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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (the "Commission" or "CFTC") is adopting amendments to Rule 30.5, which provides an exemption from registration for firms located outside the U.S. that, with regard to foreign futures and options, are acting in a capacity that requires registration, other than registration as a futures commission merchant. The amendments being adopted herein are necessary to facilitate the ongoing program of converting from a paper-based registration system to online registration. Currently, pursuant to Rule 30.5, firms that qualify for the exemption under the rule must file a petition for exemption with the National Futures Association and designate an agent for service of process in the U.S. The amendments being adopted herein facilitate the electronic submission of petitions for exemptions under Rule 30.5 through the online registration system and are technical in nature.

EFFECTIVE DATE: July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5439.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Rule 30.5 provides an exemption from the registration requirement for any person located outside the U.S. who is required to be registered with the Commission under part 30 of the Commission's rules, other than a person required to register as a futures commission merchant ("FCM")—*i.e.*, an introducing broker ("IB"), commodity pool operator ("CPO"), or commodity trading advisor ("CTA").¹ Pursuant to Rule 30.5, any

person seeking exemption from registration under the rule must designate an agent for service of process in the U.S. and submit a petition for exemption to the National Futures Association ("NFA"). The designated agent must be the FCM located in the U.S. through which business is done, any registered futures association (currently NFA is the only registered futures association), or any person located in the U.S. in the business of providing services as an agent for service of process.

In June 2002, NFA implemented an electronic online registration system ("ORS") to replace a paper-based registration system. As part of the ongoing program of updating the registration process, NFA has submitted to the Commission for its approval, pursuant to Section 17(j) of the Commodity Exchange Act (the "Act"),² amendments to NFA registration rules that would require applicants seeking exemption pursuant to Commission Rule 30.5 to file such petitions electronically through ORS. On July 1, 2003, the Commission approved these amendments to the NFA registration rules.

The addition of the Rule 30.5 exemption to NFA's ORS should streamline the exemption process and provide a quicker and easier way for persons to provide NFA with the required information and enable NFA to process this information more efficiently and confirm exemption from registration pursuant to Rule 30.5 more quickly. Additionally, information on persons exempt from registration pursuant to Rule 30.5 should be more readily accessible by the public, NFA, and the Commission.

II. The Rule Amendments

Under the ORS, persons submitting a petition for exemption from registration pursuant to Rule 30.5 will file a Form 7-R. When a person indicates that it wishes to process a Part 30 exemption application, the ORS will follow the applicable "path" of the online Form 7-R, requiring the person to submit the information required by Rule 30.5. Currently, Rule 30.5 does not require a petition for exemption to be completed on a particular form, but instead requires the petition to be in writing and sets forth the information that must be included in the petition. The Commission is amending Rule 30.5 to make clear that a petition for exemption must be filed on a Form 7-R completed in accordance with the instructions therein.

Current Rule 30.5 provides the postal address where the petition should be submitted to NFA. As the petition will now be submitted through the ORS, it is unnecessary to include the postal address in the rule.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")³ requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being adopted herein will not place any additional burdens since all persons seeking the exemption provided for pursuant to Rule 30.5 are already subject to the filing requirements of Rule 30.5. To the contrary, the amendments will help to streamline and simplify the current exemption procedures. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA⁴ that the proposed rules 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")⁵ 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. The rule amendments do not require a new collection of information on the part of any entities subject to the proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements. The Commission has submitted hard copies of how the new Form 7-R path will appear in the electronic registration system to the Office of Management and Budget.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and

³ 5 U.S.C. 601 *et seq.*

⁴ 5 U.S.C. 605(b).

⁵ 44 U.S.C. 3501 *et seq.*

¹ Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

² 7 U.S.C. 1 *et seq.* (2000).

public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was 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.

These amendments are intended to facilitate a streamlined exemption process that would result in quicker processing of petitions. The Commission is considering the costs and benefits of these rules in light of the specific provisions of section 15(a) of the Act:

1. *Protection of market participants and the public.* While the amendments are expected to lessen the burden imposed upon persons submitting petitions for exemption, they do not affect the requirements to qualify for the exemption. Accordingly, they should have no effect on the Commission's ability to protect market participants and the public.

2. *Efficiency and competition.* The amendments are expected to benefit efficiency and competition by more quickly facilitating entry into the industry and by enabling information to be collected and made available in a more timely manner.

3. *Financial integrity of futures markets and price discovery.* The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The amendments being adopted herein should have no effect on the risk management practices of the futures and options industry.

