branches, offices or divisions if, in conjunction with a petition for confirmation of § 30.10 comparability relief under an existing § 30.10 Commission order, it files the following representations with the National Futures Association, Vice-President, Registration & Membership:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22019 Filed 8–25–99; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Exemption from Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend the Commission's rules and regulations on Foreign Futures and Foreign Options Transactions to include new Rules 30.12.[1] The new rule will permit certain foreign firms acting in the capacity of FCMs and IBs to accept and execute foreign futures and options orders directly from certain U.S. customers via telephone, facsimile and electronic message without having to register with the Commission.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to ''Commission Rules 30.12.''

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Formal Rulemaking

In 1987, the Commission adopted a new Part 30 to 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.[2] These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act (''Act''), which vest the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

Part 30 sets forth regulations governing foreign futures[3] and foreign option[4] transactions executed on behalf of foreign futures or foreign options customers.[5] For example, Rule 30.4 requires any person engaged in the activities of a futures commission merchant (''FCM''), introducing broker (''IB''), commodity pool operator (''CPO'') and commodity trading advisor (''CTA''), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The transactions which 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.[6]

Under Part 30, certain persons located outside the United States may obtain an exemption from registration and certain other requirements. For example, under Rule 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 U.S. foreign futures and options customers from compliance with certain 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.[7] In addition, under

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] 52 FR 28980 (August 5, 1987).

[3] ''Foreign futures'' as defined in Part 30 means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Commission rule 30.1(a).

[4] ''Foreign option'' as defined in Part 30 means ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade,'' Commission Rule 30.1(b).

[5] Pursuant to Commission Rule 30.1(c), ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.''

[6] *See* Commission rule 30.4.

[7] *See* Appendix A to Part 30; 62 FR 47792 (September 11, 1997) (''Delegation Order''). Note that persons located inside the United States may petition for an exemption under Rule 30.10 separate

Rule 30.5, the Commission may exempt foreign persons acting in the capacity of an IB, CPO or CTA from registration, provided that the person complies with certain requirements.[8]

B. Interpretation of the Registration Requirement of Rule 30.4

The Division of Trading and Markets (''Division'') has issued advisories and interpretative letters that more specifically define the scope of permissible activity under Part 30 and what activities by foreign futures and options brokers (''FFOBs'')[9] trigger the Commission registration requirement under Rule 30.4(a). In 1987, the Division issued an interpretative letter regarding registration by an FFOB that carries an FCM's customer omnibus account. The Division indicated that certain unregistered FFOBs would not be required to register pursuant to Rule 30.4 if their activities on a foreign exchange on behalf of U.S. foreign futures and options customers were limited solely to carrying foreign futures and options accounts on an omnibus basis on behalf of an FCM and to performing the services incidental thereto.[10] The Division reasoned that registration should not be required in that circumstance because of the presence of an ''intervening U.S. registrant, i.e., a U.S. FCM, to whom the rules would be fully applicable.'' [11] The Division, however, limited this relief to the members of a foreign exchange and/or the affiliates of an FCM.[12]

In 1993, the Division issued an advisory permitting certain foreign affiliates of a U.S. FCM not registered with the Commission that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account.[13] The Division reasoned that the regulatory purposes of the Act would not be adversely affected if direct contacts between certain institutional customers and certain affiliates of an FCM were permitted under circumstances where the FCM could adequately control the transactions for which its omnibus account would be obligated by such direct customer contacts.[14] Accordingly, the Division interpreted Rule 30.4 to exempt from registration those foreign affiliates [15] that have received confirmation of Rule 30.10 relief [16] who receive orders directly from ''authorized customers'' [17] for or on behalf of such customers through the FCM's customer omnibus account.[18] This relief, however, was contingent upon the FCM's compliance with certain conditions. As outlined in the Advisory, an FCM was required to institute certain procedures with regard to its ability to adequately supervise the impact of such requests on its financial condition, confirm and supervise foreign futures and options orders placed through its customer omnibus account, and maintain an audit trail to track an order from the time it is placed to the time it is cleared and reported back to the foreign futures and options

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from the comparability relief provided for in Appendix A.

[8] An exemption from registration pursuant to Rule 30.5 requires a foreign person acting in the capacity of an IB, CPO or CTA to file a petition for exemption with NFA and to designate an agent for service of process. As set forth in the most recent amendments to Rule 30.5, 64 FR 28910 (May 28, 1999), the Rule 30.5 applicant must (1) provide general background information and information regarding the firm's fitness to conduct business with U.S. customers, (2) irrevocably agree to the jurisdiction of the commission and state and federal courts in the United States with respect to activities and transactions subject to Part 30, and (3) designate an agent for service of process. The agent for service of process must be a registered FCM, a registered futures association, or any other person located in the United States in the business of providing agency services. In addition, Rule 30.5 requires that only a U.S. FCM or a foreign broker who has received confirmation of Rule 30.10 relief, infra note 15, may carry accounts for or on behalf of any foreign futures or foreign options customer.

[9] For this preamble and the proposed rule, ''foreign futures and options broker'' will mean any person located outside the United States or its territories that is a member of a foreign board of trade, as defined in § 1.3(ss) of the Act, and is licensed, authorized or otherwise subject to regulation of a foreign jurisdiction. This term has not been previously defined in any of the Advisories. In another proposed rulemaking issued on this date, the term ''foreign futures and options broker'' will be similarly defined in proposed amendments to Rule 30.1. The Commission believes that a formal definition of ''foreign futures and options broker'' is necessary to distinguish it from the definition of ''foreign broker'' for purposes of Parts 15 through 21 of the Act. Commission Rule 15.00(a)(1) (''foreign broker'' means ''any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person'').

[10] CFTC Letter No. 87–7, Comm. Fut. L. Rep. (CCH) ¶23,792 (November 17, 1987).

[11] *Id.* at 34,408.

[12] *Id.* at 34,407–408. An affiliate of an FCM who is not also a member of the relevant foreign exchange must be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of that foreign jurisdiction. In addition, the foreign affiliate must identify to the Commission and the National Futures Association the foreign clearing member through which the affiliate conducts business and agree to respond to requests for information and records concerning transactions on such foreign exchange. *Id.* at 34,408.

[13] CFTC Advisory No. 93–115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (December 23, 1993).

[14] *Id.* at 41,052.

[15] The unregistered FFOB must either have a parent/subsidiary relationship with an FCM or otherwise be affiliated through common ownership. *Id.* at 41,054.

[16] Rule 30.10 and Appendix A thereto allows the Commission to exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers engaging in those acts described by Rule 30.4(a) from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or self-regulatory organization (''SRO'') can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission issues an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country. For a more detailed discussion of the Commission's comparability analysis and the representations to be made by foreign regulators and individual foreign firms, see FR 47792, 47793 (September 11, 1997).

[17] For the purpose of CFTC Advisory No. 93–115, ''authorized customers'' meant:

(i) An FCM, IB, CPO or CTA registered as such with the Commission;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(iii) An investment company registered under the Investment Company Act of 1940 or a business development company defined in section 2(a)(48) of the Act;

(iv) An insurance company as defined in section 2(13) of the Securities Act;

(vi) A plan established by and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(vii) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *provided* that the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is a bank, savings and loan association, insurance company, or registered adviser, or that the employee benefit plan has total assets in excess of $5,000,000;

(viii) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(ix) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(x) A corporation, Massachusetts or similar business trust, or partnership, other than a pool which has total assets in excess of $5,000,000;

(xi) A natural person who individually or with that person's spouse owns a portfolio of securities and other property with an aggregate market value of at least $5,000,000;

(xii) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000;

(xiii) A foreign person substantially equivalent to those persons described in paragraph (i) through (xii) above; or

(xiv) A governmental entity (including the United States, a state, or foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency or department of any of the foregoing.

Id. at 41,052–053.

[18] *Id.* at 41,052–054.

customer.[19] With these procedures in place, unregistered foreign affiliates of a U.S. FCM that had received confirmation of Rule 30.10 relief were permitted to accept directly orders from certain institutional investors for trades to be placed in the FCM's customer omnibus account,[20] and the Commission would have access to all the pertinent financial information should a problem arise.

In 1995, the Division issued another advisory expanding the bounds of permissible direct order transmittal to include contact between certain foreign futures and options customers and foreign affiliates of U.S. FCMs that were not registered and had not received confirmation of Rule 30.10 relief.[21] Subject to additional terms and conditions, the Division determined that the regulatory purposes of the Act would not be undermined by allowing these unregistered affiliates of FCMs to accept orders directly from ''authorized customers'' for execution for or on behalf of such customers through the FCM's customer omnibus account.[22] Similar to the terms and conditions described in Advisory No. 93–115, the relief in Advisory No. 95–08 was contingent upon the satisfaction of certain conditions by the FCM. In particular, an FCM was required to ensure that customers authorized to transmit orders directly to its foreign affiliate only deal with ''designated persons,'' i.e., a class of individuals working in the office of the foreign affiliate identified by and under the direct supervision of the FCM,[23] (2) that any ''designated person'' who accepted or entered orders in other than a clerical capacity be registered with the Commission as an AP, and (3) that all ''designated persons'' at the foreign affiliate were subject to the supervision of an AP of the FCM.[24] The FCM was also required to represent to the Commission that it was liable for all acts by the foreign affiliate through its ''designated person'' whether or not the ''designated person'' is registered with the Commission, or any person who acts in such capacity whether or not designated, for or on behalf of customers of the FCM under the circumstances described within the Advisory.[25] In addition, both the FCM, and the unregistered FFOB had to undertake to provide access to original books and records upon the request of the Commission, and represent that neither was aware of any law of the relevant foreign jurisdiction that would prohibit either entity from complying with this undertaking.[26] Moreover, a qualified, unregistered FFOC was required to consent to service of process in the United States with respect to its activities which are the subject of the Advisory.[27]

In the aggregate, the interpretative letter and advisories issued by the Division regarding Rule 30.4 have restricted the foreign order transmittal process to ''authorized customers'' of U.S. FCMs contacting the FCM's foreign affiliates. Recently, the Futures Industry Association (''FIA'') has approached the Commission about a new rule regarding foreign order transmittal that would expand the relief from registration pursuant to Rule 30.4 to certain qualified, nonaffiliated FFOBs.[28] The rule proposed by FIA would not only allow unregistered, non-Rule 30.10 FFOBs to accept orders directly from U.S. customers for execution for or on behalf of such customers through the FCM customer omnibus account carried by the FFOB, but also permit unregistered, non-Rule 30.10 FFOBs to accept directly and execute these orders for the purpose of giving the trades up to another unregistered FFOB carrying the FCM's customer omnibus account.[29] FIA's proposed rule significantly expands the relief permitted by the existing interpretative letter and advisories issued by the Division.

FIA claims that, without such relief, there is a risk that sophisticated and/or institutional U.S. investors will transfer their foreign futures and options business offshore.[30] According to FIA, sophisticated investors execute more than 90 percent of all foreign domestic futures and options transactions entered into by U.S. investors.[31] These sophisticated investors desire direct access to international cash and futures markets in order to implement their trading strategies throughout the 24-hour trading day and do not require the protections afforded by the Act to less sophisticated investors.[32] These customers want to have the operational and economic efficiencies that are the natural consequence of having all of their futures and options transactions carried by a well-capitalized U.S. FCM.[33] In particular, these customers seek the lower costs associated with centralized recordkeeping, trade reconciliation, risk management and the margining of funds. FIA has noted that such an arrangement also affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.[34]

The Commission has determined to propose Rule 30.12 to address the concerns raised by FIA, and invites public comment on all aspects of the proposed rule. The Commission believes that the proposed rule would provide for a significant liberalization of existing rules and interpretative statements.

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[19] *Id.*

[20] The relief extended to certain unregistered FFOBs in Advisory No. 93–115 was limited to an FCM's institutional customer's ability to place orders directly with the FCM's Rule 30.10 qualified foreign affiliate which carried that FCM's customer omnibus account. If that foreign affiliate in turn had an omnibus account with yet another affiliated firm (or firms) with Rule 30.10 relief, the FCM's institutional customer was not permitted to use procedure described therein to place orders with other foreign affiliate of the FCM unless the trade processing and recordkeeping systems of the FCM and relevant affiliates were linked in a manner which would have permitted the FCM and relevant foreign affiliates to remain in compliance with the terms of the Advisory. *Id.* at 41,051.

[21] CFTC Advisory No. 95–08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (January 25, 1995). In Advisory No. 95–08, the Division did not modify the list of ''authorized customers.''

[22] *Id.* at 42,490.

[23] *Id.* at 42,490–491; *see* CFTC Letter No. 92–11, Comm. Fut. L. Rep. (CCH) ¶ 25,325 at 39,051 (June 25, 1992), as *modified by* CFTC Letter No. 93–83, Comm. L. Rep. (CCH) ¶ 25,949 at 41,089 (August 9, 1993) (discussing procedures necessary for an FCM to allow a foreign affiliate to handle Globex orders placed by a customer after normal business hours in the United States, a.k.a., ''passing the book'').

[24] *Id.* 42,490–491.

[25] *Id.* at 42,490.

[26] *Id.* at 42, 491.

Shortly after it issued CFTC Letter No. 95–08, the Division learned that local laws in both Japan and Hong Kong prevented firms located in those jurisdictions from removing original books and records from the country without prior notice to and consent from the appropriate regulatory agencies. *See* CFTC Letter No. 95–83, Comm. Fut. L. Rep. (CCH) ¶ 26,559 at 43, 490 (September 20, 1995). Accordingly, the Division issued a no-action position with regards to a U.S. FCM's Japanese and Hong Kong affiliates without Rule 30.10 relief, provided that the U.S. FCM making the request and affiliates agreed to provide authentic copies of the original books and records upon the request of the Commission. *Id.* at 43,491. Citing CFTC Letter No. 95–08, the Commission extended this avenue of relief to all U.S. FCMs with Japanese and Hong Kong affiliates. Delegation Order, 62 FR at 47795, n.31.

[27] CFTC Letter No. 95–05, ¶ 26,300 at 42,491.

[28] Letter from Ronald H. Filler, President, FIA's Law and Compliance Division, to the Division of Trading and Markets, dated February 18, 1999. The FIA proposal did not restrict FCM participation to those firms that met certain minimum capital requirements, nor did it limit the category of foreign brokers to those that were clearing members of foreign exchange. The Commission believes that these limitations are essential and as discussed below, has incorporated those provisions into the proposed rule.

[29] *Id.* at Appendix A, p. 4 (''Example 4. Transaction Executed by Executing Firm and Given-Up to Firm Carrying US FCM Customer Omnibus Account'').

[30] *Id.* at 4.

