COB. This arrangement generally will permit all products of one jurisdiction to be offered to customers located in the other jurisdiction, subject to certain conditions specified in the MRMOU intended to ensure adequate customer protection. Further, the arrangement will also permit brokers licensed in one jurisdiction to sell the products of that jurisdiction to customers located in the other jurisdiction, generally by complying with the rules of the licensing jurisdiction, and with requirements agreed to by the Commission and COB to eliminate regulatory gaps. As a condition of these arrangements, and to reduce duplication and enhance cooperation, the MRMOU provides for

[1] 17 CFR part 30 (1989). 52 FR 28980 (Aug. 5, 1989).

[2] 52 FR 48811 (December 28, 1987).

[3] *See* S. Rep. No. 384, 97th Cong., 2d Sess. 45-46 (1982) and 51 FR 12104, 12107 (April 8, 1986).

[4] *See* Commission rule 30.10, 17 CFR 30.10 (1989).

[5] Specifically, futures or option contracts concerning stock indices and non-exempt foreign government debt instruments may not be offered or sold in the United States without compliance with certain additional procedures. *See* section 2(a)(1) of the Act, 7 U.S.C. 2 and section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[6] *See* Commission rule 32.11, 17 CFR 32.11 (1989).

[7] *See* Commission rule 30.3(a), 17 CFR 30.3(a) (1989).

HeinOnline -- 55 Fed. Reg. 23902 1990

information sharing on a routine and "as needed" basis in connection with monitoring and compliance matters, thus improving the Commission's and COB's ability to address financial or market disruptions that could affect their markets.

Memorandum of Understanding Regarding Mutual Recognition Between the Commodity Futures Trading Commission and the Commission des Operations de Bourse

The Commodity Futures Trading Commission ("CFTC") and the Commission des Opérations de Bourse ("COB"):

Considering the increasing international activity on their respective futures and option markets;

Recognizing the need to enhance client protection through the oversight of the activities of the regulated persons transacting business on their respective markets and through the enforcement of their respective national laws and regulations concerning futures and option contracts and transactions involving such contracts;

Desiring to develop new mechanisms for mutual cooperation and assistance, including the sharing of information, between the Authorities; and

Representing that each Authority has the power to effectuate the provisions of this Mutual Recognition Memorandum of Understanding and the annexed Side Letter (collectively "MRMOU");

Understand the following;

Article 1—Definitions

1. For the purposes of this MRMOU:

(a) *"Authority"* means the CFTC or the COB;

(b) *"Authorized person"* means:

(1) A credit institution as defined by Article 1 of Law N° 84–46 dated January 24, 1984 and published in the Journal Officiel of the Republic of France or an institution regulated by Articles 69 and 99 of such law, that is approved by the Comité des Etablissements de Crédit, controlled by the Commission Bancaire and placed under the supervision of the Bank of France and of the COB, and that is authorized by the Conseil du Marché à Terme to trade Futures or Option Contracts under Article 8 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, and Law N° 89–531 dated August 2, 1989, each published in the Journal Officiel of the Republic of France;

(2) A brokerage firm that is approved and controlled by the Conseil des Bourses de Valeurs and placed under the supervision of the COB, and that is authorized by the Conseil du Marché à Terme to trade Futures or Option Contracts under Article 8 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, Law N° 88–70 dated January 22, 1988, and Law N° 89–531 dated August 2, 1989, each published in the Journal Officiel of the Republic of France; or

(3) Any other person that is authorized by the Conseil du Marché à Terme, and that is qualified to solicit or accept Client orders and funds involving Futures or Option Contracts;

(c) *"Client" or "Customer"* means a person who directly or indirectly has, holds, or places an order to obtain a beneficial interest in a Futures or Option Contract;

(d) *"Conseil du Marché à Terme" ("CMT")* means the professional organization under Article 5 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987 and Law N° 89–531 dated August 2, 1989, with the authority to establish the General Regulation of the Futures and/or Option Markets subject to its jurisdiction, to approve Authorized Persons and to improve disciplinary sanctions on such Persons or their employees;

(e) *"Futures Contract"* means an agreement, subject to regulation by the CFTC, or subject to regulation by the CMT and placed under the supervision of the COB, which is, or is held out to be, of the character of a contract for the purchase or sale for future delivery of a commodity, a financial instrument or an index, and which is traded on, or subject to the rules of, a Futures and/or Option Market;

(f) *"Futures and/or Option Market" or "Market"* means:

(1) With respect to France, the markets on Futures or Option Contracts regulated by the CMT and placed under the supervision of the COB under the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, and Law N° 89–531 dated August 2, 1989, and which are listed in Annex A of this MRMOU; and

(2) With respect to the United States, the contract markets (as defined in CFTC regulation 1.3(h), 17 CFR 1.3(h)) designated under the Commodity Exchange Act (the "CEA"), 7 U.S.C. 1, and which are listed in Annex B of the MRMOU;

(g) *"Laws and Regulations"* means the provisions of the laws and decrees of France or the United States, a rule or regulation adopted thereunder, or an order issued thereunder, by an Authority, or by the Conseil des Bourses de Valeurs, the CMT, the National Futures Association or by a Futures and/or Option Market subject to the approval of, or in consultation with, an Authority, concerning a Futures or Option Contract, a Futures and/or Option Market, or a Person transacting business on such Market;