5. *Other public interest considerations.* The amendments, in facilitating the ongoing program of building an online registration system, are expected to result in a system that is easier to use and more efficient in its processing exemption applications. Additionally, the system should permit more information about persons exempt from registration pursuant to Rule 30.5 be readily accessible by the public more quickly.

After considering these factors, the Commission has determined to adopt the amendments discussed above.

D. Administrative Procedure Act

The Commission has determined that the amendments discussed herein relate solely to agency organization, procedure, and practice. Accordingly, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.⁶ The Commission further finds that, because the amendments relieve a restriction, in so far as they provide for a process that will make the submission of a petition for exemption under Rule 30.5, and the subsequent confirmation of such exemption, quicker and more efficient, and the amendments have no adverse effect upon a member of the public, there is good cause to make it effective less than thirty days after publication in the **Federal Register**.⁷

List of Subjects in 17 CFR Part 30

Commodity futures, consumer protection, fraud.

■ For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for Part 30 is revised to read as follows:

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

■ 2. Section 30.5 is amended as follows:

- a. By revising the introductory text;
- b. By revising paragraph (a);
- c. By revising paragraph (b); and
- d. By removing paragraph (e).

The revisions read as follows:

§ 30.5 Alternative procedures for non-domestic persons.

Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, may apply for an exemption from registration under this part by filing with the National Futures Association a Form 7-R completed and filed in accordance with the instructions thereto and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under Part 30 through a registered futures commission merchant

or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association, or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer. If the written agency agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement, shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the National Futures Association. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person that is party to the agreement shall immediately notify the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of

⁶ 5 U.S.C. 553(b)(3)(A).

⁷ See 5 U.S.C. 553(d).

a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

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Issued in Washington, DC, on July 1, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 141, 201, 260, 352, and 357

[Docket No. RM02-14-000; Order No. 634]

Documentation Requirements for Cash Management Programs Issued June 26, 2003

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule.

SUMMARY: In order to protect the customers of jurisdictional companies, the Federal Energy Regulatory Commission is amending its regulations to implement documentation requirements for cash management programs. The Commission is also seeking comments on new reporting requirements that require FERC-regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent.

This initiative responds to recent investigations by FERC and others that revealed large amounts of funds in cash management programs (at least \$16 billion) that, in many instances, were not formalized in writing. The interim rule is intended to protect the ratepaying customers of FERC-regulated entities by providing greater transparency concerning cash

management programs. Additionally, it will ensure that the investing community has more and better information to evaluate the condition of these FERC-regulated entities and their financial exposure.

DATES: *Effective Date:* This rule is effective August 7, 2003.

Compliance Date: The Commission will not implement the reporting requirements in §§ 141.500, 260.400, and 357.5 until it has considered the comments filed on these requirements.

Comment Date: Comments on the new reporting requirements in §§ 141.500, 260.400, and 357.5 are due August 7, 2003.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Wayne McDanal (Technical Information), Office of the Executive Director, Division of Regulatory Accounting Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6010.

Peter Roidakis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8206.

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Appendix A—Commenters in RM02-14-000

I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is amending its regulations by implementing documentation requirements for FERC-regulated entities that participate in cash management programs. The documentation requirements are reflected in changes to 18 CFR parts 101, 201, and 352 of the Commission's Uniform Systems of Accounts for public utilities and licensees, natural gas and oil pipeline companies. The Commission, however, is not adopting the two financial prerequisites as proposed in the NOPR that would have limited participation in a cash management program when either of the two prerequisites was not met.

2. Additionally, the Commission is seeking comments on new reporting requirements that require FERC-regulated entities to file the agreements related to their cash management programs with the Commission, and require FERC-regulated entities to notify the Commission when their proprietary capital ratios drop below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent. By making this information available to the public, the investing community will have needed and better information on which to evaluate the financial conditions of FERC-regulated entities. These reporting requirements are reflected in changes to 18 CFR §§ 141.500, 260.400, and 357.5 of the Commission's regulations. The Commission will not implement the reporting requirements in these Sections until it has considered the comments filed on these requirements.

3. Cash management programs are of several different types. Some concentrate and transfer funds from multiple accounts into a single bank account in the parent company's name. Another type is known as "cash pooling" or "money pooling." This system uses a single summary account with interest earned or charged on the net cash balance position. There is no movement of funds between accounts of the entities participating in the pool. All accounts must be in the same bank, but not at the same branch. A third type, known as a "zero balance account," empties or fills the balances in an affiliated company's account at a bank into or out of a parent's account each day. This list is not exhaustive and merely describes generic features of cash management programs.