

approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Issued in Kansas City, Missouri, on January 17, 2008.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 3 and 30

RIN 3038-AC26

### Exemption From Registration for Certain Firms With Regulation 30.10 Relief

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission”) is proposing to amend the regulations regarding the registration of certain firms located outside the U.S. that are engaged in commodity interest activities with respect to trading on U.S. designated contract markets (“DCMs”) and U.S. derivative transaction execution facilities (“DTEFs”).<sup>1</sup> The amended regulation would codify past actions of the Commission’s staff permitting certain foreign firms that have confirmed relief from registration as futures commission merchants (“FCMs”) in accordance with the regulations to introduce to registered FCMs certain U.S. customers in connection with trading U.S. DCM and DTEF listed futures and commodity options without having to register as an introducing broker pursuant to section 4d of the Commodity Exchange Act (“Act”). The Commission also is proposing to revoke the regulations regarding quarterly reporting requirements for foreign futures and foreign options transactions.

**DATES:** Comments must be received on or before February 25, 2008.

**ADDRESSES:** Comments may be submitted, identified by RIN 3038-AC26, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [secretary@cftc.gov](mailto:secretary@cftc.gov). Include “Exemption from Registration for

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. I (2007). References to trading on U.S. DCMs or DTEFs shall include trading that is subject to the rules of such entities as well.

Certain Firms with Regulation 30.10 Relief” in the subject line of the message.

- Fax: 202/418-5521.

- Mail or Courier: Send to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581.

All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Andrew V. Chapin, Special Counsel, at (202) 418-5465, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: [achapin@cftc.gov](mailto:achapin@cftc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

##### A. Registration Requirements for Commodity Interest Activities on U.S. Markets

Part 3 of the Commission’s regulations governs the registration of intermediaries engaged in the offer and sale of, and providing advice concerning, futures and commodity options traded on U.S. markets, including both DCMs and DTEFs. In particular, Regulation 3.10 sets forth the manner in which FCMs, introducing brokers (“IBs”), commodity trading advisors (“CTAs”), commodity pool operators (“CPOs”) and leverage transaction merchants must apply for registration with the Commission. Regulation 3.10(c) also provides an exemption from registration for certain persons. For example, Regulation 3.10(c)(1) provides an exemption from registration as an FCM for any person trading solely for proprietary accounts, as defined in Regulation 1.3(y).

The Commission recently adopted amendments to Regulation 3.10(c) to codify the Commission’s longstanding policy towards certain foreign intermediaries, known as foreign brokers.<sup>2</sup> New Regulation 3.10(c)(2) provides an exemption from registration as an FCM to any foreign broker that limits its customers to persons located outside the U.S. and submits transactions executed on U.S. exchanges for clearing on an omnibus basis through a registered FCM. The Commission also promulgated Regulation 3.10(c)(3) to provide an exemption from registration to any foreign person engaged in the activity of an introducing broker, commodity pool

<sup>2</sup> 72 FR 63976 (November 14, 2007).

operator or commodity trading advisor solely on behalf of customers located outside the U.S., provided that all commodity interest transactions are submitted for clearing to a registered FCM.<sup>3</sup>

##### B. Part 30 of the Commission’s Regulations

In 1987, the Commission adopted a new Part 30 of its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered into on or subject to the rules of a foreign board of trade.<sup>4</sup> These regulations were promulgated pursuant to Sections 2(a)(1)(A), 4(b) and 4c of the Act, which vest the Commission with exclusive jurisdiction over the offer and sale, in the U.S., of futures and commodity option contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the U.S.

