

By letter dated March 6, 2002, ASXF petitioned the Commission on behalf of its Participants ("firms"), located and doing business in Australia, for an exemption from the application of the Commission's part 30 rules to those firms. In support of its petition, ASXF states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act ("Act") and the rules thereunder.

Based upon a review of the petition, supporting materials filed by ASXF and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have been met and that compliance with applicable Australian law and ASXF rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by ASXF as eligible for the relief granted herein from:

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;
- Those sections of part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in part 30; and
- Those sections of part 1 of the Commission's rules relating to books and records which apply to transactions subject to part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Australia.

This determination to permit substituted compliance is based on, among other things, the Commission's

finding that the regulatory scheme governing persons in Australia who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, the customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, ASXF, and the Australian regulatory authorities on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Australia, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, such as the antifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of ASXF for products that customers located in the U.S. may trade.<sup>4</sup> The relief does not extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.<sup>5</sup> Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to

foreign brokers.<sup>6</sup> The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC<sup>7</sup> that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Australia; such firm is engaged in business with customers in Australia as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers resident in the U.S. will be made on or subject to the rules of ASXF and the Commission will receive prompt notice of all material changes to the relevant laws in Australia, any rules promulgated thereunder and ASXF rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Australian customers under all relevant provisions of Australian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the part 30 rules, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.<sup>8</sup>

(2) Each firm seeking relief hereunder must represent in writing that it:

<sup>6</sup> See, e.g., 17 CFR Parts 17 and 21 (2002).

<sup>7</sup> As described below, these representations are to be filed with NFA.

<sup>8</sup> ASIC represented to the Commission that the existing Memorandum of Understanding governing the sharing of information between ASIC and the Commission "will extend to activities of the ASXF and its members." See Letter from Greg Tanzer, Executive Director, Regional Coordination & International Relations for ASXF, to Jane Kang Thorpe, Director for the Division of Clearing and Intermediary Oversight, dated May 16, 2003.

<sup>4</sup> See, e.g., Sections 2(a)(1)(C) and (D) of the Act.

<sup>5</sup> See, e.g., 17 CFR Part 18 (2002).