

other such nonsubstantive revisions, during that period; and

(6) The board of trade has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) *Notification of extension of time.* The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the board of trade making the submission that the review period has been extended for a period of thirty days where the designation application raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) *Notification of termination of fast-track procedures.* During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the board of trade that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulation, or form or content requirement of Appendix A of this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A of this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the board of trade may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs

(a)(6) and (b)(5) of this section that the contract market amend the proposed contract or supplement the application, to notify a board of trade under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the contract market under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

Appendix D—Internal Procedure Regarding Period for Public Comment

* * * Generally, the Commission will provide for a public comment period of thirty days on such applications for designation; *provided*, however, that the public comment period will be fifteen days for those applications submitted for review under the fast-track procedures of § 5.1(b) of this part.

* * * * *

Issued in Washington, D.C., this 27th day of February, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-5567 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

17 CFR Parts 1 and 31

Financial Reports of Futures Commission Merchants, Introducing Brokers and Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is amending its Rule 1.10(d)(4), which requires that each Form 1-FR filed with the Commission contain an oath or affirmation attesting that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained therein is true and correct. The amended rule provides that, for the purposes of making this attestation when filing a financial report with the Commission electronically, the use of a personal identification number ("PIN") will be deemed to be the equivalent of

a manual signature.¹ The Commission also is amending Rule 1.10(c) to account for the possibility that registrants may choose to file certain financial reports electronically using a Commission issued PIN rather than filing such reports in paper form with the regional office of the Commission nearest the principal place of business of the registrant. Rule 1.10(c) will permit electronic filing of financial reports that are not required to be certified by an independent public accountant provided that the Commission obtains the means to read and process the electronically transmitted data.² The Commission also is adding Rule 1.10(b)(2)(iii) to clarify that certified financial reports may not be filed electronically.

In addition, the Commission is amending Rules 1.10(g) and 31.13(m) to clarify that certain portions of the financial reports will be deemed public and other portions nonpublic, and to eliminate the requirement that firms filing financial reports need to separately bind portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Background

On October 25, 1996, the Commission published for comment proposed amendments to Rule 1.10 (the "Proposals"),³ which sets forth the financial reporting requirements for futures commission merchants ("FCMs") and independent introducing brokers ("IBIs").⁴ Rule 1.10 requires

¹ Commission Rule 1.10(h) permits registrants that are also registered as securities broker-dealers with the Securities and Exchange Commission to file a copy of their Financial and Operational Combined Uniform Single Report ("FOCUS") with the Commission in lieu of Form 1-FR. The amendments discussed herein are intended to apply equally to registrants who file Form 1-FR or FOCUS with the Commission.

² The Commission currently is involved in discussions with the Chicago Mercantile Exchange ("CME") to obtain the electronic filing software co-developed by CME and the Chicago Board of Trade ("CBT") and used by CME, CBT and their members.

³ 61 FR 55235.

⁴ Approximately two-thirds of introducing brokers enter into a guarantee agreement with an FCM and thus are not required to raise their own regulatory capital or file financial reports.

generally that FCMs file with the Commission financial reports on Form 1-FR-FCM each quarter and that IBIs file financial reports on Form 1-FR-IB semiannually.⁵ The Proposals consisted of several amendments concerning the electronic filing of such financial reports, as well as the treatment of the various portions of financial reports as either public or nonpublic, whether filed electronically or in paper form. Specifically, the Proposals: (1) provide that for the purposes of making the attestation under Rule 1.10(d)(4) as to the truth and correctness of information contained in electronically filed financial reports, the use of a PIN would be deemed to be the equivalent of a manual signature;⁶ (2) account for the possibility that registrants may choose to file electronically financial reports which need not be certified by an independent public accountant; (3) clarify that certified financial reports may not be filed electronically; (4) clarify that certain portions of the financial reports will be deemed public and other portions nonpublic; and (5) eliminate the requirement that firms filing financial reports bind separately the portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

The 30-day public comment period on the Proposals expired on November 25, 1996. The Commission received one written comment on the Proposals, submitted by National Futures Association ("NFA"). In general, NFA noted its strong support for the Commission's Proposals to allow FCMs and IBIs to file certain financial reports electronically, but requested that the Commission clarify and revise certain aspects of the proposed amendments. The Commission has considered carefully the comments received from

⁵The Commission recently adopted amendments to certain of its financial reporting requirements for FCMs and IBIs, including time requirements for filing Form 1-FR. See 62 FR 4633 (Jan. 31, 1997).