Part 30 sets forth regulations governing foreign futures and foreign option transactions executed on behalf of customers located in the U.S., referred to in the regulations as foreign futures or foreign options customers.<sup>5</sup> For example, Regulation 30.4 requires any person engaged in the activities that are described in the regulation to register with the Commission as an FCM, IB, CPO or CTA, respectively, unless such person claims relief from registration under Part 30. The activities described in Regulation 30.4 essentially are similar to those of an FCM, IB, CPO or CTA defined in the Act, except that the transactions that the person intermediates are conducted on or subject to the rules of a foreign board of trade. The transactions that are subject to regulation and require registration under Part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.<sup>6</sup>

Under Part 30, certain persons located outside the U.S. may obtain an exemption from registration and certain other requirements. For example, under Regulation 30.10 and Appendix A thereto, the Commission may exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from customers located in the U.S. from compliance with certain

<sup>3</sup> *Id.*

<sup>4</sup> 52 FR 28980 (August 5, 1987).

<sup>5</sup> Regulations 30.1(a), (b) and (c), define the terms “foreign futures,” “foreign options,” and “foreign futures or foreign options customer,” respectively.

<sup>6</sup> See Regulation 30.4.

Commission rules, including those rules pertaining to registration, provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. investors, including an information-sharing arrangement between the Commission and the firm's home country regulator.<sup>7</sup> Relief from registration pursuant to Regulation 30.10 does not extend to any activities related to acting as an intermediary with respect to trading, directly or indirectly, on any U.S. exchanges.

### C. Interpretation of the Rule 30.10 Exemption

The Division of Clearing and Intermediary Oversight ("Division") has issued a series of no-action letters that permit, in limited circumstances, a foreign firm exempt from FCM registration pursuant to Regulation 30.10 ("Regulation 30.10 firm"), to intermediate transactions executed on U.S. exchanges on behalf of U.S. customers. Specifically, the Division confirmed that it would not recommend that the Commission commence any enforcement action against certain FCMs and affiliated Regulation 30.10 firms if such unregistered affiliates introduced certain sophisticated U.S. customers to a registered FCM for the purpose of trading on U.S. designated contract markets.<sup>8</sup> The relief in each no-action letter issued by the Division was predicated upon the relevant FCM's acknowledgment that it would be jointly and severally liable for any violations of the Act or the Commission's regulations committed by the foreign affiliate in connection with those activities, even if the FCM did not submit the trade for clearing. In addition, the no-action relief required that all U.S. customers be introduced on a fully-disclosed basis, and that any non-U.S. affiliate would not be permitted either to solicit any U.S. customer or handle any U.S. customer funds for trading on U.S. markets.

In granting the above no-action relief, the Division recognized that a U.S. institutional customer may achieve greater operational and economic efficiencies by eliminating the need to use multiple order entry systems to engage in transactions in both U.S. and non-U.S. markets. In addition, the Division acknowledged that, by consolidating orders into a single execution system, an intermediating FCM may mitigate more effectively the

increased systemic and liquidity risks associated with such activities.

Given that the no-action relief provided by the Division applies only to the recipients of each no-action letter, the Commission believes that it may be appropriate to provide relief for all FCMs and their affiliates that provide brokerage services to U.S. institutional investors in like circumstances. Like those FCMs addressed by the Division's no-action relief, these FCMs also have institutional U.S. customers that trade globally throughout the 24-hour trading day, and who currently must use multiple order entry systems to execute transactions both domestically and abroad. Accordingly, the Commission has determined to propose to amend Regulation 3.10(c) to address the issue without the need for separate no-action letters, and invites public comment on all aspects of the proposed rule.

## II. Proposed Regulations

The Commission proposes to codify the staff interpretations described in Section I.C above. Specifically, the Commission proposes to promulgate Regulation 3.10(c)(4) to exempt from registration as an IB a firm located outside the U.S. that introduces certain sophisticated U.S. customers to a registered FCM for the purpose of trading on a DCM or DTEF. The exemption would be limited to those foreign firms that are affiliated with an FCM and have obtained confirmation of relief pursuant to the terms and conditions of an order issued by the Commission pursuant to Regulation 30.10. Any account introduced pursuant to this exemption must be introduced on a fully-disclosed basis in accordance with Regulation 1.57 and the foreign firm would not be permitted to solicit any U.S. customers nor handle any U.S. customer funds for trading on U.S. markets. The Commission has proposed to limit the exemption in Regulation 3.10(c)(4) to Regulation 30.10 firms because Regulation 30.10 relief is predicated on the existence of a comparable regulatory program in the jurisdiction in which the affiliate is located, and the presence of certain safeguards to protect U.S. investors, including standards for fitness and an information-sharing arrangement between the Commission and the authorities in the affiliate's home country.

