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[Page 27859-27861]
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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ('`Commission'' or ``CFTC'') is granting an exemption to firms designated by the Winnipeg Commodity Exchange ('`WCE'') 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 specified 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: May 21, 2001.

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

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Winnipeg Commodity Exchange 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.

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.

\1\ Commission rules referred to herein are found at 17 CFR Ch. I (2000).

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 comparable 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 through whom customer orders are solicited and accepted; (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.

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

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) consensually 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-----

\3\ 52 FR 28980, 28981 and 29002.

By letter dated June 29, 2000 and subsequent correspondence through September 26, 2000, the WCE petitioned the Commission on behalf of certain firms located and doing business in Manitoba for an exemption from the application of the Commission's Part 30 rules to those firms. In support of its petition, the WCE states that granting such an exemption with respect to 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 the WCE 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 generally been satisfied and that compliance with applicable Manitoba and Canadian law and WCE 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 the WCE 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 C.F.R. Sec. 1.55(c);
- 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 the province of Manitoba.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Manitoba 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 that all firms immediately notify WCE if the firms' adjusted net capital falls below a specified level 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, augmented by a compensation scheme designed to compensate customers whose assets are segregated and who have suffered a loss as a result of fraud and/or insolvency of a firm;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

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

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements 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, the WCE, and the MSC on an ``as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Manitoba, 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, for example, without limitation, 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 the WCE 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.

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

Exchange Act.

\5\ See, e.g., 17 CFR Part 18 (2000).

\6\ See, e.g., 17 CFR Parts 17 and 21 (2000).

The relief also does not extend to trading, directly or indirectly, on any other non-U.S. exchanges. Should the WCE seek to extend the Rule 30.10 relief set forth herein to permit designated members to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on any other non-U.S. exchange, it must apply for and receive prior approval from the Commission. In a petition to extend the relief set forth herein to other non-U.S. exchanges, the WCE must: (1) Represent that local law prohibits its members from intermediating otherwise permitted transactions for customers located in the U.S. on unapproved foreign exchanges as set forth therein, and must specify which exchanges are authorized by local law; (2) represent that member firms with customers located in the U.S. will comply with all the terms and conditions of this Order with respect to transactions entered into on or subject to the rules of a foreign exchange located outside its jurisdiction; and (3) confirm that it has the authority and the ability to enforce its laws, rules and/or regulations with respect to those transactions to the same extent that it conducts such activities on an exchange located within its jurisdiction.\7-----

\7\ See 64 FR 50248, 50251 (September 16, 1999) (permitting designated members of the Singapore Exchange Derivatives Trading Limited to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on Eurex Deutschland).

[[Page 27861]]

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 CFTC 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 Manitoba; such firm is engaged in business with customers in Manitoba 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. Sec. 12(a)(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 made in the U.S. will be made on or subject to the rules of WCE and the Commission will receive prompt notice of all material changes to the relevant laws in Manitoba, any rules promulgated thereunder and WCE rules;

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

(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 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 Manitoba 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 from directly applying to do business in the U.S. under Section 8a(2) of the Act, 7 U.S.C. Sec. 12(a)(2), and will notify the Commission promptly of any change in that representation based on a change in control as generally defined in Rule 3.32;

(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, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Agrees to maintain, on behalf of customers located in the U.S., funds equivalent to the ``foreign futures and foreign options secured amount'' described in Rule 1.3(rr), in a separate account as set forth in Rule 30.7, and to treat those funds in the manner described by that rule; and

(g) Undertakes to comply with the applicable provisions of

Manitoba laws and WCE rules that form the basis upon which this exemption from certain provisions of the Act and rules 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.

\8\ 62 FR 47792, 47793 (September 11, 1999). 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.

This Order will become effective as to any designated WCE member firm the later of the date of publication of the Order in the Federal Register or the filing of the consents set forth in paragraph (2). 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 WCE.

This Order is issued pursuant to Rule 30.10 based on the comparability 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 generally been satisfied. 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 rules and will make necessary adjustments if appropriate.

Issued in Washington, DC on May 15, 2001.
Jean A. Webb,
Secretary of the Commission.
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