

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.

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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.<sup>1</sup> 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. exchanges<sup>2</sup> 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.<sup>3</sup>

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

<sup>2</sup> 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.

<sup>3</sup> 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

The Commission now seeks to clarify the procedures with which SFE members should comply in order to operate pursuant to the expanded relief permitting certain SFE member firms to engage in foreign futures and options transactions for U.S. customers other than on the SFE. This Order clarifies that the funds of U.S. foreign futures and options customers must be subject to consistent protection irrespective of whether the SFE member firm effects trades directly on the SFE,<sup>4</sup> or effects trades on another foreign futures and options exchange directly or through the intermediation of a foreign exchange member.<sup>5</sup>

Accordingly, the Commission has determined to clarify that the relief set forth in the expanded relief authorized pursuant to the 1993 Order is applicable only if the Exchange member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered FCMs concerning the protection of customer funds under the provisions of Commission rule 30.7:<sup>6</sup>

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE<sup>7</sup> and the SFE whether by the SFE

statutes, regulations and Exchange rules in effect in Australia, on the same basis as set forth in the Original Order.

<sup>4</sup>With respect to transactions on the SFE, applicable Australian laws and regulations and the Original Order require segregation of all money, securities and property deposited on behalf of U.S. customers in respect of such transactions and the accruals thereon. See paragraphs 2(f) and (g) of the Original Order, 53 FR 44856, 44858.

<sup>5</sup>The Commission notes that substantially similar conditions were imposed in its Order authorizing members of the New Zealand Futures and Options Exchanges ("NZFOE") that are designated for relief under Commission rule 30.10 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 rules of the NZFOE to conduct futures business for customers. See 61 FR 64985 (December 10, 1996).

<sup>6</sup>See Commission rule 30.7, 17 C.F.R. § 30.7 (1996). To the extent that a depository is unable to provide the required acknowledgement (for example, as in the case of an intermediary firm which does not segregate customer from house assets), that foreign depository is not a good secured amount depository. To use such an intermediary, an FCM must establish a "mirror" account in the United States to meet its secured amount obligations. Thus, the procedures articulated in this Order are intended to be consistent with the requirements applicable to the treatment of customer funds under rule 30.7 by FCMs and to clarify that these same obligations apply to foreign firms operating under rule 30.10 orders permitting the execution of trades on exchanges outside of their home jurisdiction (see n.5 above).

<sup>7</sup>As noted above, the NZFOE received rule 30.10 relief from the Commission on December 10, 1996. That exchange is a wholly-owned subsidiary of the SFE, and the SFE Clearing House ("SFECH") is the designated clearing house for all transactions effected on the NZFOE. The NZFOE and its members are required to segregate customer funds

member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFE member complies with paragraphs a, b or c below:

a. (1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

(2) Does not commingle such money, securities and property with the money, securities or property of the member, or with any proprietary account of such member and does not use such money, securities and property to secure or guarantee the obligations of, or extend credit to, the member or any proprietary account of the member;

(3) Provided that it may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph a-1 above money, securities or property held for or on behalf of non-U.S. customers of the member for the purpose of entering into foreign futures and options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount required by paragraph a-1 above plus the amount that would be required to be on deposit if all such customers (including non-U.S. customers) were subject to such requirement, or (2) the foreign futures and foreign options secured amount required by paragraph a-1 above plus the amount required to be held in a separate account or accounts for or on behalf of such non-U.S. customers pursuant to any applicable law, rule, regulation or order, or any rule of any self-regulatory organization;

(4) Maintains the separate account or accounts referred to in paragraph a-1 above under an account name that clearly identifies them as such, with any of the following depositories:

(a) Another person registered with the Commission as an FCM or a firm exempted from FCM registration pursuant to CFTC rule 30.10;

(b) The clearing organization of any foreign board of trade;

(c) Any member and/or clearing member of such foreign board of trade; or

(d) A bank or trust company which any of the depositories identified in (a)-(c) above may use consistent with the applicable laws and rules of the jurisdiction in which the depository is located; and