⁶See also, CFTC Interpretative Letter 96-21, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,633 (Feb. 29, 1996) (no-action letter issued to the CBT concerning the attestation of financial reports where an FCM is organized as a partnership); Advisory 12-96, reprinted as CFTC Advisory 96-21 in [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,640 (March 8, 1996) (making relief provided to CBT available to all FCMs, IBIs and self-regulatory organizations ("SROs")); Advisory 28-96, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996) (alerting FCMs, IBIs and SROs that to the extent that any SRO program for electronic filing of financial reports approved by the Commission does not require a manual signature for purposes of attestation, the use of a PIN would be deemed to be the equivalent of a manual signature for purposes of attestation under Commission Rule 1.10(d)(4)).

NFA. The Commission has determined to adopt the amendments as proposed with one minor modification. Amended Rule 1.10(c) now clarifies that, while the Commission intends to permit the electronic filing of noncertified financial reports, it will permit such electronic filing only after such time as the Commission obtains the necessary computer software to read and process the electronically transmitted data. The Commission also has clarified various matters relevant to the operation of the amended rules in the discussion below.

II. Rule Amendments

A. Electronic Filing Issues

The Commission proposed to amend Rule 1.10(d)(4) such that the use of a PIN in filing a Form 1-FR pursuant to Rule 1.10 will be deemed to be the equivalent of a manual signature under the rule. The Commission did not receive any comments concerning the language of this proposed amendment and is adopting the provision as proposed. The amended rule, therefore, makes clear that the transmission of a financial report to the Commission or an SRO under a PIN constitutes a representation that the person whose PIN is used in such transmission attests that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete.⁷ The Commission hopes that this amendment will encourage and facilitate the process of electronic filing of such reports with the Commission but notes that, while it encourages the use of the electronic filing option, the amendments do not mandate electronic filing with the Commission.⁸

In the Proposals, the Commission noted that it intends to adopt procedures for issuing PINs to facilitate electronic filing with the Commission consistent with the procedure currently in use by SROs such as CBT and the CME.⁹ In this regard, NFA stated in its comment letter that it fully supports the use of PINs as described in the Proposals. However, NFA recommended that, with respect to those firms that are members of an SRO, the Commission should permit the registrant's SRO to assign one PIN to be used by the

⁷Commission Rule 1.10(c) provides that financial reports must be filed with the Commission and the firm's designated self-regulatory organization ("DSRO").

⁸The Commission may determine to require electronic filing at some later period, but believes such a requirement would be premature at this time. The Commission also encourages the industry to develop a system of electronic filing of financial reports that will provide for the development of a uniform database of financial information with the least burden upon filers, SROs and the Commission.

⁹61 FR 55235, at 55236.

registrant to file financial reports with both the Commission and the firm's DSRO. Thus, the Commission could avoid the situation where a registrant would need to use multiple PINs to file electronically. NFA stated its belief that such a situation could be a disincentive to filing electronically with the Commission. The Commission has discussed this issue with CME, which did not provide a written comment on this issue, but would be affected along with the other exchanges by adoption of NFA's proposal. CME stated that, for security reasons, each entity receiving an electronically filed financial report should assign a unique PIN to each filer. If a PIN is too widely known, an issue arises as to the value of the use of the PIN for attestation purposes. Additionally, CME noted that the software used by FCMs would have to be modified in order to allow the PIN number currently used with the exchange also to be used when filing with the Commission. Finally, as NFA's proposed electronic filing system is evolving, it appears that there may not be a need for the Commission to have a PIN for firms for which NFA is the DSRO. NFA is proposing to have the firms for which it is the DSRO file financial reports directly with NFA. Under this framework, NFA would then transmit the electronically filed reports to the Commission. In light of the foregoing, the Commission anticipates that it will issue unique PINs to FCMs that choose to file their financial reports with the Commission electronically.

