

BURSA MALAYSIA DERIVATIVES BERHAD
Date: 10 August 2010
Trading Participant Circular: 18/2010
DIRECTIVES IN RELATION TO REGULATION 30.10 RELIEF
A. INTRODUCTION

Reference is made to Trading Participant Circular No.13/2010 dated 23 June 2010.

As stated in the above circular, the US Commodity Futures Trading Commission ("CFTC") had issued an order dated 15 June 2010 to Bursa Malaysia Derivatives Bhd ("the Exchange") pursuant to Regulation 30.10 of the Commodity Exchange Act ("the Order"), permitting Trading Participants of the Exchange to solicit and accept orders and customer funds directly from U.S. customers for trading on Bursa Malaysia Derivatives Bhd ("the Exchange") without having to register with the CFTC as futures commission merchants ("FCM") ("Regulation 30.10 Relief") .

B. DIRECTIVES

A Trading Participant intending to open a Client Account for a Client (as defined in the Rules of Bursa Malaysia Derivatives Bhd ("Rules of Bursa Derivatives")) located in the US as stated in the Regulation 30.10 Relief must first apply to avail itself of the Regulation 30.10 Relief. A Trading Participant intending to avail itself of the Regulation 30.10 Relief must apply to the Exchange to be designated as an entity that is eligible for the relief and comply with the following directives issued by the Exchange:

1. A Trading Participant must comply with the procedures and requirements stated in the Information Sheet attached;
2. A Trading Participant must submit all information, documents and provide representations to the Exchange and the CFTC as stated in the Information Sheet attached and the information, documents and representations must not be false or misleading; and
3. A Trading Participant must at all times, comply with or give effect to all representations given to the Exchange, the CFTC and the National Futures Association and any other condition that may be imposed by the Exchange for the purpose of the Regulation 30.10 relief.

The above directives are issued pursuant to Rule 603.1 of the Rules of Bursa Derivatives in relation to opening of Client Accounts (as defined in the Rules of Bursa Derivatives).

Non-compliance with any of the directives stated above is a breach of the Rules of Bursa Derivatives.

C. CONTACT DETAILS

In the event of any queries in relation to this circular kindly contact the following persons:

Name	Contact Details
Ahmad Sufian Mokhtar	03-20347242 sufian@bursamalaysia.com
Shaharun Shaari	03-20347376 shaharun@bursamalaysia.com
Yeow Chae Yin	03-20347079 yeowchaeyin@bursamalaysia.com

Bursa Malaysia Berhad 303632-P

Please be informed that this circular is available on Bursa Malaysia's website at:
http://www.bursamalaysia.com/website/bm/regulation/rules/bursa_rules/bm_derivatives.html

REGULATION

INFORMATION SHEET ON REGULATION 30.10 EXEMPTION RELIEF UNDER U.S. COMMODITY EXCHANGE ACT APPLICABLE TO TRADING PARTICIPANTS OF BURSA MALAYSIA DERIVATIVES

BHD

A. WHAT IS REGULATION 30.10 RELIEF

Introduction

Under the law of the U.S., the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained under Part 30 of the regulations issued by the Commodity Futures Trading Commission (“CFTC”) under the Commodity Exchange Act (“CEA”). These regulations include the requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, record keeping and reporting and sales practice and compliance procedures that are generally comparable to those applicable to transactions on the U.S. markets.

The CFTC has on 22 June 2010 issued an order to Bursa Malaysia Derivatives Bhd (“the Exchange”) pursuant to Regulation 30.10 of the CEA, exempting Trading Participants (as defined in the Rules of Bursa Malaysia Derivatives Berhad (“Rules of Bursa Derivatives”)) designated by the Exchange from the application of certain provisions in Part 30 upon substituted compliance with comparable requirements under the Capital Markets and Services Act 2007 (“CMSA”) and the Rules of Bursa Derivatives (“Regulation 30.10 Relief”). With this Regulation 30.10 Relief, the Trading Participants of the Exchange can solicit and accept orders and customer funds directly from U.S. customers located in the U.S. for trading on the Exchange based on the terms of the Regulation 30.10 Relief.

Please refer to **ANNEXURE 1** for the Regulation 30.10 Relief.