(5) The separate account or accounts referred to in paragraph a-1 may be deemed

from money and property belonging to the firm and cannot use customer funds to satisfy the firm's obligations, both at the firm level and at the SFECH. See the New Zealand Futures Industry (Client Funds) Regulations (1990) sections 6, 14, and 20 and n.5, above. Consequently, taking into account the common ownership, use of the same clearing house, and relevant segregation requirements on both the SFE and NZFOE, with respect to transactions on the NZFOE on behalf of U.S. foreign futures and options customers, SFE members may comply with existing SFE and NZFOE rules in connection with this paragraph relating to the foreign futures and options secured amount.

located at a good secured amount depository only if the member obtains and retains in its files for the period required by applicable law and Exchange rules a written acknowledgement from such separate account depository that:

(a) It was informed that such money, securities or property are held for or on behalf of customers of the member; and

(b) It will ensure that such money, securities or property will be held and treated at all times in accordance with the provisions of this paragraph; and, *provided further*, that the member assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the member has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in paragraph a hereof;<sup>8</sup> or

b. Sets aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 C.F.R. 30.7 (1996), and treats those funds in the manner described by that rule; or

c. Complies with the terms and procedures of paragraph a or b, except that the amount required to be segregated under SFE rules

<sup>8</sup>This proviso is intended to clarify that the originating member makes reasonable inquiries and understands prior to the initiation of a trade the conditions under which its customers' funds will be held at all subsequent depositories, so that it may determine whether a particular intermediary or clearing house is a good separate account depository for purposes of this Order or must alternatively set aside funds in the manner set forth in paragraph b. The member would be expected to discuss with its immediate intermediary broker whether funds would be transferred to any subsequent depositories and determine the conditions under which such funds would be treated. Compliance with this proviso would be satisfied by the member obtaining relevant information or assurances from appropriate sources such as, for example, the immediate intermediary broker, exchanges or clearinghouses, exchange regulators, banks, attorneys or other relevant references, including regulatory sources.

This Supplemental Order is intended to clarify that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under rule 30.7(c) or a firm exempted from registration as an FCM under CFTC rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations. Thus, for example, an exchange that does not segregate customer from firm obligations and firms which trade on such exchanges and which do not arrange to comply otherwise with any of the procedures described herein would not be deemed an acceptable separate account. Specifically, such exchange or firms could not provide a valid and binding acknowledgement to a rule 30.10 exempted firm.

This provision is not necessarily intended to create a duty on a rule 30.10 firm that it audit intermediaries it uses for continued compliance with the undertakings it has obtained based on discussions with those relevant intermediaries. It is intended to make clear that firms seeking the benefit of the Commission's 30.10 relief must undertake a due diligence inquiry before customer funds are transferred to another intermediary and must take appropriate action (*i.e.*, set aside funds) in the event that such firms become aware of facts leading them to conclude that customer funds are not being handled consistent with the requirements of Commission rules or this Order by any subsequent intermediary or clearing house.

and Australian laws may be substituted for the secured amount requirement as set forth in such paragraphs.<sup>9</sup>

The expanded rule 30.10 relief already granted to the SFE also is contingent upon the SFE's and SFE members' continued compliance with the Original Order and the 1993 Order, and the enumerated conditions above.

Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular member, 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 member, 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.

#### List of Subjects in 17 CFR Part 30

Commodity Futures, Commodity Options, Foreign Futures.

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

### PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

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

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

2. Appendix C to Part 30 is amended by adding the following citation to the existing entry for the Sydney Futures Exchange to read as follows:

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

\* \* \* \* \*

FR date and citation, March 7, 1997, 62 FR.

Issued in Washington, D.C. on March 3, 1997.

Jean Webb,

Secretary of the Commission.

[FR Doc. 97-5658 Filed 3-6-97; 8:45 am]

BILLING CODE 6351-01-P

<sup>9</sup> Any Australian laws or regulations or SFE rules which permit an SFE member firm to obtain from its customers a waiver, acknowledgement or similar document in which such customer effectively waives the right to segregation protection would be inconsistent with compliance with paragraphs a, b, and c.