The Commission also proposed to add new Rule 1.10(b)(2)(iii) and to amend paragraph (c) of Rule 1.10 to provide certain clarifications regarding the Commission's electronic filing program. New Rule 1.10(b)(2)(iii), as set forth in the Proposals, clarified that firms may not file electronically their certified financial reports, which must accompany the application for registration and be submitted as of each fiscal year-end following registration. The amendment to Rule 1.10(c) clarified that a registrant may file non-certified financial reports via electronic transmission using a Commission issued PIN in accordance with instructions issued by the Commission. NFA requested that the Commission delete the proposed addition of Rule 1.10(b)(2)(iii) as well as the reference in the proposed amendment to Rule 1.10(c) with respect to "reports which need not be certified * * *." NFA acknowledged that technology does not yet permit the electronic filing of a complete certified report, but recommended that the Commission include any electronic

filing restrictions in the instructions to the forms to be filed rather than in Rule 1.10 itself, in order to accommodate future technology. The Commission believes that references to filing restrictions in the rules themselves promote clarity. Should the Commission wish to permit the filing of certified financial reports in order to accommodate new technology as it becomes available, the Commission could readily amend Rule 1.10 to account for such change. Accordingly, the Commission is adopting new Rule 1.10(b)(2)(iii) as proposed. The Commission is, however, making one minor modification to the proposed amendment to Rule 1.10(c). As adopted, amended Rule 1.10(c) clarifies that the Commission's electronic filing program will begin only if the Commission can obtain the computer software necessary to read and to process the data contained in the electronically filed reports. The Commission wishes to avoid a situation in which registrants would be required to use software to file their financial reports with the Commission that is different from the software used to file such reports with their DSRO. As noted above, the Commission currently is engaged in discussions with CME in an attempt to obtain the computer software co-developed by CME and CBT and used by CME, CBT and their members as part of CME's and CBT's electronic filing programs.

The Commission further noted in the Proposals that, at the outset of its electronic filing program, firms filing non-certified financial reports electronically must continue to file a paper report with the appropriate regional office of the Commission. The Commission explained that, following some experience with electronic transmission of financial data (the "Pilot Period"), it may be permissible for firms to submit non-certified financial reports to the Commission solely via electronic transmission. In this regard, NFA encouraged the Commission to keep its Pilot Period with respect to its electronic filing program brief, stating that firms have little incentive to file with the Commission electronically if they also are required to file their reports in paper form. NFA also requested that the Commission clarify that the Pilot Period is intended for the Commission to gain experience with the electronic filing program itself and is not meant to serve as a testing period for each individual firm's use of the system. The Commission shares NFA's views on these points and anticipates permitting firms to file their non-certified financial

reports solely via electronic transmission as quickly as practicable, given an adequate time period in which the Commission can gain experience with the electronic filing program. At the conclusion of its Pilot Period, the Commission intends to change its instructions regarding filing to eliminate the requirement that a firm file a paper copy of its financial report in addition to filing such report electronically. The Commission does not anticipate that additional rulemaking would be necessary to accomplish this.