The Commission notes that the Division's existing no-action letters provide exemptive relief to foreign firms acting on behalf of certain "institutional" and "commercial" entities. In search of a workable universal standard, the Commission has

proposed to structure the exemption so as to limit the offer and sale of U.S. contracts to institutional customers, as defined in Regulation 1.3(g). The Commission also proposes Regulation 3.10(c)(6) that, for the purposes of this regulation, the term "affiliate" means any person that: (i) Owns 50 percent or more of the FCM; (ii) is owned 50 percent or more by the FCM; or (iii) is owned 50 percent or more by a third person that also owns 50 percent or more of the FCM.<sup>9</sup>

Consistent with the terms and conditions of relief established by the Division in the no-action process, the Commission also proposes to predicate the availability of the exemption upon the relevant FCM's acknowledgment, to be filed with NFA pursuant to proposed Regulation 3.10(c)(4)(iii), that it would be jointly and severally liable for any violations of the Act or the Commission's regulations committed by the foreign affiliate in connection with those activities, even if the FCM ultimately did not submit the trade for clearing. As such, the Commission has proposed to limit the exemption to firms affiliated with an FCM so that the FCM may maintain the appropriate level of oversight to ensure that the foreign affiliate complies with the conditions for relief as set forth in the proposed regulation.

Proposed regulation 3.10(c)(4), in keeping with the no-action letters issued to date, prohibits the firm wishing to take advantage of the IB registration exemption from soliciting customer orders for trading on U.S. exchanges. This registration exemption only is intended to be a convenience for institutional customers so that they need not use multiple order entry processes to transact related business. For example, an institutional customer seeking to establish a position on the London Metal Exchange (LME) may desire to hedge that position with contracts listed on the New York Mercantile Exchange (NYMEX). Absent relief, a Regulation 30.10 firm executing and/or submitting for clearing the LME transaction may not participate in the

<sup>9</sup> See, e.g., CFTC Staff Letter 07-06, [Current Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ \_\_\_\_\_ at \_\_\_\_\_, n.3 (May 24, 2007). CFTC Letter 07-06 is one of a series of letters issued by the Division of Market Oversight that permits members of a particular foreign exchange located in the U.S. to connect directly to the foreign exchange's order and trade matching system without the exchange having to register as a DCM or DTEF. For the purposes of the no-action relief, the term "members" includes "affiliates" as defined consistent with this proposal. The Commission notes that, as a condition of the no-action relief, members connected directly to the foreign exchange are ultimately responsible for the conduct of any affiliate.

<sup>7</sup> See Appendix A to Part 30; 62 FR 47792 (September 11, 1997).

<sup>8</sup> See, e.g., CFTC Letter 07-23, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ \_\_\_\_\_ (November 23, 2007).

acceptance of orders for any NYMEX contracts. Pursuant to the proposed regulation, a Regulation 30.10 firm may introduce the institutional customer to a registered FCM for the purposes of submitting the NYMEX transaction for clearing, provided that the institutional customer initiates the transaction.

The exemption from registration also is not intended to be used by firms as a promotional vehicle. The proposed regulation would not permit a Regulation 30.10 firm to solicit new customers based on its ability to access U.S. markets. As stated above, the Commission is proposing to create a limited-purpose exemption from IB registration so that existing institutional customers may reduce transactional costs associated with the use of multiple order entry processes.