[31] *Id.* at 2.

[32] *Id.* at 3.

[33] *Id.*

[34] *Id.*

II. Proposed Rule 30.12

As the Commission noted in its adoption of Part 30, ''the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex.'' [35] The Commission believes that it is appropriate to amend provisions of Part 30 at this time to continue the Commission's efforts to update and to modernize its regulations. This effort is particularly appropriate now, when many futures and options exchanges are accessible 24 hours per day and customers, particularly sophisticated customers, want prompt access to exchanges globally.

Specifically, the Commission proposes to allow certain foreign firms with sufficient capital and regulatory oversight to directly receive foreign futures and options orders from certain sophisticated U.S. customers without having to register with the Commission, regardless of whether such firm has received confirmation of Rule 30.10 relief or is an affiliate of a U.S. FCM, or whether such firm carries the FCM's customer omnibus account.[36] Further, a qualified customer of an FCM may, with the consent of the FCM,[37] directly place a foreign futures and/or options order with an unregistered FFOB who either carries the FCM's customer omnibus account, or transfers the trade pursuant to a give-up arrangement to the unregistered FFOB that carries the FCM's customer omnibus account, without requiring either FFOB to register or obtain a Rule 30.10 exemption. Such a rule will permit qualified U.S. investors to select execution and clearing firms based upon their analysis of the respective services that each firm provides. Under the proposed rule, a qualified investor would be able to execute foreign futures and options trades through unregistered FFOBs without having to sacrifice the operational and economic efficiencies offered by a single U.S. global clearing firm, such as centralized recordkeeping, trade reconciliation, and the margining of funds.

In proposing Rule 30.12, the Commission has also sought to protect customers and to minimize systemic risk. Both of these concerns were implicated in the recent failure of Griffin Trading Company (''Griffin''), which is instructive here. Late last year, a London customer of Griffin placed orders on Eurex Deutschland, a German electronic futures and options exchange, through an executing broker in London with instructions to give up the trades to the clearing firm with which Griffin maintained a customer omnibus account. The customer's orders executed by the executing broker for give-up to Griffin's customer omnibus account far exceeded the customer's ability to pay and exceeded the amount of funds on margin in the customer's account. While Griffin itself presumably would not have executed the customer's voluminous orders, the unaffiliated executing broker did. Since neither the customer nor Griffin was able to meet the margin calls issued by the broker carrying Griffin's customer omnibus account, Griffin defaulted and ultimately became insolvent.

It would be impossible to fashion regulations that would adequately protect against every rogue customer placing trades in excess of his financial resources; nor can the Commission guarantee that no broker will ever fail. Rather, the Commission must strike a reasonable balance between permitting and encouraging market efficiency and growth, and protecting against known risks, particularly those that have systemic implications. Accordingly, the Commission proposes to permit direct order transmittal to unregistered FFOBs only if the primary participants in direct foreign order transmittal (e.g., the customer, the U.S. FCM and the FFOB) posses the sophistication and the financial resources to mitigate the risk that any default or failure by an individual customer or firm will threaten the integrity of the market itself or cause other customers to lose their money. Had Griffin, the executing broker and the London customer been required to follow the proposed rules, the customer could not have lawfully placed the trades that resulted in Griffin's collapse because all of the rule's eligibility requirements would not have been met.

Under the proposed rule, an FFOB that is not registered with the Commission and has not received confirmation of Rule 30.10 relief will be permitted to receive orders directly from certain U.S. customers for execution on a foreign exchange only under the circumstances described below. The exemption from registration for qualified, unregistered FFOBs does not apply to the solicitation of U.S. foreign futures and options customers. Under the proposed rule, the qualified customer, or the U.S. FCM acting on its behalf, must initiate contact with the FFOB in an effort to establish a transactional relationship with consent of the U.S. FCM that carries its account. Once the transactional relationship is established, the FFOB may then provide services incidental to that relationship, including the provision of up-to-date market information to the customer and the confirmation of any trades placed by the customer directly with the FFOB. At no time may the qualified FFOB solicit current or prospective foreign futures and options customers, direct the trading in any authorized foreign futures and options customer account, or engage in any other activity that would require registration under the Act without an appropriate exemption.

A. Eligible Participants

(1) Authorized Customers

The Commission proposes to limit direct foreign order transmittal to only the most sophisticated of U.S. investors. In the past, the Commission has identified particular groups of investors who do not require the full customer sales practice protections afforded by the Act.[38] The Commission believes that the risks inherent in the procedures permitted by the proposed rule require a distinct, more narrowly-defined class

[35] 52 FR at 28980.

[36] For the purpose of this proposed rulekmaking, ''customer omnibus account'' means an account in which the transactions of one or more customers are combined and carried in the name of the originating FCM rather than separately.

[37] Since ultimate responsibility for trades executed through the customer omnibus account lies with the FCM, the customer must receive approval from the FCM before engaging in direct foreign order transmittal.

