

Note: "Software" for equipment that is freed from export control only by ECCN 1565A(h)(2)(vi) may contain file server or printer server functions above layer 2 of the OSI reference model provided the protocols do not contain level 3 of CCITT X.25 or equivalent functions.

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Dated: November 1, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-25873 Filed 11-4-88; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of the Sydney Futures Exchange Limited ("Exchange" or "SFE") 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, 17 CFR 30.10 (1988), which permits certain 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 the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: December 7, 1988.

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

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Designated Members of the Sydney Futures Exchange Limited from the Application of Certain of the Foreign Futures and Option Rules Thirty Days After Filing of Consents by Such Members and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein.

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987.) These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, the Commission considered the potential extraterritorial impact of such a program and the desirability of avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission rule 30.10, determined to permit persons *located outside the United States* and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by 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 Commission rule 30.10, 52 FR at 29001. 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) appropriate 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 adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the person to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States 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 make their books and records available in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.¹

By letter dated October 13, 1987, the Exchange, which is regulated pursuant to the Futures Industry (New South Wales) Code (the "Code"), petitioned the Commission on behalf of certain of its members for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, the Exchange states that granting such an exemption with respect to its members would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because the Exchange and its members are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by the Exchange and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in

¹ 52 FR 28980, 28981 and 29002.

particular, Appendix A thereof, have generally been satisfied and that compliance with applicable Australian law and Exchange rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from: registration with the Commission; the separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988); and those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; based upon substituted compliance by such persons with the applicable statutes, regulations and relevant exchange rules in effect in New South Wales, Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in Australia who would be exempted hereunder provides:

(1) A system of qualification or licensing of firms and persons who deal in transactions subject to regulation under Part 30 that includes, for example, "conditions" or criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about licensees;

(2) Financial requirements for licensees including, without limitation, conditions and restrictions on the amount and nature of a licensee's assets, segregation, accounting and limits on the use of customer funds and daily mark-to-market settlement procedures;

(3) A system for the protection of customer funds that applies to all customers and which precludes the use of customer funds to satisfy house obligations, requires separate accounting for such funds and requires covering of deficits within 5 days, augmented by a fidelity fund designed to compensate customers who have suffered a loss as a result of fraud or, at the discretion of the Exchange, insolvency of an Exchange member;

(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 licensees which include, for example,

required disclosures to prospective customers and prohibitions on (a) certain representations, (b) unapproved advertising, (c) the commingling of customer funds and (d) insider and other 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 which take advantage of customers, the existence of an Exchange Committee for Inspection and Audit with broad powers to investigate, audit, and sanction Exchange members' sales practices and an arbitration program for the resolution of customer disputes; and

(7) Mechanisms for sharing information with the Commission and NFA on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures and options products subject to regulation in Australia, position data, data on firms' standing to do business and financial condition, and mechanisms for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6 and 33.7, 17 CFR 30.6 and 33.7 (1988). Moreover, the relief granted is directed to brokerage activities by firms licensed in Australia on the Exchange and does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits United States customers for transactions on United States markets. In that case, the firm must comply with all applicable United States laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm 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 of its place of domicile; such firm is engaged in business with customers located in Australia as well as in the United States; and, such firm would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 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 which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) All transactions on the Exchange with respect to customers resident in the United States will be made on or subject to the rules of the Exchange and the Commission will receive prompt notice of all material changes in such Code and Regulations;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than Australian customers under all relevant provisions of Australian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information which in its judgment affects the financial or operational viability of an Australian-domiciled firm doing business in the United States under the exemption granted by this Order.²

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act and files a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission

² In this connection, the Commission notes that the Exchange's petition dated October 13, 1987, already addresses the representations required in paragraphs (1) (c) (d) and (e) of the conditions specified above.

Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letter dated July 5, 1988;

(b) Agrees to provide the books and records related to transactions under Part 30 required to be maintained under the applicable statutes, regulations and Exchange rules in effect in Australia upon the request of any representative of the Commission or United States Department of Justice at the place in the United States designated by such representative, within 72 hours, or such lesser period of time as specified by that representative, after service of the request;

(c) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(d) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (e.g., banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(e) Consents to participate in any NFA arbitration program which 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 all customers resident in the United States of the availability of such a program;

(f) Maintains the greater of regulatory capital as required under the Code and Exchange Articles or four percent of funds segregated on behalf of customers resident in the United States; and

(g) Undertakes to comply with the applicable provisions of Australian law and Exchange rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or hereinafter designated the later of thirty days after publication of the Order in the Federal Register or after filing of the consents hereinabove required. Interim relief will be extended to firms subject

thereto for thirty days after the date of publication. Upon filing of the notice required under paragraph (1)(b) as to any firm, the relief granted by this Order will 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 the Exchange and/or any applicable regulatory or self-regulatory organization.

This Order is issued pursuant to Commission 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 Commission Rule 30.10 and, in particular, Appendix A thereof, 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. If necessary, provisions will be made for servicing existing client positions.

In the future, the Commission may determine that other considerations and conditions are also relevant to the determination to exempt, or to continue to exempt, specified firms from the application of the Part 30 rules generally. To this end, 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.

Issued in Washington, DC, on November 1, 1988.

Jean A. Webb,
Secretary of the Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands

Issued October 28, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (52 FR 43320 [Order No. 469, 52 FR 18201 (May 14, 1987)]). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1988)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adopting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1988 through September 30, 1989, the fees in this notice will become effective October 1, 1988. The fees will apply to fiscal year 1989 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Jewel Poore, Chief, Management Systems Branch, Office of the Controller, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5640.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the Federal Register. In addition, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin