

(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);

- 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 the U.K.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in U.K. 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 that all firms immediately notify FSA if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of assets of appropriate customers that is designed to preclude the use of such customer assets to satisfy house obligations and requires separate accounting for such assets, augmented by a compensation scheme designed to compensate customers whose assets are segregated and who have suffered a loss as a result of fraud and/or insolvency of a firm;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

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

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements 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 and FSA and the availability of related mechanisms for sharing monitoring information with the Commission on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in U.K., position data, data on firms' standing to do business and financial condition, and for cooperating with the Commission and NFA in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, 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 an RIE, DIE, or a regulated Market for products that customers located in the U.S. may trade.²⁴ 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.²⁵ 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.²⁶ 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.²⁷ 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 FSA must present in writing to the Commission that:

(a) Each firm of which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the

U.K.; such firm is engaged in business with customers in the U.K. 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 89a(2) of the Act, 7 U.S.C. § 12(a)(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 the 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) It will provide the Commission with prompt notice of all material changes to the relevant laws in the U.K., or any rules promulgated thereunder;

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

(e) It will cooperate with the Commission in connection with information sharing pursuant to the FISMOU.

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

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Acknowledges that it can be required by FSA to provide to FSA immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the U.K. and that FSA will cooperate in providing access to such books and records in accordance with the FISMOU;

(d) Consents that all futures and options transactions with respect to customers located in the U.S. will be made on or subject to the rules of an RIE, DIE located outside the U.S., or Regulated Market, and will be undertaken consistent with the Financial Services and Markets Act 2000 and the rules and guidance set forth in the FSA Handbook;

(e) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified from directly applying to do business in the U.S. under Section 8a(2) of the Act, 7 U.S.C. § 12(a)(2);

(f) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program; provided, however, that the firm may require its customers resident in the U.S. to execute the consent attached hereto as

²⁴ See, e.g., Sections 2(a)(1)(C) and (D) of the Commodity Exchange Act.

²⁵ See, e.g., 17 CFR Part 18 (2000).

²⁶ See, e.g., 17 CFR Parts 17 and 21 (2000).

²⁷ See, also, CFTC Interpretative Letter 03-28 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,559 (July 25, 2003) (no-action letter permitting a specific foreign entity that has previously been granted exemption from registration by a Commission order issued under Rule 30.10 in connection with foreign futures and options to also act as an introducing broker with respect to trades executed on U.S. markets for U.S. institutional customers without registering as an introducing broker).