Exemption from Compliance with Certain CFTC Regulations

By the Regulation 30.10 Relief, the CFTC exempts Trading Participants of Bursa Derivatives subject to specified conditions, from:

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

Exemptions like these are typically granted by the CFTC to foreign exchanges that request them as long as those exchanges can offer comparable regulations and customer safeguards in their home jurisdiction.

The criteria for the CFTC's review of whether such regulations and customer safeguards are comparable are set forth in an Interpretative Statement contained in Appendix A to Part 30 of the CFTC's regulations..

In gist CFTC found that the regulatory framework governing persons in Malaysia who would be exempted 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, Bursa Derivatives, and the Malaysian 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 Malaysia, position data, and data on firms' standing to do business and financial condition.

You can access the text of Part 30 at the following link:

[Part 30 Full Text](#)

Further information on Part 30 can be viewed at CFTC's website at:

[CFTC website - Part 30](#)

Limited Marketing Order

A Trading Participant may with the Regulation 30.10 Relief, also engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set out in the CFTC's Limited Marketing Order ("LMO").

Trading Participants are advised to read the LMO carefully and ensure that they comply with the terms of the LMO when conducting marketing activities in U.S. The Trading Participants must especially be mindful of the duration that they are permitted to be in U.S. to do the marketing which currently is for not more than 30 business days in a calendar year and the types of customers that they can market to. The list of customers that Trading Participants can market to, are also in the LMO.

A Trading Participant and its employees or other representatives who engage in marketing as described above are deemed to have consented to CFTC's jurisdiction over such marketing activities by the Trading Participant's filing of a valid and binding appointment of an agent in the U.S. for service of process. This filing is done when a Trading Participant applies to avail itself of the Regulation 30.10 Relief as explained under Part D below.

Please note that under the provisions of the CMSA, only licensed persons may carry out soliciting and marketing activities [See Schedule 2 of the CMSA]. Therefore a Trading Participant must ensure that only persons who hold Capital Markets and Services Representative License for regulated activity of trading in futures contracts may carry out soliciting and marketing activities in the U.S.

Trading Participants must keep a record of their marketing activities in the U.S. because the Exchange may audit such records during the Exchange's annual inspection of Trading Participants. A record of marketing activities in the U.S. includes marketing materials, itinerary of marketing events, list of persons met, list of products promoted and the duration of any such marketing trips to the U.S.

A copy of the LMO is enclosed in **ANNEXURE 2**.

B. WHEN IS REGULATION 30.10 RELIEF REQUIRED

The Regulation 30.10 Relief is only applicable if the Trading Participant intends to engage in business directly with a U.S. customer located in the U.S. For the purpose of Regulation 30.10, a U.S customer located in the U.S includes both a U.S. citizen and a U.S. resident, irrespective of where the U.S. citizen resides and irrespective of the citizenship of the US resident.

If the Trading Participant intends to do so, it is then mandatory for a Trading Participant to apply to the National Futures Association of U.S. ("NFA") to avail itself of the Regulation 30.10 Relief.

The Regulation 30.10 Relief is not automatically available to a Trading Participant unless approved by the NFA. A Trading Participant can only commence doing business directly with a U.S. customer located in the U.S. once the approval is obtained from the NFA.

The application and approval process is explained under Part D below.

If a Trading Participant has no intention of engaging in business directly with a U.S. customer located in the U.S., no further action is required on the part of the Trading Participant. If the Trading Participant decides later in time to engage in business directly with a U.S. customer located in the U.S., the Trading Participant will then need to apply to NFA as explained above.

There is no time frame for a Trading Participant to apply to avail itself of the Regulation 30.10 Relief. A Trading Participant can apply at any time when it decides to engage doing business directly with a U.S. customer located in the U.S. The Regulation 30.10 Relief only becomes unavailable if the CFTC decides to terminate the Regulation 30.10 Relief granted to the Exchange.

C. WHAT IS NOT COVERED UNDER REGULATION 30.10 RELIEF

The Regulation 30.10 Relief:

- 1) does not exempt the Trading Participants from complying with any other provisions of the CEA or regulations issued under the CEA not specified above, governing the offer and sale of futures and options contracts traded on a foreign board of trade to customers located in the U.S. such as the antifraud provision in Regulation 30.9.

In the event of doubt Trading Participants are advised to consult a U.S. legal counsel or NFA for information on provisions of the Act or regulations that may be applicable to the Trading Participants.