(h) *"National Futures Association" ("NFA")* means a self-regulatory organization with the authority; *inter alia*, to regulate certain Registered Persons conducting a business on Futures and/or Option Markets, that is a registered futures association under section 17 of the CEA, 7 U.S.C. 21, and that maintains the records of Registered Persons under the CEA;

(i) *"Option Contract"* means an agreement, subject to regulation by the CFTC, or subject to regulation by the CMT and placed under the supervision of the COB, which is, or is held out to be, of the character of an option, bid, offer, call or put, and which is traded on, or subject to the rules of, a Futures and/or Option Market;

(j) *"Person"* means an individual, association, partnership, corporation, trust, or any other legal entity;

(k) *"Recognized Person"* means:

(1) An Authorizes Person that, pursuant to this MRMOU, is permitted to offer or sell Futures or Option Contracts traded on the Markets subject to the supervision of the COB, or to accept orders and funds related thereto, to Clients residing in the United States, without any additional registration in accordance with the provisions of part 30 of the CFTC's regulations; or

(2) A Registered Person that, pursuant to this MRMOU, is permitted to offer or sell Futures or Option Contracts traded on the Markets subject to the supervision of the CFTC, or to accept orders and funds related thereto, to Clients residing in France, without any additional authorization in accordance with the provisions of Article 32 of Law N° 89–531 dated August 2, 1989;

(l) *"Recognizing Authority"* means:

(1) With respect to the recognition in France of Registered Persons listed in Annex C of this MRMOU, and the recognition of Futures or Option Contracts traded on the Markets subject to the supervision of the CFTC and listed in Annex D of this MRMOU, the COB; or

(2) With respect to the recognition in the United States of Authorized Persons listed in Annex E of this MRMOU, and the recognition of Futures or Option Contracts traded on the Markets subject to the supervision of the COB and listed in Annex F of this MRMOU, the CFTC: and

HeinOnline -- 55 Fed. Reg. 23903 1990

(m) *"Registered Person"* means a Person who solicits or accepts Client orders and funds related to transactions involving Futures or Option Contracts and who is registered in accordance with the requirements of section 4d of the CEA, 7 U.S.C. 6d, and part 3 of the CFTC regulations thereunder, 17 CFR part 3.

2. Words used in the singular form in this MRMOU are deemed to import the plural, and vice versa.

Article II—Mutual Recognition of Regulatory Systems

1. The Authorities have exchanged correspondence intended to inform each other of the Laws and Regulations and procedures governing the Authorized Persons, Registered Persons, Futures or Option Contracts, and Futures and/or Option Markets in their respective jurisdictions. The Authorities represent that they have informed each other of the Laws and Regulations and procedures governing the confidentiality of information to be shared pursuant to this MRMOU.

2. Based on the representations made by each Authority in the exchange of correspondence referred to in paragraph 1 of this Article, each Authority recognizes that the jurisdiction of the other Authority has Laws and Regulations which address:

(a) Authorization or registration of Persons who offer or sell Futures or Option Contracts, or accept orders and funds related thereto, including, without limitation:

(1) Criteria and procedures for refusing, granting, monitoring, suspending and revoking such authorization or registration; and

(2) Provisions for requiring and obtaining access to fitness information about Authorized or Registered Persons;

(b) Financial requirements for Authorized or Registered Persons including, without limitation, requirements concerning:

(1) The amount and nature of the assets of such Persons who carry Client accounts or handle Client funds;

(2) Accounting for transactions and transaction prices; and

(3) Daily mark-to-market clearance and settlement procedures;

(c) Systems for the protection of Client funds including, without limitation, mechanisms intended to:

(1) Mitigate the loss of Client funds because of defalcation or default;

(2) Ensure appropriate accounting for Client funds and the interests in which such funds are invested; and

(3) Permit the liquidation or transfer of Client positions when a margin call is not met;

(d) Recordkeeping and reporting requirements pertaining to financial and transaction information including, without limitation, information about:

(1) Futures or Option Contract prices;

(2) Settlement prices;

(3) Orders;

(4) Trade confirmations;

(5) Statements of the finanacial position and other accounting records of the Authorized or Registered Persons;

(6) Client account statements; and

(7) Any other Client records;

(e) Requirements which govern sales practices including, without limitation, the handling of Customer complaints, supervision of accounts, solicitation, risk disclosure, discretionary accounts, promotional material, and supervision of employees and disciplinary actions; and

(f) Procedures to audit for compliance with, and to redress violations of, Client protection and sales practice requirements including, without limitation:

(1) Surveillance programs designed to detect abusive activities which take advantage of Clients;

(2) Powers to investigate, audit, and sanction the sales practices of Authorized or Registered Persons; and

(3) Procedures to resolve Client disputes.

3. Each Authority represents that all Futures or Option Contracts and Markets subject to the supervision of such Authority are governed by the Laws and Regulations and procedures referred to in paragraph 2 of this Article and that such Authority will provide the other Authority with prompt notice of all material changes in such Laws and Regulations.

4. Each Authority will accord to Clients residing in the jurisdiction of the other Authority the equal protection of its Laws and Regulations as to Clients residing in its own jurisdiction.