### 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 Orders issued on May 15, 1989 (the "Original Orders"), authorizing designated members of The Securities Association ("TSA") and the Association of Futures Brokers and Dealers ("AFBD"),<sup>1</sup> which subsequently merged to form the Securities and Futures Association ("SFA")<sup>2</sup> to solicit and to accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges which have been designated as a Designated Investment Exchange ("DIE") by the United Kingdom Securities and Investments Board ("SIB").<sup>3</sup>

This Supplemental Order is issued pursuant to (1) Commission rule 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, (2) the Commission's Original Orders, granting relief under rule 30.10 to designated members of the AFBD and TSA, and (3) the Commission's SFA Order.

**EFFECTIVE DATE:** March 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jane C. Kang, Esq., or Warren Gorlick, Esq.,

<sup>1</sup> See 54 FR 21604 (May 19, 1989) (granting rule 30.10 relief to firms designated by the AFBD) and 54 FR 21609 (May 19, 1989) (granting rule 30.10 relief to firms designated by the TSA).

<sup>2</sup> Following the April 1, 1991 merger of the AFBD and TSA to form the SFA, the Commission issued an Order, which, among other things, confirmed that the earlier Orders granting rule 30.10 relief to the AFBD and TSA and their respective members continued to be effective as to the successor SFA and its designated members. See 56 FR 14017, 14018 (April 5, 1991) (the "SFA Order").

<sup>3</sup> An exchange carrying on investment business in the United Kingdom must be authorized by the SIB as a Recognized Investment Exchange ("RIE"). See United Kingdom Financial Services Act ("FSA") Sections 3, 36, and 37. DIE's are certain non-U.K. exchanges determined by the SIB to meet adequate standards of investor protection. See Financial Services (Glossary and Interpretation) Rules and Regulations 1990. Under the terms of the Original Orders, an SFA member firm may only handle transactions on behalf of U.S. customers on an RIE or DIE. See 54 FR 21604, 21605 and 54 FR 21609, 21610.

The Commission also notes that although a rule 30.10 Order was issued to the SIB concurrently with the Original Orders (54 FR 21599 (May 19, 1989)), there are no firms currently designated by the SIB for rule 30.10 relief. Under the current United Kingdom regulatory structure the SIB no longer has direct supervisory responsibility for any firm engaged in investment business involving derivatives under the FSA. See, e.g., Andrew Large, *Financial Services Regulation—Making the Two Tier System Work* at 21 (SIB, 1993).

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 Securities and Futures Authority 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 United Kingdom Law to Conduct Futures Business for Customers.

In Orders issued on May 15, 1989, the Commission authorized designated members of the TSA and AFBD to offer or sell certain futures and option contracts on or subject to the rules of an RIE in the United Kingdom, or any other non-U.S. exchange<sup>4</sup> which is a DIE.

The Commission now seeks to clarify the procedures with which SFA members should comply in order to operate pursuant to the Original Orders and the SFA Order authorizing SFA member firms to engage in foreign futures and options transactions for U.S. customers on a DIE other than a U.S. exchange designated as a contract market pursuant to section 5 of the Commodity Exchange Act ("CEA" or "Act"). This Order clarifies that the funds of U.S. foreign futures and options customers must be subject to consistent protection irrespective of whether the SFA member firm effects trades directly on an RIE<sup>5</sup> or effects trades on a DIE directly or through the intermediation of a foreign exchange member.<sup>6</sup> Accordingly, the Commission

<sup>4</sup> 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 CEA are not within the scope of the Original Orders and this Supplemental Order.

<sup>5</sup> With respect to transactions on an RIE, applicable U.K. laws and regulations and the Original Orders require segregation of all money, securities and property deposited on behalf of U.S. customers in respect of such transactions and the accruals thereon. See paragraphs 2(c) and (h) of the Original Orders, 54 FR 21604, 21606, and 54 FR 21609, 21611.

<sup>6</sup> The Commission notes that substantially similar conditions were imposed in its Order authorizing

Continued