The Commission also notes that the proposed amendments to Regulation 3.10(c) are intended to provide a limited-purpose registration exemption available only to those foreign firms engaging in *bona fide* global futures brokerage activities on behalf of institutional customers located in the U.S. Absent such relief, these firms would be required to register with the Commission in the appropriate capacity, because the applicable Regulation 30.10 relief does not extend to brokerage activities undertaken, directly or indirectly, on U.S. exchanges on behalf of any U.S. person. A foreign firm not engaged in *bona fide* global futures brokerage activities on behalf of institutional customers, *e.g.*, a firm limiting its brokerage activities on behalf of U.S. customers to trading solely on U.S. exchanges, may not rely on the proposed exemptions to circumvent the IB registration requirement. An FCM submitting the acknowledgment set forth in proposed Regulation 3.10(c)(4)(iii) could be held liable for any violations of a foreign affiliate in an attempt to circumvent the Commission's registration requirements in this regard.

The Commission further notes that proposed Regulation 3.10(c)(4) would replace prior staff letters as the sole source of authorization for those unregistered foreign firms that introduce to an FCM U.S. customers for the purpose of trading on U.S. markets.<sup>10</sup> A firm that fails to comply with any of the terms or conditions of the applicable Regulation 30.10 order, including a failure to comply with any element of

the regulatory program on which relief was predicated, would make the firm ineligible for relief set forth in proposed Regulation 3.10(c)(4).

In each of the existing no-action letters on this subject cited in the footnote, the Division considered the size of the FCM and its relationship with its particular non-U.S. affiliate prior to determining that relief would not be contrary to the public interest. More specifically, the Division determined that the financial strength and organizational structure of each FCM provided a reasonable basis upon which to rely that it could honor the acknowledgement of joint and several liability. Accordingly, the Commission solicits comments as to whether it would be appropriate to establish minimum capital or other standards for the affiliated FCM as a condition for exemptive relief.<sup>11</sup>

The Commission also solicits comment as to whether the proposed limited-purpose registration exemption should be extended to otherwise qualified foreign persons that advise institutional customers for the purposes of trading on U.S. markets. This relief would be available, for example, to the foreign affiliate of an FCM that provides trading advice tailored to the particular circumstances of U.S. customers that meet the institutional customer standards regarding the trading of both domestic and foreign futures as part of an overall global strategy.

The Commission also is proposing to revoke Regulation 30.8. Regulation 30.8 requires each FCM to provide NFA with a quarterly report containing data for the total volume of foreign futures and options contracts effected on foreign boards of trade. From its experience, the Commission recognizes that FCMs are engaging in both domestic and foreign futures and options transactions on behalf of customers located in the U.S., and therefore are subject to other extensive reporting and recordkeeping requirements set forth in Part 1 of its regulations. As such, the Commission believes that the reporting requirement set forth in Regulation 30.8 is overly burdensome and no longer necessary. The Commission solicits comments as to whether remaining reporting requirements are sufficient for FCMs engaged in foreign futures and options

transactions on behalf of customers located in the U.S.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.<sup>12</sup> The Commission previously has determined that registered FCMs are not small entities for the purpose of the RFA because each FCM has an underlying fiduciary relationship with its customers, regardless of the size of the FCM.<sup>13</sup> The Commission notes that the foreign persons affected by the proposed changes to the Commission's regulations would be registered as FCMs if not for the exemption provided therein and, as such, would maintain a fiduciary relationship with customers similar to the relationship maintained by each registered FCM. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

While the proposed rule discussed herein has no burden, the group of rules (3038–0023, Rules, Regulations and Forms for Domestic and Foreign Futures and Options Related to Registration with the Commission) of which it is a part has the following burden:

*Average Burden Hours per Response:* 18.11.

*Number of Respondents:* 76,750.

*Frequency of Response:* Annually and on occasion.