5. Consequently, each Authority recognizes that:

(a) The Futures or Option Contracts and Futures and/or Option Markets subject to the supervision of the other Authority are governed by Laws and Regulations intended to provide Client and Market protections to Persons engaged in trading such Futures or Option Contracts; and

(b) The Recognized Persons subject to the supervision of the other Authority are governed by Laws and Regulations intended to provide Client and Market protections to Persons engaged in trading Futures or Option Contracts.

6. Therefore, subject to the requirements of this MRMOU including, without limitation, the provisions set forth in Articles V and VI herein, each Authority understands that:

(a) Compliance by a Recognized Person with the requirements imposed by, and under the supervision of, one Authority concerning authorization or registration of Persons, is substituted for compliance with the authorization or registration requirements imposed by, and under the supervision of, the other Authority; and

(b) Subject to the provisions of the Side Letter regarding Futures or Option Contracts concerning stock indices and certain debt securities, each Authority will permit the offer or sale, and acceptance of funds related thereto, to Clients residing in its jurisdiction, or Futures or Option Contracts which are properly authorized or designated to be traded on Markets subject to the supervision of the other Authority.

7. The Authorities understand that the recognition of an Authorized or Registered Person or the recognition of a Futures or Option Contract in accordance with paragraph 6 above may be refused by the Recognizing Authority if such recognition would prejudice the public interest in the jurisdiction of such Authority.

8. With respect to Recognized Persons, each Authority acknowledges that this MRMOU is directed to brokerage activities by such Persons in the jurisdiction of the Recognizing Authority, which involve Futures or Option Contracts traded on Markets subject to the supervision of the other Authority, and is not directed to trading activities by these Persons on Markets subject to the supervision of the Recognizing Authority.

9. Each Authority understands that this MRMOU does not exempt a Recognized Person or any other Person from any provision of the Laws and Regulations in France and in the United States which are not specified herein including, without limitation, the antifraud provisions of each of these jurisdictions.

Article III—Mutual Assistance Concerning Information Sharing

1. Each Authority acknowledges that its respective understandings set forth in this MRMOU are based on the existence of mechanisms for sharing information on an "as needed" basis and for cooperating in inquiries, investigations, proceedings and compliance matters with respect to the Laws and Regulations subject to its jurisdiction.

2. Each Authority will:

(a) Assist the other Authority, to the extent permitted by the Laws and Regulations of its jurisdiction, by providing information concerning the oversight and protection of the Markets

HeinOnline -- 55 Fed. Reg. 23904 1990

which are subject to the supervision of such Authority and the protection of Recognized Persons' Clients residing in the jurisdiction of the Recognizing Authority; and

(b) Designate in the Side Letter contact offices at the COB and the CFTC to receive and process all requests for such information sharing.

3. With respect to Recognized Persons, the information sharing described in this Article will include, without limitation, information concerning:

(a) Transaction specific data, including confirmation data and position data;

(b) Any data necessary to trace the funds: (1) that are located in the jurisdiction of an Authority; (2) that concern transactions on the Markets subject to the supervision of that Authority; (3) that are held by, or on behalf of, Authorized or Registered Persons recognized by the other Authority; and (4) that belong to Clients residing in the jurisdiction of such other Authority; and

(c) Data on the standing of the Recognized Person to do business, including its financial condition.

4. With respect to any arrangement between the Markets of each Authority to permit access to each others Futures or Option Contracts traded on an electronic trading system which has been authorized in the respective jurisdiction of both Authorities, information necessary to permit each Authority to ensure compliance with, or enforcement of, any Laws and Regulations of the jurisdiction of that Authority, may be shared pursuant to the provisions of this MRMOU.

5. A request for information pursuant to this Article must be made in writing and addressed to the contact office of the requested Authority designated in accordance with paragraph 2(b) above.

Such request will be accompanied by a translation in French in the case of a request to the COB, and by a translation in English in the case of a request to the CFTC. A request must specify the following:

(a) The information sought by the requesting Authority;

(b) A general description of the matter which is the subject of the request and the purpose for which the information is sought; and

(c) The desired time period for the reply and, where appropriate, the urgency thereof, in the event of urgency, a request for information and a reply thereto may be transmitted by summary or emergency procedures by mutual arrangement of the Authorities.

6. In response to a request, made in accordance with paragraph 5 above, for immediate access to the books and records of a Recognized Person that are required to be maintained under the Laws and Regulations in France or in the United States, as the case may be, and that relate to transactions subject to this MRMOU, each Authority will provide the other Authority with the copies of the books and records which are the subject of the request.

7. In addition to the specific notice provisions set forth in Article V hereunder, each Authority will inform the other Authority, on an "as needed" basis, about the authorization or registration status of a Person subject to its jurisdiction and about the status of Futures or Option Contracts traded on the Markets subject to its supervision.

8. Each Authority will use its best efforts to notify and consult with the other Authority if it becomes aware of any information which, in its judgment, materially and adversely affects the financial or operational viability of any Authorized or Registered Person recognized by such other Authority.