- 2) is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the regulations of the Exchange for products in the Exchange that customers located in the U.S. may trade. Currently customers located in the U.S. may only trade commodity futures. U.S. persons cannot purchase or sell securities or securities-based Bursa products without an order or no-action relief from the U.S. Securities and Exchange Commission ("SEC") and/or the CFTC.

The securities products listed on the Exchange include stock index options, stock index futures, futures on Malaysian Government Securities, and single-stock futures. Should the Exchange obtain relief for these other products the Exchange will inform Trading Participants accordingly. Trading Participants must not offer the products of other exchanges to customers located in the U.S. under the Regulation 30.10 Relief.

- 3) does not extend to regulations relating to trading, directly or indirectly, on U.S. exchanges. For example, a Trading Participant trading in U.S. markets for its own account would be subject to the CFTC's large trader reporting requirements. Similarly, if such a Trading Participant were to carry positions on a U.S. exchange on behalf of foreign clients and submit such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.
- 4) is not applicable where a Trading Participant solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the Trading Participant must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

D. HOW DOES A TRADING PARTICIPANT AVAIL ITSELF OF THE REGULATION 30.10 RELIEF

Introduction

As mentioned earlier a Trading Participant does not enjoy the Regulation 30.10 Relief automatically. A Trading Participant must apply to the CFTC to avail itself of the Regulation 30.10 Relief. The NFA is delegated with the authority by the CFTC to administer the Regulation 30.10 Relief process for the CFTC. In this respect the CFTC has authorized the NFA to receive applications from firms for confirmation of the availability of the Regulation 30.10 Relief, to verify such firm's fitness and compliance with the conditions under Regulation 30.10 Relief and to grant exemptive relief from registration for qualifying firms. For further information on NFA please view the following link:

<http://www.nfa.futures.org/basicnet/>

Application Process

A Trading Participant intending to avail itself of the Regulation 30.10 Relief must apply to the Exchange to be designated as an entity that is eligible for the Regulation 30.10 Relief. The Exchange will thereafter file each Trading Participant's application with the NFA. All applications must be submitted to the contact persons for the Exchange stated in Section H.

A Trading Participant who wishes to apply for the Regulation 30.10 Relief must submit the following documents to the Exchange:

- 1) Representations to CFTC

Under the Regulation 30.10 Relief, a Trading Participant must make certain representations to the CFTC in order to enjoy the Part 30.10 Relief. These representations are stated in the Regulation 30.10 Relief. Trading Participants are required to make these representations by completing the form prescribed by the Exchange and marked as **ANNEXURE 3**. Further explanation and clarification on these representations are provided in Section E below.

2) Representations to the Exchange

A Trading Participant must provide certain representations to the Exchange for the purpose of ensuring compliance with the conditions in the Regulation 30.10 Relief. The Exchange will also be relying on these representations to make certain representations to the CFTC as required under the terms of the Regulation 30.10 Relief. A Trading Participant is required to make these representations to the Exchange by completing the form prescribed by the Exchange and marked as **ANNEXURE 4**. Further explanation and clarification on these representations are provided in Section F below.

A copy of the template for the Exchange's representations to the CFTC is marked as **ANNEXURE 5**. Further explanation and clarification on these representations are provided in Section G below.

3) Appointment of agent for service of process

It is a condition in the Regulation 30.10 Relief that Trading Participants consent 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. A Trading Participant must submit a copy of the agency agreement as confirmation of the appointment. Further details on the appointment of an agent for service of process are provided in Section E below.

The Exchange will submit the above documents to the NFA on behalf of the Trading Participant.

Approval Process

Once a filing is made with the NFA, NFA will send the filing to the CFTC for review. Upon completion of the review by the CFTC, the CFTC will provide confirmation to the NFA that the filing is in order. The NFA will in turn provide such confirmation to the Exchange who will then inform the Trading Participant. The approval for availability of the Regulation 30.10 Relief to the Trading Participant is valid until it is revoked by the CFTC.

The NFA will publish the name of the approved Trading Participant in the Background Affiliation Status Information Centre ("BASIC"). BASIC contains CFTC registration and NFA membership information and futures-related regulatory and non-regulatory actions contributed by the NFA, the CFTC and the U.S. futures exchanges. Trading Participants may access BASIC's webpage at the following link:

<http://www.nfa.futures.org/basicnet/>

The CFTC may at any time after the approving the availability of the Regulation 30.10 Relief to a Trading Participant modify or restrict the Regulation 30.10 Relief granted as it deem appropriate on its own motion.