The Office of Management and Budget ("OMB") approved the collection of information associated with this group of rules on August 17, 2004. Copies of the OMB-approved information collection submission are available from

<sup>10</sup> The following letters for no-action relief will be superceded if the proposed rules are adopted: CFTC Letters 03–28, 04–09, 04–14, 05–06, 07–05, 07–08, 07–16, 07–17, 07–20 and 07–23. The Commission seeks comments from any party adversely affected by the determination to rescind these CFTC Letters.

<sup>11</sup> Compare Regulation 30.12, 17 CFR 30.12 (Direct Foreign Order Transmittal). Pursuant to Regulation 30.12(b)(1)(i), an FCM must possess, for example, \$20,000,000 in adjusted net capital in order for one of its "authorized customers" to engage in direct foreign order transmittal with an unregistered foreign futures and options broker for the purpose of trading foreign futures or options through the FCM's customer omnibus account.

<sup>12</sup> 47 FR 18618–18621 (April 30, 1982).

<sup>13</sup> 47 FR 18619–18620.

the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5160.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, Section 15(a) requires the Commission to "consider the cost and benefits" of the subject regulations.

Section 15(a) further specifies that the costs and benefits of the proposed regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed regulations should foster the protection of market participants and the public by providing greater legal certainty to the commodity interest activities of persons located outside the U.S. As the activity set forth in the proposed regulations presently is permitted under staff interpretation and no-action, the proposed regulations should have no material impact from the standpoint of imposing costs or creating benefits, on efficiency, competitiveness and financial integrity of financial markets, price discovery, sound risk management practices, or any other public interest considerations.

List of Subjects

17 CFR Part 3

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in

the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23, unless otherwise noted.

2. Section 3.10 is amended by adding paragraph (c)(4) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

\* \* \* \* \*

(c) Exemption from registration for certain persons.

\* \* \* \* \*

(4) A person located outside the United States, its territories or possessions that is exempt from registration as a futures commission merchant in accordance with § 30.10 of this chapter is not required to register as an introducing broker in accordance with section 4d of the Act if:

(i) Such a person is affiliated with a futures commission merchant registered in accordance with section 4d of the Act;

(ii) Such a person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3(g) of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market or derivatives execution facility;

(iii) Prior to a person located outside the United States, its territories or possessions, that is exempt from registration as a futures commission merchant pursuant to § 30.10 of this chapter, engaging in the introducing activities described in this paragraph, the affiliated futures commission merchant has filed with the National Futures Association (ATTN: Vice President, Compliance) an acknowledgement that it will be jointly and severally liable for any violations of the Act or the Commission's regulations committed by such person in connection with those introducing activities, whether or not the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(iv) Such person does not solicit any person located in the United States, its

territories or possessions for trading on a designated contract market or derivatives transaction execution facility, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for the purpose of trading on any designated contract market or derivatives transaction execution facility.

(v) For the purposes of this paragraph, a person shall be affiliated with a futures commission merchant if such a person:

(A) Owns 50 percent or more of the futures commission merchant;

(B) Is owned 50 percent or more by the futures commission merchant; or

(C) Is owned 50 percent or more by a third person that also owns 50 percent or more of the futures commission merchant.

\* \* \* \* \*

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

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

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c, and 12a, unless otherwise noted.

§ 30.8 [Removed and reserved]

4. Section 30.8 is removed and reserved:

Dated: January 15, 2008.

By the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8-979 Filed 1-24-08; 8:45 am]

BILLING CODE 6351-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R05-OAR-2007-1198; FRL-8521-4]

State Operating Permits Program; Ohio; Revision to the Acid Rain Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve into the Ohio operating permits program revisions submitted by the State of Ohio for the purpose of amending the Acid Rain Permits and Compliance portion of the program. The changes made to OAC 3745-103, which comprises the revisions, include rules for phase II acid rain permits and new information on items incorporated by reference.

DATES: Comments must be received on or before February 25, 2008.