9. Each Authority will provide, or will cause to be provided, to the other Authority, commencing with the first filing due after the effective date of this MRMOU, as promptly as practicable after receipt of the relevant report, the following information with respect to a Registered or Authorized Person recognized by the other Authority:

(a) Copies of the annual audited financial statement, required under the Laws and Regulations of the jurisdiction of that Authority. The Authority, or its designee(s), will represent that the annual financial statement of this Person has been certified as required under the Laws and Regulations of its jurisdiction. Such Authority, or its designee(s), will further represent that, through the access it has to financial compliance information regarding the Authorized or Registered Person, it has no reason to believe that such Person has violated any of the financial requirements of the jurisdiction of this Authority; and

(b) Details of any notice received by the Authority, or its designee(s), under the Laws and Regulations of the jurisdiction of this Authority regarding any breach of financial requirements under such Laws and Regulations.

10. No provision of this MRMOU shall be considered as conferring the right to ask for, or challenge, the execution of a request for information upon any Person other than the Authorities.

11. The Authorities acknowledge that this MRMOU does not prohibit either Authority from taking measures, to the extent permitted by international law, otherwise than as provided herein to obtain information necessary to ensure compliance with, or enforcement of, its Laws and Regulations.

Article IV—Confidentiality of the Information Shared Between the Authorities

1. The requesting Authority may use the information furnished pursuant to this MRMOU solely:

(a) For the purpose stated in the request, including ensuring compliance with, or enforcement of, any Laws and Regulations specified in such request; or

(b) For purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory enforcement proceeding, assisting in a proceeding, including a proceeding whose purpose is to permit a subsequent criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the provision specified in the request.

2. In order to use the information furnished for any purpose other than those stated in paragraph 1 of this Article, the requesting Authority must first inform the requested Authority of its intention and provide this Authority with the opportunity to oppose such use. If, under such conditions, the requested Authority does not oppose such use, this Authority may subject it to certain conditions. In the event where this use of the information is opposed by the requested Authority, the Authorities agree to consult pursuant to paragraph 8 of Article VI hereunder as to the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

3. Each Authority shall keep confidential requests made within the framework of this MRMOU, the contents of such requests, and any other matters arising during the operation of this MRMOU, including consultations between the Authorities.

4. In all cases, the requesting Authority shall keep confidential any information received pursuant to this MRMOU to the same extent as such information would be kept confidential in the jurisdiction of the requested Authority, except in the case where the information provided must be disclosed in the course of its use pursuant to paragraphs 1 and 2 of this Article.

5. However, the Authorities may, by mutual agreement, make an exception to the principle set forth in paragraphs 3 and 4 above, to the extent permitted by

HeinOnline -- 55 Fed. Reg. 23905 1990

the Laws and Regulations of each Authority.

Article V—Recognition of Persons and Contracts

1. The Authorities understand that the recognition of an Authorized or Registered Person will become effective thirty days after the completion of the following:

(a) The Authority notifies the Recognizing Authority that the Registered or Authorized Person is presently qualified to do business in its jurisdiction and expects to commence business in the jurisdiction of the Recognizing Authority; and

(b) The Authority provides the Recognizing Authority with the following written undertakings of the Authorized or Registered Person:

(1) A consent to submit to jurisdiction in France or the United States, as the case may be, with respect to transactions in Futures or Option Contracts with Clients residing in such jurisdiction, and a binding appointment of an agent for service of process in the jurisdiction of the Recognizing Authority, which has been filed with the CMT or the NFA, as the case may be, in accordance with the requirements of the Recognizing Authority, unless such appointment previously has been filed and remains valid;

(2) An acknowledgement of such Person that it can be required by the Authority in the jurisdiction in which it is authorized or registered to provide to that Authority immediate access to its books and records which are related to transactions subject to this MRMOU and which are required to be maintained under the applicable Laws and Regulations of the jurisdiction of that Authority; such Person further acknowledges that each Authority will cooperate in providing to the Recognizing Authority access to the copies of such books and records which are the subject of a request made by the Recognizing Authority in accordance with Article III of this MRMOU;

(3) A list of its principals including, without limitation:

(A) Its directors and officers as well as its controlling shareholders or partners, or any Person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by an Authority;

(B) Any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock;

(C) Any Person who has contributed ten percent or more of its capital;

(4) Subject to the provisions of the Side Letter, such Person consents to notify all Clients of the existence of, and to participate in, any procedure available under the Laws and Regulations of the Recognizing Authority to resolve on the papers Client disputes where such disputes involve transactions within the purview of this MRMOU; and

(5) Such Person agrees to provide Clients residing in the jurisdiction of the Recognizing Authority with the disclosures required by such Authority;

unless the Recognizing Authority gives notice to the other Authority that such recognition is refused in accordance with the provisions of this MRMOU.

2. Subject to paragraph 3 hereunder, the recognition by an Authority of a Registered or Authorized Person will remain in effect as long as such Person is authorized or registered in the jurisdiction of the other Authority.

3. The recognition of an Authorized or Registered Person may be terminated if:

(1) The Authorized or Registered Person violates the law of the Recognizing Authority;

(2) The Authorized or Registered Person fails to comply with any provision of this MRMOU;

(3) In the case of a Person recognized by the CFTC, a princpal of such Person has been disqualified from doing business in France, or in the case of a Person recognized by the COB, a principal of such Person has been disqualified from doing business in the United States under the CEA and CFTC regulations;

(4) The continued recognition of the Authorized or Registered Person is contrary to the Laws and Regulations of the Recognizing Authority; or

(5) The Authorized or Registered Person ceases to do business in the jurisdiction of the Recognizing Authority or in the jurisdiction of the Authority where such Person is authorized or registered.