Annual Fee Payment to NFA

The NFA levies a record maintenance fee of USD100 on an annual basis which will be due at the same time each year. The first annual due date will be a year from the confirmation of exemption is granted. For example, if confirmation of exemption is granted in August 10, 2010, the annual due date will be September 1, 2011). NFA will invoice the Trading Participant directly (and not through the Exchange) for the fees. Trading Participants may make payment to the NFA via wire transfer or a cheque issued by a U.S. bank.

NFA will deem the failure to pay the required annual registration records maintenance fee within 30 days following the annual due date as a request to withdraw the confirmation of the exemption pursuant to the Regulation 30.10 Relief.

For further enquiries on the NFA's administrative processes, please refer to the NFA contact person stated in Section H.

On-going Obligation

A Trading Participant has an ongoing obligation to notify the NFA and the Exchange if there is any material change to any of the representations made by the Trading Participant in its application for the Regulation 30.10 Relief.

Suspension/Termination of Approval

The Trading Participant's availability of the Regulation 30.10 Relief may be suspended or terminated by CFTC in the following circumstances:

- 1) any change in the status of a Trading Participant that would affect its continued eligibility for the relief, for instance, if the Trading Participant is suspended by the Exchange;
- 2) if a Trading Participant terminates its activities in the U.S.;
- 3) if the Trading Participant breaches the conditions imposed or the representations made pursuant to the Regulation 30.10 Relief; and
- 4) in any other circumstances that the CFTC determines.

Any misrepresentation or any non-compliance with any of the conditions imposed by the CFTC, NFA and the Exchange is a breach of the directives issued by the Exchange and thus a breach of the Rules of Bursa Derivatives.

E: REPRESENTATION BY TRADING PARTICIPANTS TO CFTC

A Trading Participant seeking to avail itself of the Regulation 30.10 Relief must make representations addressed to CFTC as stated in Annexure 3. An explanation and clarification of the representation required is provided below.

	Representation	Remarks
1)	Is located outside the U.S., its territories and	A Trading Participant must confirm that

	Representation	Remarks
	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.	<p>it is operating its futures broking business outside of U.S. This is because the Regulation 30.10 Relief is only available if the Trading Participant is operating its business outside of the U.S. and not within the U.S.</p> <p>The Trading Participant must also disclose the identity of each subsidiary and affiliate of the Trading Participant if any, domiciled in U.S. with a related business (banks/broker affiliates) and to provide a brief description of the principal business in the U.S. This is to serve as information to CFTC as to whether a Trading Participant has affiliates within the U.S.</p>
2)	Consents to jurisdiction in the U.S. under the Exchange Commodity 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 Regulation 30.5, 17 CFR 30.5	<p>A Trading Participants may appoint the following persons as an agent:</p> <ul style="list-style-type: none"> a) a FCM or U.S. affiliate; b) a person in the business of accepting service e.g. a legal firm; or c) the NFA (at no charge). <p>The Trading Participant may liaise with the NFA contact person stated in Section H in respect of appointing NFA as an agent for the service of process:</p> <p>A copy of NFA's agency agreement and the guidelines to follow where NFA is not serving as the appointed agent are marked as ANNEXURE 6. A Trading Participant must ensure that the appointment is made before it submits its application to the Exchange.</p>
3)	Agrees to provide 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 Malaysia upon the request of any representative of the CFTC or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request	<p>The CFTC or U.S. Department of Justice would contact the U.S. agent for service of process and make a written request for records, which written request would typically specify the place records are to be produced. The agent would then contact the Trading Participant. Depending upon the urgency of the request extensions of time can often be negotiated.</p> <p>The Trading Participant must inform the Exchange of the request</p>