[38] For example, in part 4 of the Commission's rules, the Commission defined certain investors to be ''qualified eligible participants'' (''QEPs'') and ''qualified eligible clients'' (''QECs'') for the purpose of allowing CPOs and CTAs, respectively, to avoid certain registration, disclosure, recordkeeping and reporting obligations with respect to activities undertaken in connection with these sophisticated persons. Working with the definition of an ''accredited investor,'' as defined by Regulation D of the Securities Act, 17 C.F.R. 230.501–230.508, the Commission defined QEP and QEC status by means of ''objective criteria that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments.'' 57 FR 3148, 3151 (January 28, 1992) (proposed Rule 4.7); 57 FR 34853, 34854 (August 7, 1992) (final Rule 4.7).

Similarly, the Commission adopted Parts 35 and 36 to allow certain sophisticated investors to engage in swaps and contract market transactions, respectively, in the absence of any Commission oversight. For the purpose of defining ''eligible swap participant'' for Part 35, the Commission generally used the list of ''appropriate persons'' set forth in new section 4(c)(3)(A) through (J) of the Act and utilized the authority granted by section 4(c)(3)(K) to include other persons. 58 FR 5587, 5589 (January 22, 1993). For the purpose of defining ''eligible participant'' for Part 36, the Commission created a class of sophisticated persons derived from the list of ''appropriate persons'' and the definition of ''eligible swap participant.'' 60 FR 51323, 51328 (October 2, 1995).

of sophisticated investors, called ''authorized customers'' for the purpose of this rule. Proposed Rule 30.12 will allow authorized customers to enter into transactions with parties that may or may not be (1) subject to the jurisdiction of the courts of the United States or the Commission's reparations or arbitration program, nor (2) supervised or controlled by a U.S. FCM. As a result, the transactions may implicate laws, rules, regulations, customs and/or usages that offer different or diminished protection from those that govern transactions on U.S. exchanges. Accordingly, the Commission seeks to identify those sophisticated investors who it reasonably believes will appreciate the additional risk associated with transmitting orders to foreign brokers not registered or supervised by the Commission and who are sufficiently well-capitalized to withstand the risk of such transactions. Note that, unlike the exemption granted to eligible swap participants pursuant to Part 35, proposed Rule 30.12 would focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA.

The Commission believes that financial institutions have the sophistication to manage and appreciate the risk of such transactions. These institutions include banks, savings associations, credit unions, insurance companies, investment companies subject to the regulation under the Investment Company Act of 1940, broker-dealers subject to regulation under the Securities Exchange Act of 1934, and FCMs. Moreover, these institutions are subject to ongoing regulation regarding, among other things, their financial condition.

Similarly, futures industry professionals, such as CPOs and CTAs, generally obtain professional licenses by passing proficiency exams which cover, among other things, the risks associated with commodity markets. However, their proficiency may not necessarily include an understanding of the risks of dealing in foreign futures and options. As a proxy for such understanding, the Commission proposes to require foreign brokers seeking relief under proposed Rule 30.12 to only accept orders from CPOs and CTAs that ''have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments.'' [39] In a like manner, business associations (including, but not limited to, corporations, proprietorships and partnerships) may not possess the financial acumen to appreciate adequately the risks of direct foreign order transmittal, and therefore, should also be required to maintain a significant asset level as a proxy for their financial sophistication. However, since business associations are putting their own funds at risk, and not the funds of a third party investor, the Commission proposes to require a lower level of net assets to serve as a proxy for financial sophistication. Accordingly, the Commission proposes to define authorized customer to include those CPOs and CTAs with $50,000,000 in funds under management, and those business associations with $10,000,000 in net assets, as well.

In addition, the Commission proposes not to include customer floor brokers [40] and floor traders in the definition of authorized customers.[41] U.S. floor brokers and floor traders may be well=versed in the risks of trading on U.S. futures exchanges, but are not required to be experts in trading foreign futures and options. For similar reasons, the Commission proposes not to include in the definition of ''authorized customer'' employee benefit plans and state and local government entities. It is important to note that, despite their exclusion from the list of authorized customers, small CPOs and CTAs, as well as state and local government entities and employee benefit plans, may continue to place orders for foreign futures and options through a U.S. FCM or a Rule 30.10 firm, in accordance with Part 30 of the regulations.

The Commission requests comments specifically addressed to whether these ''authorized customers'' eligibility requirements are appropriate and whether net asset, net worth or other financial criteria should be increased or decreased.

The Commission's proposed eligibility requirements for ''authorized customers'' apply equally regardless of whether the foreign executing broker directly receiving the order carries the FCM's customer omnibus account, or gives up the trade for clearing to either the foreign broker carrying the FCM's omnibus account or directly to the FCM. The Commission believes that, in order to simplify the operational aspects of complying with and enforcing the rule, one uniform standard should define ''authorized customers.'' For example, if the minimum financial requirements for authorized customers differed depending on whether there was a give-up trade, then a customer might be permitted to utilize direct foreign order transmittal for orders placed only in those jurisdictions where the FCM maintains an omnibus account. Thus, the U.S. FCM would have to create and maintain separate lists of those investors qualified to place orders on each exchange, and implement internal procedures necessary to monitor and apply the bifurcated rule. Similarly, a rule requiring different standards for those firms executing orders placed directly in an FCM's customer omnibus account and those firms executing orders pursuant to a give up arrangement would unnecessarily prejudice U.S. FCMs that do not maintain numerous customer omnibus accounts abroad. Accordingly, the Commission proposes a single standard to identify which ''authorized customers'' can participate in direct foreign order transmittal.