4. Each Authority understands that a Recognizing Person will be required to comply with the requirements relating to protection of Client funds, prudential standards including financial requirements, risk disclosure and arbitration as set forth in the Side Letter.

5. Each Authority understands that a Recognized person will maintain its books and records according to the Laws and Regulations of the jurisdiction where such Person is authorized or registered.

6. Each Authority will notify the Recognizing Authority prior to the first offer or sale of an Option Contract subject to its regulation to Clients residing in the jurisdiction of the Recognizing Authority. The Authorities understand that the recognition of the Option Contract by such Authority will not become effective until thirty days after publication in the Bulletin Mensuel of the COB or in the **Federal Register**, as the case may be, of a notice specifying the Option Contract to be offered or sold, unless such recognition is refused as permitted by paragraph 7 of Article II of this MRMOU.

7. The Authority with jurisdiction over the Market on which are traded the Futures or Option Contracts offered or sold to Clients residing in the jurisdiction of the Recognizing Authority by an Authorized or Registered Person, will conduct, or will cause to be conducted, sales practice audits of this Authorized or Registered Person.

Article VI—Effective Date and Miscellaneous Representations

1. Each Authority acknowledges that this MRMOU has been executed in accordance with the applicable laws and Regulations in France and the United States and is based on the representations made and supporting materials exchanged by the Authorities.

2. This MRMOU will be published, in France, in the Bulletin Mensuel of the COB, and in the United States, in the **Federal Register**.

3. The Authorities acknowledge that the effectiveness of this MRMOU will depend upon the adoption of the domestic measures that are necessary to implement fully its provisions in the respective jurisdiction of each Authority. The Authorities will exchange letters to inform each other of the adoption of such measures.

4. This MRMOU will enter immediately into force upon the exchange of letters referenced in the preceding paragraph, provided that a delay of thirty days has elapsed since the publication of this MRMOU in the Bulletin Mensuel of the COB and in the **Federal Register**.

5. The Authorities acknowledge however that they will implement immediately those provisions of this MRMOU which are already in compliance with the Laws and Regulations of the jurisdiction of both Authorities, provided that the thirty-day delay referenced in the preceding paragraph has elapsed. For this purpose, the information sharing assistance between the Authorities will be subject to the conditions described in the Side Letter.

6. Subject to the notice provisions set forth in Article V above, the Authorities,

HeinOnline -- 55 Fed. Reg. 23906 1990

or their designees, may periodically update the Annexes of this MRMOU.

7. The Recognizing Authority will promptly notify the other Authority before refusing, suspending or terminating the recognition of an Authorized or Registered Person, and before refusing, suspending or terminating the recognition of a Futures or Option Contract subject to regulation by the other Authority.

8. The Authorities will consult, upon the request of an Authority, in the event of:

(a) A refusal by an Authority to comply with a request for information in accordance with Article III of this MRMOU; or

(b) A change in market conditions, or in their respective Laws and Regulations, or in the event of any other difficulty which may make it necessary to amend or interpret this MRMOU.

9. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this MRMOU.

10. This MRMOU may be amended by mutual written agreement of the Authorities.

11. Each Authority understands that if the continued effectiveness of this MRMOU, in general or with respect to a particular Recognizing Person, or a Futures or Option Contract, or a Futures or Option Market, would prejudice the sovereignty, security, fundamental interests or public order of an Authority, that Authority may condition, modify, suspend or terminate the recognition of an Authorized or Registered Person or the recognition of a Futures or Option Contract, or otherwise restrict such recognition upon its motion and written notice to the other Authority.

12. This MRMOU shall remain in effect unless terminated by either Authority upon thirty days written notice to the other Authority.

In Witness Whereof, the Undersigned, being duly authorized, have signed this MRMOU.

Done at Washington, DC, in duplicate, this 6th day of June, 1990, in the English and French languages, each text being equally authoritative.

Wendy L. Gramm,

Chairman, Commodity Futures Trading Commission.

Jean Saint-Geours,

Le Président, Commission des Opérations de Bourse.

Annex A

Futures and/or Option Markets Placed under the Supervision of the COB

The Futures and/or Option Markets placed under the supervision of the COB and referenced in the provisions of this MRMOU are the following:

Marché à Terme International de France (MATIF).

Annex B

Futures and/or Option Markets Placed under the Supervision of the CFTC

The Futures and/or Option Markets placed under the supervision of the CFTC and referenced in the provisions of this NRMOU are the following:

Amex Commodities Corporation
Chicago Board of Trade
Chicago Mercantile Exchange
Chicago Rice and Cotton Exchange
Coffee, Sugar & Cocoa Exchange, Inc.
Commodity Exchange, Inc.
Kansas City Board of Trade
MidAmerica Commodity Exchange
Minneapolis Grain Exchange
New York Cotton Exchange
New York Futures Exchange, Inc.
New York Mercantile Exchange
Philadelphia Board of Trade, Inc.
Pacific Futures Exchange

Annex C

Registered Persons

The Registered Persons that, pursuant to this MRMOU, are permitted to offer or sell the Futures or Option Contracts listed in Annex D of this MRMOU to Clients residing in France are the following:

(List to be provided by the CFTC).