B. Freedom of Information Act Issues

In the Proposals, the Commission noted that, consistent with current practice, the Commission intends to respond to a Freedom of Information Act ("FOIA") request for a financial report that was filed with the Commission solely by electronic transmission by printing a paper copy of the responsive public data and forwarding it to the requestor. The data which the Commission would print and forward to the requestor would be the public portions of a Form 1-FR. Commission Rule 1.10(g) provides that these public portions are, for FCMs and IBIs, the statement of financial condition and the statement of the computation of the minimum capital requirements, and, in addition, for FCMs only, the statements concerning segregation of customer funds and the secured amount for foreign futures and option customers. The proposed amendments to Rule 1.10(g) would reconfirm the current demarcation as to which portions of the Form 1-FR are generally treated as public and nonpublic and eliminate the need for firms to use a separate binding procedure to receive such treatment for their reports, whether reports are filed in paper form or electronically. The Commission received no comments with respect to the proposed amendments to Rule 1.10(g)¹⁰ and is adopting them as proposed.

The Commission has proposed to clarify, in a separate release, its rules under FOIA and the Government in the Sunshine Act ("GINSA") in order to, among other things: (1) reaffirm that certain portions of the Form 1-FR are generally public and the remainder are nonpublic; and (2) state that it will no longer process petitions for confidential treatment of the generally public

¹⁰ Although there are currently no registered leverage transaction merchants ("LTMs"), the Commission is also amending Rule 31.13(m) which currently provides for a separate binding procedure similar to that set forth in Rule 1.10(g) with respect to LTMs submitting financial reports on Form 2-FR.

portions of a Form 1-FR.¹¹ The amendments to Rule 1.10(g)(1) and(2)¹² are intended to complement these proposed amendments of the FOIA and GINSA rules and to eliminate a burden on firms to bind separately certain portions of a Form 1-FR to assure nonpublic treatment.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs, LTMs and IBIs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.¹³ FCMs and LTMs¹⁴ have been determined not to be small entities under the RFA.

With respect to IBIs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBIs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.¹⁵ These rule amendments do not require any IBI to submit financial reports electronically but only govern the attestation of the completeness and accuracy of such reports so filed. Presumably, an IBI would choose to file a financial report electronically only if it were cost-effective to do so. These rule amendments should impose no additional burden or requirements on an IBI and thus would not have a significant economic impact on a substantial number of IBIs. Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairperson, on behalf of the Commission, certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13 (May 13, 1995) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of

¹¹ 61 FR 66949 (Dec. 19, 1996).

¹² The Commission has removed and reserved paragraph (g)(3) and revised paragraph (g)(5) of Rule 1.10. 62 FR 4633, 4637 and n.17, 4640. The amendments discussed herein do not interfere with or require further amendment of those earlier amendments.

¹³ 47 FR 18618-18621 (April 30, 1982).

¹⁴ See 50 FR 102, 108 n.11 (Jan. 2, 1985).

¹⁵ See 48 FR 35248, 35275-78 (Aug. 3, 1983).

information as defined by the PRA. While these rule amendments have no burden, the group of rules (3038-0024) of which they are a part has the following burden:

Average Burden Hours Per Response: 128.

Number of Respondents: 3,988.

Frequency of Response: Quarterly, Monthly or On Occasion.

Copies of the OMB approved information collection package may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503 (202) 395-7340.

List of Subjects

17 CFR Part 1

Commodity futures; Minimum financial and related reporting requirements.

17 CFR Part 31

Leverage transactions; Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby amends parts 1 and 31 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6m, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by adding paragraph (b)(2)(iii) and revising paragraphs (c), (d)(4), (g)(1) and (g)(2) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2) * * *

(iii) A Form 1-FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant, an introducing broker or an applicant for registration in either category, must be filed in paper form and may not be filed electronically.

* * * * *

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the

regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office): *Provided, however,* That any report filed pursuant to paragraphs (b)(1), (b)(2) or (b)(4) of this section or § 1.12(a) or (b) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, if the Commission has obtained the means necessary to read and to process the information contained in such report: *And, provided further,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission: *And, provided further,* That any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with and will be considered filed when received by the National Futures Association.