(2) U.S. FCM Carrying Brokers

The Commission also proposes to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds minimum requirements. In a typical FCM-customer relationship, the FCM limits the size of any one customer's open positions based upon the customer's financial condition and creditworthiness. These trading limits are generally correlated to the amount of assets available to the customer to satisfy its contractual obligations, and serve to protect the FCM (and derivatively, other market participants) in the event that a customer's aggregate position declines significantly. Should the customer place an order directly with an FCM that exceeds the customer's trading limits, the FCM may reject the order. If the FCM does not reject the order, and the customer cannot deposit additional funds to cover any subsequent loss, then the FCM will have to use its own capital to satisfy the margin call from a clearinghouse or clearing broker or it will be in default.

Under the proposed rule, an FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated

[39] *See, e.g.*, 57 FR 3148, 3151.

[40] ''Floor Broker'' means ''any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market.'' Section 1a(8) of the Act.

[41] ''Floor Trader'' means ''any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market.'' Section 1a(9) of the Act.

FFOB.[42] More specifically, an authorized customer may place trades with an FFOB in multiple international markets without the immediate knowledge of the FCM. Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thus mitigate against the increased systemic risk.[43] Accordingly, the Commission proposes to require FCMs whose authorized customers use direct foreign order transmittal to possess either $50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5)[44], or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).[45] The FCM's compliance with this requirement will be determined by reference to the most current Form 1–FR filed (or required to have been filed) by the FCM with the Commission. With either amount of capital in reserve, the FCM would more likely be able to satisfy the obligations of its authorized customers without implicating the integrity of the market as a whole or impacting other customers. In addition, the alternative minimum capital requirement will allow smaller FCMs to participate in the direct foreign order transmittal process, provided that they maintain a proportionate amount of excess capital to mitigate the risk associated with the activities of their authorized customers.[46] Should an FCM fail to satisfy both of the minimum financial requirement alternatives outlined above, it may seek relief from this requirement by petitioning the Division for a no-action position accordance with Rule 140.99.

The Commission requests comments specifically addressed to whether these thresholds are appropriate in light of the increased systemic risk associated with direct foreign order transmittal and whether other financial criteria should be applied to determine the eligibility of a U.S. FCM to participate in the process.

The FCM is responsible, along with the unregistered FFOB, for determining which of the FCM's customers qualify as authorized customers and for ensuring that the FCM maintains excess capital as required by the rule. An FCM's breach of either of these core obligations shall be considered a violation of the proposed rule. In addition, the proposed rule requires each participating FCM to also establish, or continue to maintain, reasonable procedures to facilitate compliance with the other obligations imposed by the proposed rule regarding its ability to supervise adequately the impact of such orders on its financial condition, confirm and supervise foreign futures and options orders placed through its customers omnibus account, and maintain an audit trail to track an order from the time it is placed in the customer omnibus account to the time it is cleared and reported back to the foreign futures and options customer. An FCM's breach of any of these obligations shall be considered a violation of the proposed rule. Note that nothing in the proposed rule discharges an FCM of its duty to comply with the requirements set forth in the Act, including, but not limited to, its obligation to maintain the secured amount set forth in Rule 30.7.

(3) Foreign Futures and Options Brokers

The Commission also proposes to specify which FFOBs may receive foreign futures and options orders via direct foreign order transmittal from U.S. customers without being required to register or obtain Rule 30.10 relief. Absent registration with the Commission, the Commission believes that FFOBs should be, at a minimum, registered, licensed or otherwise subject to regulation in the jurisdiction in which they are located. While the Commission recognizes that such registration, licensing or other regulation may offer different or even diminished protection to U.S. investors (and carrying brokers), authorized customers and qualified FCMs will know that the unregistered FFOB is subject to the jurisdiction of a foreign regulatory authority. In addition, the Commission believes that an FFOB's decision to register abroad evidences its intent to act according to the governing statutes. Accordingly, the Commission proposes that FFOBs not registered with the Commission that accept orders pursuant to the guidelines of proposed Rule 30.12 be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of the foreign jurisdiction in which they are located.