Annex D

Futures or Option Contracts Placed Under the Supervision of the CFTC

The Futures or Option Contracts placed under the supervision of the CFTC that, pursuant to this MRMOU, are permitted to be offered or sold to Clients residing in France are the following:

(List to be provided by the CFTC).

Annex E

Authorized Persons

The Authorized Persons that, pursuant to this MRMOU, are permitted to offer or sell the Futures or Option Contracts listed in Annex F of this MRMOU to Clients residing in the United States are the following:

(List to be provided by the COB).

Annex F

Futures or Option Contracts Placed Under the Supervision of the COB

The Futures or Option Contracts placed under the supervision of the COB that, pursuant to this MRMOU, are permitted to be offered or sold to Clients residing in the United States are the following:

(List to be provided by the COB).

SIDE LETTER

June the 6th, 1990.

Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Jean Saint-Geours, Le Président, Commission des Opérations de Bourse, 39–43 Quai André Citroën, 75739 PARIS CEDEX 15.

Re: *Mutual Recognition Memorandum of Understanding between the CFTC and the COB ("MRMOU") dated June 6, 1990*

This letter refers to the agreement which was signed today by the duly authorized representatives of the Commodity Futures Trading Commission ("CFTC") and the Commission des Opérations de Bourse ("COB") (collectively, the "Authorities"), concerning the mutual recognition of Futures or Option Contracts traded on the Futures and/or Option Markets subject to the supervision of these Authorities, as well as the recognition of Authorized or Registered Persons transacting business on such Markets ("MRMOU"). This letter is intended to facilitate the operation of this MRMOU and to further clarify certain conditions imposed by the Authorities for its implementation. All terms used in this letter have the same meanings as set forth in this MRMOU.

This MRMOU is the result of extensive consultations among the Authorities and of the exchange of correspondence concerning the financial capacities of the Futures and/or Option Markets subject to their supervision.

Article V of this MRMOU sets forth certain conditions imposed by each Authority in order for an Authorized or Registered Person to become and remain recognized by such Authority. The Authorities understand that, in addition to Article V of this MRMOU and in addition to any applicable Laws and Regulations, the recognition of an Authorized or Registered Person, for the purpose of permitting the offer or sale of Futures or Option Contracts in the jurisdiction of the Recognizing Authority, will be subject to the following further conditions:

1. Protection of Client Funds

(a) In the case of an Authorized Person, the Clearing House referenced in Article 9 of the Law dated March 28, 1885, as amended, and Article 1.3.0.4. of the General Regulation of the CMT, will guarantee to such Person's Clients residing in the United States the deposits, and any variation margins, due by the Authorized Person to such Clients with respect to Futures and Option Contracts traded on a Market subject to the regulation of the COB. This full performance guarantee will be provided to such Clients provided that: (i) The Authorized Person will insure that its own positions and the positions of its Clients will be cleared separately, and that the obligations in respect of such positions cannot be offset; (ii) the Authorized Person will maintain, on behalf of such Clients, the amount of the deposit required by the Clearing House, in liquid assets which are permitted under the CMT rules; and (iii) in the event of a default of the Authorized Person, the amount referenced in subparagraph (ii) above will be transferable to another Authorized Person as Client's property. Furthermore, the undisbursed accruals will also be maintained by the Authorized Person, on behalf of such Clients, in liquid assets that are identifiable as property of a particular Client and that can

HeinOnline -- 55 Fed. Reg. 23907 1990

be claimed as Client's property according to Article 30 of Law N° 83-01 of January 3, 1983, as amended;

(b) In the case of a Registered Person, such Person will maintain the funds described in 1.3(gg) of the CFTC regulations, 17 CFR 1.3(gg), in accordance with the segregation provisions of section 4d of the CEA and part 1 of the CFTC regulations thereunder, 17 CFR part 1.

2. Prudential Requirements

(a) In the case of an Authorized Person, such Person will maintain net equity as required under the CMT General Regulation, provided that, according to such regulation, no subordinated debt or guarantee may be substituted for such net equity in order to fulfill the minimum capital requirements, *i.e.*, FF 7.5 million for nonclearing members, FF 50 million for individual clearing members, and FF 375 million for general clearing members, and provided, further, that, if a more stringent financial requirement is imposed by the European Economic Community on european investment firms, the Authorized Person will meet such requirement;

(b) In the case of a Registered Person, such Person will maintain capital as required under the CFTC rule 1.17, 17 CFR 1.17;

(c) The Authorities acknowledge that they will consult further as to the comparability of the prudential requirements of their respective jurisdictions concerning the Authorized or Registered Persons. As a preliminary agreement, each Authority also agrees to consult if the obligations of a Person which is authorized or registered in its jurisdiction, in respect to Clients residing in the jurisdiction of the other Authority, exceed twenty-five times any such Person's net equity. The Authorities will further consult if a substantial part of the obligations that an Authorized or Registered Person owes to his Clients originates from Clients residing in the jurisdiction of the other Authority.