(d) * * *

(4) Attached to each Form 1-FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1-FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer. In the case of a Form 1-FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission

must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(g) *Nonpublic treatment of reports.* (1) The following portions of Forms 1-FR filed pursuant to this section will be public: the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 1-FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

(2) The following portions of copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA filed pursuant to paragraph (h) of this section, will be public: The statement of financial condition, the computations of net capital and the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial

information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

* * * * *

PART 31—LEVERAGE TRANSACTIONS

3. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23.

4. Section 31.13 is amended by revising paragraph (m) to read as follows:

§ 31.13 Financial reports of leverage transaction merchants.

* * * * *

(m) The following portions of Form 2-FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2-FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

* * * * *

Issued in Washington, D.C. on February 27, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-5561 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

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 clarifying the procedures applicable in its prior Order issued on April 13, 1993 ("1993 Order"), authorizing members of the Sydney Futures Exchange Limited ("Exchange" or "SFE") to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the Australian Corporations Law ("ACL") to conduct futures business for customers.

This Supplemental Order is issued pursuant to Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, the Commission's Order dated November 7, 1988 ("Original Order"), granting relief under rule 30.10 to designated members of the Exchange, and the 1993 Order.

EFFECTIVE DATE: March 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Warren Gorlick, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Supplemental Order:

Supplemental Order Clarifying Conditions Under Which Certain Members of the Sydney Futures Exchange Designated for Relief Under Commission Rule 30.10 May Solicit and Accept Orders From U.S. Customers for Otherwise Permitted Transactions on All Non-U.S. Markets Where Such Members Are Authorized by Australian Law to Conduct Futures Business for Customers

On November 1, 1988, the Commission issued the Original Order under rule 30.10 authorizing designated members of the SFE to offer or sell certain futures and option contracts traded on the Exchange to persons located in the United States. 53 FR 44856 (November 7, 1988). The Original Order limited the scope of permissible brokerage activities undertaken by designated SFE members on behalf of U.S. customers to transactions "on or

subject to the rules of the Exchange." 53 FR 44856, 44857.

By letter dated March 11, 1993, counsel to the SFE petitioned the Commission to revise the Original Order to include all non-U.S. markets where SFE members are authorized by the ACL to conduct futures business for customers.¹ As represented in that letter, section 1258 of the ACL prohibits futures brokers (including Exchange members confirmed for relief under rule 30.10) from dealing on behalf of another person unless the dealing is effected on an Australian futures exchange or a "recognized" foreign futures exchange. The Recognized Futures Exchanges, as defined in section 9(b) of the ACL as well as Regulation 8.02.02 thereunder, appear in Schedule 11 of such Regulations.

On April 13, 1993, the Commission issued its 1993 Order authorizing members of the SFE designated for rule 30.10 relief to solicit and accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges² where such members are authorized by Australian law to conduct futures business for customers. See 58 FR 19209 (April 13, 1993). The expanded rule 30.10 relief, however, is contingent on the SFE's and SFE members' compliance with the Original Order and their compliance with certain specified conditions.³

¹ Letter from Philip McBride Johnson, counsel to the SFE, to William P. Albrecht, Acting Chairman, Commission, dated March 11, 1993.

² The term "non-U.S. exchange" refers to a foreign board of trade which is defined in Commission rule 1.3 (ss), 17 C.F.R. § 1.3(ss) (1996) as:

Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into.

Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act") are not within the scope of the 1993 Order and this Supplemental Order.

³ These conditions are the following:

1. SFE will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated SFE members of U.S. customers for futures business on Recognized Futures Exchanges, as defined in section 9(b) of the ACL, other than a contract market designated as such pursuant to section 5a of the CEA, to the same extent that it conducts such activities in regard to SFE business;

2. SFE will cooperate with the Commission with respect to any inquiries concerning any activity which is the subject of this [1993 Order], including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis, on the same basis as set forth in the Original Order; and

3. Each SFE member firm confirmed for § 30.10 relief seeking to engage in activities which are the subject of this [1993 Order] must agree to provide the books and records related to such transactions required to be maintained under the applicable

Continued