The Commission also proposes to require unregistered FFOBs seeking to accept orders via direct order transmittal to demonstrate an ability to mitigate against the effect of default on the exchange on which the order is placed in the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades. As one alternative, the Commission proposes to require that an unregistered FFOB that accepts orders from authorized persons in accordance with Rule 30.12 be a clearing member (or a majority-owned affiliate thereof) on the exchange on which the trade is executed. Although minimum capital requirements for FFOBs vary from jurisdiction to jurisdiction, in general, clearing members must maintain greater capital. In the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades, the clearing member, or derivatively, its majority-owned affiliate, would be able to prevent a series of potential defaults by other intermediaries and/or counterparties by absorbing the loss. As a second alternative, the Commission proposes to allow those unregistered FFOBs affiliated with FCMs to accept orders from authorized persons in accordance with proposed Rule 30.12. As described in the existing advisories, the Commission believes that an FCM and its affiliates have a relationship that fosters the ability to exchange information as necessary to prevent an authorized customer from exceeding its trading limits without authorization and thereby putting the affiliate and the FCM at risk. Accordingly, the Commission proposes that unregistered FFOBs operating pursuant to proposed Rule 30.12 be clearing members on the exchange on which the order is executed, a majority-owned affiliate of a clearing member located in the

[42] Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the laws, rules and regulations of the exchange governing such a transaction.

[43] While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

[44] Commission Rule 1.17(c)(5).

[45] Commission Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various statutorily defined amounts, including:

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: *Provided*, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

[46] The Commission notes that as of March 31, 1999, 41 out of the 200 firms currently registered as FCMs would not satisfy the threshold financial requirements. Of those 41, only 14 (or 7% of the total number of FCMs) carry accounts on behalf of foreign futures and options customers.

jurisdiction in which the trade is executed or be an affiliate of the U.S. FCM that carries the authorized customer's account.

The Commission request comments specifically addressed to whether these requirements for unregistered FFOBs are appropriate in light of the increased risk associated with direct foreign order transmittal.

B. Procedural Safeguards

In addition to limiting direct order transmittal to a select class of investors, carrying brokers, and FFOBs, the Commission proposes to require carrying brokers to perform certain tasks designed to apprise authorized customers of the risks of dealing directly with a foreign broker and to mitigate against the risks of customer default. Under both FIA's proposal and the Commission's proposed rule, the U.S. FCM carrying the account of an authorized customer will be required to furnish an additional risk disclosure document to authorized customers advising them of the risks of placing orders directly with an unregistered foreign broker before the authorized customer contacts any FFOB. While the Commission is sensitive to the costs imposed upon carrying brokers by an additional disclosure requirement, it believes the additional disclosure is necessary in light of the risks associated with direct foreign order transmittal. In addition, the U.S. FCM will be required to establish guidelines for direct contacts between any of its authorized customers and any FFOB exempt from registration under the proposed rule, and devise appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets. The Commission believes that these requirements will serve to further mitigate the increased systemic risk associated with direct foreign order transmittal by promoting the flow of relevant information among the parties to the transaction.

This proposed rule will apply to transmittal of orders to an FFOB by telephone, facsimile and electronic mail messages. The rule shall not address the transmission of orders via a screen-based direct trading system or automated order routing system for execution on an electronic foreign exchange. The relief under the proposed rule also is not available to any FFOB that directly carries the customer account for any foreign futures or options customers,[47] unless the FFOB has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures [48] or is registered with the Commission as an FCM.

Note that this proposed rule would replace prior Commission advisories as the sole source of authorization for those unregistered FFOBs that directly accept orders from foreign futures and options customers.[49] In addition, note that the proposed rule does not alter any obligation to comply with other provisions of the Act, or any existing regulatory obligations to the Securities and Exchange Commission or state securities administrators. The Commission seeks comments on this proposed rule at that time and invites comment regarding any other amendments to Part 30 that may be appropriate in light of these proposed rules.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules 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 rules on such entities in accordance with the RFA.[50] The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[51] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[52] Due to the minimum capital requirements for CTAs under proposed Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the proposed rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the 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 May 26, 1999. Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC, 20581 (202) 418–5160.

[47] The relief described herein will extend to those FFOBs that accept orders directly from an authorized customer of a U.S. FCM that maintains a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with FFOBs on various foreign exchanges, provided that the U.S. FCM independently satisfies the minimum capital requirements prescribed by the proposed rule, and the U.S. FCM, its foreign affiliate and the FFOB otherwise comply with the conditions outlined therein.

[48] Unlike an unregistered FFOB, a Rule 30.10 firm must, among other things, consent to jurisdiction in the United States, agree to provide access to its original books and records, represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and consent to NFA arbitration. Information regarding the registration status of any FFOB, including those firms with exemptions from registration pursuant to Rules 30.5 and 30.10, is publicly available through NFA. Interested parties may contact NFA or access NFA's registration database, BASIC, at http://www.nfa.futures.org.

[49] The following advisories will be rescinded if the proposed rules are adopted: CFTC Advisory No. 93–115 (permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customers omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief) and CFTC Advisory No. 95–08 (extending the relief in Advisory No. 93–115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). The Commission seeks comments from any party adversely affected by the determination to rescind CFTC Advisories Nos. 93–115 and 95–08.

[50] 47 FR 18618–18621 (April 30, 1982).

[51] 47 FR 18619–18620.