3. Risk Disclosure Statements

(a) Prior to the opening of an account in Futures or Option Contracts traded on Markets subject to the supervision of the COB, for Clients residing in the United States, the Authorized Person will provide such Clients with:

(1) The information notice, translated into English, which is approved by the COB pursuant to Article 14-bis of the Law dated March 28, 1885, as amended, and by Regulation N° 90-[_____] of the COB, as attached hereto as appendix I; and

(2) The risk disclosure statements in accordance with rule 30.6 and rule 33.7 of the CFTC, 17 CFR 30.6 and 33.7, as attached hereto as appendices II and III;

(b) Prior to the opening of an account in Futures or Option Contracts traded on Markets subject to the supervision of the CFTC, for Clients residing in France, the Registered Person will provide such Clients with:

(1) The information document required by Regulation N° 90-[_____] of the COB regarding the offer or sale of securities, futures contracts, and financial products traded on a non-French market, as attached hereto as appendix IV; and

(2) The risk disclosure statements, translated into French, in accordance with CFTC rules 33.7, 1.55 and 190.10, 17 CFR 33.7, 1.55 and 190.10, as attached hereto respectively as appendices III, V and VI.

4. Arbitration Procedures

The Authorized or Registered Person consents to arbitrate, at the election of the Client, at the NFA or the CMT, the arbitration programs of each of which provides a mechanism for a hearing on the papers; provided, however, that if the claim arises primarily out of delivery, clearing, settlement or floor practices on Futures and/or Option Markets, the Recognized Person can elect to arbitrate at the forum of the jurisdiction in which it is authorized or registered; and provided, further, that the demand for arbitration at the CMT or the NFA can be filed by the Client at either such forum.

For purposes of this MRMOU, the term "public interest" in paragraph 7 of Article II of this MRMOU shall include, without limitation, the Laws and Regulations governing disqualification from authorization or registration in effect in the jurisdiction of each Authority. The Authorities understand that no employee or representative of a Recognized Person may be permitted to engage in activities subject to this MRMOU if, to the best knowledge and belief of the Authority in the jurisdiction of which the Recognized Person is authorized or registered, the employee or representative of the Recognized Person has been disqualified, or would be statutorily disqualified, from so acting under the Laws and Regulations of the jurisdiction of the Recognizing Authority.

For purposes of this MRMOU, the term "designee(s)" in paragraph 9 of Article III of this MRMOU shall mean the NFA, the CMT, or in appropriate circumstances, a Futures and/or Option Market.

The Authorities understand that Futures or Option Contracts concerning stock indices, and certain debt securities which are not exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 and rule 3a12-8 promulgated thereunder, may not be permitted to be offered or sold pursuant to this MRMOU without compliance with certain additional procedures (*see* section 2(a)(1) of the CEA, 7 U.S.C. 2, section 3(a)(12) of the Securities Exchange Act of 1934 and rule 3a12-8 promulgated thereunder).

The Authorities acknowledge that the provisions of this MRMOU concerning the recognition of Authorized or Registered Persons are only directed to those Persons residing outside the jurisdiction of the Recognizing Authority. The Authorities will ascertain, in accordance with mutually agreed upon compliance procedures or requirements, that the Persons which are authorized or registered in their respective jurisdiction, to the extent possible, do not permit their affiliates or subsidiaries which are located in the jurisdiction of the Recognizing Authority, to engage in their behalf in the activities subject to this MRMOU.

The Authorities understand that the failure by an Authorized or Registered Person to comply with any provision of this MRMOU, or the conditions and understandings referenced above may result in a denial or termination of recognition by the Recognizing Authority. A termination of recognition will be communicated, within thirty days, by written notice to the Authority of the jurisdiction in which the Person is authorized or registered. Such termination may be communicated orally in the event of an emergency. At the discretion of the Authority terminating recognition, a period of time may be permitted to make different arrangements for Clients residing in the jurisdiction of that Authority.

The Authorities also understand that the refusal by an Authority to honor any provision of this MRMOU, or the conditions and understandings referenced above, may result in a termination of this MRMOU. A termination of this MRMOU under the terms thereof will be communicated in writing, and a period of time mutually acceptable to the Authorities will be accorded to permit Recognized Persons to make other arrangements.

Each Authority will be responsible for monitoring whether the Authorized or the Registered Person that are recognized by the other Authority, meet the terms of this MRMOU and the Side Letter, and are otherwise in compliance with the respective regulatory regime of each Authority.

Until the exchange of letters of notification referenced in paragraph 3 of Article VI of this MRMOU, the Authorities acknowledge their participation in a proceeding for the return to the requested Authority of the documents, and any copies thereof, that such Authority has designated as confidential information.

Article III of this MRMOU provides that the Authorities will designate contact offices at their respective agencies to receive and process all requests for assistance in obtaining information concerning the oversight and protection of their Markets and the protection of Recognized Persons' Clients residing in their respective jurisdiction. The Authorities hereby designate such contact offices as follows:

CFTC: Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Tel: (202) 254-8955, Fax: (202) 254-3534.

COB: Service des Placements, Commission des Opérations de Bourse, 39-43 Quai André Citröen, 75739 Paris Cedex 15, Tel: (1) 40 58 66 87, Fax: (1) 40 58 65 00.

Wendy L. Gramm,

Chairman, Commodity Futures Trading Commission.

Jean Saint-Geours,

Le Président, Commission des Opérations de Bourse.

Attachments:

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR part 30 is amended as set forth below:

HeinOnline -- 55 Fed. Reg. 23908 1990

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTION

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

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7, U.S.C. 2, 6, 6c, and 12a (1982).

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
Marche a Terme Internationale de France.	[To be Provided].	1990; FR
* * * * *		

3. Appendix C to part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

Authorized Persons as designated in Annex E to Mutual Recognition Memorandum of Understanding.

FR date and citation: _____, 1990; 55 FR ___.

Issued in Washington, DC, on June 6, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-13599 Filed 6-12-90; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239, 240 and 249

[Rel. Nos. 33-6867; 34-28094; File No. S7-16-89]

RIN 3235-AB79

Registration and Reporting Requirements for Employee Benefit Plans

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of rule and form amendments to revise registration and reporting requirements relating to employee benefit plans. The amendments are intended to reduce costs and expedite the effectiveness and updating of Form S-8 registration statements for such plans by: (1) Streamlining Form S-8 registration procedures under the Securities Act of 1933; and (2) amending Form 11-K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan.

EFFECTIVE DATE: All amendments are effective July 13, 1990. Registrants may elect to comply with the new rules on or after the date of this release (June 6, 1990). Registrants electing early compliance and seeking immediate effectiveness for a registration statement filed after the release date (June 6, 1990) must include a statement in the top right corner of the cover page of the Form S-8 registration statement requesting that the registration statement become automatically effective upon filing in accordance with Rule 462. Failure to include the statement will cause the Form S-8 registration statement to be subject to automatic effectiveness 20 days after filing. Refer to Section II.J. of the release for detailed information concerning transition to the new rules under the revised regulatory framework, including the applicability, if any, to ongoing offerings on Form S-8.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Barbara C. Smith, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, contact Mary Anne Busse, Office of Chief Counsel, Division of Corporation Finance, at (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Forms S-8,[1] S-3,[2] and F-3[3] under the Securities Act of 1933 ("Securities Act");[4] to Rules 402,[5] 405,[6] 416,[7] 424(b),[8] 457(h),[9] 472,[10] and 475a[11] under Regulation C of the Securities Act;[12] Items 512[13] and 601[14] of Regulation S-K,[15] and Form 11-K[16] and Rule 15d-21[17] under the Securities Exchange Act of 1934 ("Exchange Act").[18] The Commission also is adding Rules 428 and 462 to Regulation C.

Table of Contents

I. Executive Summary
II. Amendments to Registration and Reporting Requirements
A. Prospectus Requirements
1. Plan Documents Constitute Section 10(a) Prospectus Under Revised Framework
2. Legend on Plan Documents
3. Identification of Portions of Documents Deemed Part of Section 10(a) Prospectus
4. Section 10(a) Prospectus Documents Retained for Five Years
B. Updating the Section 10(a) Prospectus
C. Section 10(a) Prospectus Liability
D. Delivery Requirements
1. Delivery of Registrant Information
2. Delivery of Shareholder Communications
E. Registration Statement Requirements
1. Revised Format
2. Elimination of Ninety Day Eligibility Requirement
3. Use of Form S-8 for Securities Issued Pursuant to Compensatory Contracts, to Former Employees, and to Consultants and Advisors
F. Disclosure Requirements
1. Streamlined Plan Disclosure
2. Financial Data Concerning Alternative Investment Media
3. Exhibits, Signatures, and Undertakings
G. Reoffer and Resale Requirements
H. Other Proposed Amendments to Form S-8
1. Immediate Effectiveness of Form S-8 Registration Statements Upon Filing
2. Automatic Registration of Plan Interests
3. Filing Fees
4. Registration of Additional Securities
I. Form 11-K
J. Transition to New System
III. Charts Reflecting Revisions
A. Revisions to Form S-8
B. Revisions to Information Delivery Requirements
IV. Cost-Benefit Analysis
V. Final Regulatory Flexibility Analysis
VI. Statutory Basis for Rules and Forms
VII. Text of the Amendments

I. Executive Summary

The Commission is adopting substantial revisions to the procedures for registering employee benefit plan[19]

[1] 17 CFR 239.16b.
[2] 17 CFR 239.13.
[3] 17 CFR 239.33.
[4] 15 U.S.C. 77a, *et seq.*
[5] 17 CFR 230.402.
[6] 17 CFR 230.405.
[7] 17 CFR 230.416.
[8] 17 CFR 230.424(b).
[9] 17 CFR 230.457(h).
[10] 17 CFR 230.472.
[11] 17 CFR 230.475a.
[12] 17 CFR 230.400-230.499.
[13] 17 CFR 229.512.
[14] 17 CFR 229.601.
[15] 17 CFR 229.10-229.802.
[16] 17 CFR 249.311.
[17] 17 CFR 240.15d-21.
[18] 15 U.S.C. 78a, *et seq.*
[19] Securities Act Rule 405 has been amended to define "employee benefit plan" as any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for

Continued

HeinOnline -- 55 Fed. Reg. 23909 1990