[52] 47 FR 18618–18620.

List of Subjects in 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 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. 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.

2. Section 30.12 is proposed to be added to read to follows:

§ 30.12 Direct foreign order transmittal.

(a) *Authorized customers defined.* For the purposes of this section an ''authorized customer'' of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1 of this chapter, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and foreign options customer omnibus account and

(2) Is:

(i) A bank or trust company acting on its own behalf;

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); provided, that such investment company is not formed solely for the specific purpose of constituting an authorized customer;

(v) A commodity pool operator subject to regulation under the Act, provided, that such commodity pool operator has funds, securities or property exceeding $50,000,000 under management for the purpose of trading in any commodity for future delivery or commodity option on or subject to any contract market or foreign board of trade, irrespective of whether the owner of the funds, securities or property under management independently satisfies any of the requirements set forth in paragraph (a) of this section;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an authorized customer:

(A) Which has total assets exceeding $10,000,000, or

(B) The obligation which under the customer agreement with the futures commission merchant are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (a)(2)(vi)(A) of this section or by an entity referred to in paragraph (a)(2) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this section;

(vii) Any United States governmental entity, or political subdivision thereof, of any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(viii) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), acting on its own behalf, provided, however, that if such broker-dealer is a natural person or sole proprietorship, the broker-dealer must also meet the requirements of paragraph (a)(2)(vi) of this section;

(ix) A futures commission merchant subject to regulation under the Act acting on its own behalf, provided, however, if such futures commission merchant is a natural person or sole proprietorship, the futures commission merchant must also meet the requirements of paragraph (a)(2)(vi) of this section;

(x) A commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as such under the Act or Commission regulations, with total assets under management exceeding $50,000,000, irrespective of whether the owner of the assets under management independently satisfies any of the requirements set forth in paragraph (a) of this section.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and foreign options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the FCM's most recent required filing of a Form 1–FR with the Commission:

(i) Possesses $50,000,000 in adjusted net capital, as defined by Rule 1.17(c)(5); or

(ii) Possesses three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B); and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraph (c) or (d), and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3)(i) Furnishes a written disclosure statement to each such authorized customer, in a form acceptable to the Commission, advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker.

(ii) The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers [1] of [US FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an ''Executing Firm'') that execute transactions on behalf of [FCM's] customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures

transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.

- It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program will be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.
- Unless you object within five (5) days by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

[1] You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, *provided*, that such person accepts orders for foreign futures and foreign options transactions from authorized customer via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section carried by the person, but does not solicit, or accept any money, securities or property (or extend credit in lieu thereof) directly, from any U.S. foreign futures and options customer to margin, guarantee to secure any trades or contracts that result or may result therefrom; and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

(d) Exemption for foreign futures and options brokers carrying a customer omnibus account. Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will exempt from such registration, *provided*, that such person carries the customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section, and accepts orders for foreign futures and foreign options transactions from authorized customers via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement, and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22020 Filed 8–25–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 115

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

Food Labeling: Safe Handling Statements: Labeling of Shell Eggs; Shell Eggs: Refrigeration of Shell Eggs Held for Retail Distribution; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of July 6, 1999 (64 FR 36492). The document proposed to require safe handling statements on labels of shell eggs that have not been treated to destroy Salmonella microorganisms. The document also proposed to require that, when held by retail establishments, shell eggs be stored and displayed under refrigeration at a temperature of 7.2°C (45°) or less. The document was published with some inadvertent errors. This documents corrects those errors.

DATES: Submit written comments by September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–17122, beginning on page 36492 in the **Federal Register** of Tuesday, July 6, 1999, the following corrections are made:

1. On page 36497, in the second column, in the first full paragraph, the 19th line is corrected by inserting the word ''eggs'' before the word ''into''.

2. On page 36498, in the first column, in the first full paragraph, the second line is corrected by inserting the phrase ''consumption of'' before ''SE-''.

3. On page 36507, in the first column, the last paragraph is corrected after the last line by adding ''One comment suggested allowing existing safe handling labels. Several comments advocated some form of HACCP for shell eggs. Comments regarding the regulatory impact of the proposed rule are addressed below.''

§ 101.17 [Corrected]

4. On page 36513, in § 101.17(h)(8)(i)(E)(*1*), in the second column, in the second line, ''(h)(8)(iv)'' is corrected to read ''(h)(8)(i)(A)''.

§ 115.50 [Corrected]

5. On page 36514, in § 115.50(e), in the second column, in the 19th line, ''paragraphs (f)(2)(iii) through (f)(2)(v)'' is corrected to read ''paragraph (f)(2)(iii)''.

§ 115.50 [Corrected]

6. On page 36514, in § 115.50(f)(1)(ii)(D), in the third column, in the fourth line, ''(g)(4)'' is corrected to read ''(f)(1)(v)''.

§ 115.50 [Corrected]

7. On page 36514, in § 115.50(f)(1)(iv), in the third column, in the forth line, ''(g)(1)'' is corrected to read ''(f)(1)(i)''.