	Representation	Remarks
		immediately. The Trading Participant must subsequently inform the Exchange of the books and records it plans to submit to the CFTC prior to submitting to the CFTC.
4)	Has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.	<p>A Trading Participant needs to confirm this.</p> <p>See the definition of principal in regulation 3.1 marked as ANNEXURE 7 and Section 8a(2) of the Act marked as ANNEXURE 8.</p> <p>The definition of principal covers:</p> <ul style="list-style-type: none"> • someone who has a title in the company e.g. CEO, COO • an individual who owns 10% or more of shares/ interest/ profits/ voting rights or has control over the futures transactions e.g. head of dealing. <p>In our context principal and employees who solicits or accepts orders from customers located in U.S. must hold Capital Markets and Services Representatives license for trading in futures contracts under the CMSA.</p>
5)	Consents to participate in any National Futures Association ("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, and consents to notify customers located in the U.S. of the availability of such a program	<p>Details of the arbitration program can be found at: http://www.nfa.futures.org/nfa-arbitration-mediation/customers.HTML</p> <p>A Trading Participant and its U.S. client may agree to opt for either arbitration under the rules of the Exchange (Rule 513) or the NFA arbitration. If a U.S. client does not agree to arbitration under the rules of the Exchange, the Trading Participant may either not open the account or agree to the NFA arbitration. NFA would be amenable to the Trading Participant and its U.S. client negotiating the location of the arbitration or even providing for a telephonic arbitration hearing.</p>

	Representation	Remarks
		However in certain rare cases involving sales fraud, for example, the NFA reserves the right to override the contractual agreement as to location if it has reason to believe that the customer has been abused in the process.
6)	Undertakes to comply with the applicable provisions of Malaysian laws and the regulations of the Exchange including those provisions that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted	This is self explanatory.

F: REPRESENTATION BY TRADING PARTICIPANTS TO THE EXCHANGE

A Trading Participant must provide certain representations to the Exchange for the purpose of ensuring compliance with the conditions in the Regulation 30.10 Relief. The Exchange will also be relying on these representations to make certain representations to the CFTC as required under the terms of the Regulation 30.10 Relief. A Trading Participant seeking to avail itself of the Regulation 30.10 Relief must make representations addressed to the Exchange as stated in Annexure 4. An explanation and clarification of the representation required is provided below.

	Representation	Remark
1)	We are located outside the U.S., its territories and possessions, and will disclose the identity of each subsidiary or affiliate of such Bursa Derivatives Participant domiciled in the U.S. with a related business (e.g., banks and broker affiliates) if any and provide a brief description of each subsidiary's or affiliate's principal business in the U.S.	This representation to the CFTC is also made to the Exchange to ensure that each Trading Participant complies with the conditions imposed by the CFTC and to enable the Exchange to take action against each Trading Participant for any breach of the conditions.
2)	We consent to jurisdiction in the U.S. under the Commodity Exchange Act (the "CEA") for activities conducted in the U.S. related to activities permitted under the Order and will file a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirement set forth in CFTC Rule 30.5, unless a currently effective valid and binding agency agreement has previously been filed by or on our behalf.	This representation to the CFTC is also made to the Exchange to ensure that each Trading Participant complies with the conditions imposed by the CFTC and to enable the Exchange to take action against each Trading Participant for any breach of the conditions.
3)	We agree to provide access to our books and records related to transactions under Part 30 required to be maintained under applicable statutes and regulations in effect in Malaysia upon the request of any representatives of the Commission or the U.S. Department of Justice at the place in the	This representation to the CFTC is also made to the Exchange to ensure that each Trading Participant complies with the conditions imposed by the CFTC and to enable the Exchange to take action against each Trading Participant

	Representation	Remark
	U.S. designated by such representative, within 72 hours, or such lesser period as specified by that representative as may be reasonable under the circumstances after notice of the request	for any breach of the conditions.
4)	Each principal and employee is registered, licensed or otherwise in good standing under the standards in place in Malaysia, we intend to engage in business with customers located in the U.S. and we have no principal or employee who solicits or accepts orders from clients located in the U.S. who would be disqualified from doing business in the U.S. under Section 8a(2) of the CEA and we agree to notify the Commission promptly of any change in that representation consistent with CFTC Rule 3.31	This representation to the CFTC is also made to the Exchange to ensure that each Trading Participant complies with the conditions imposed by the CFTC and to enable the Exchange to take action against each Trading Participant for any breach of the conditions.
5)	We consent to participate in the NFA's arbitration program that offers a procedure for resolving client disputes where such disputes involve representations or activities with respect to transactions under Part 30 and will notify the clients of the availability of the NFA program	This representation to the CFTC is also made to the Exchange to ensure that each Trading Participant complies with the conditions imposed by the CFTC and to enable the Exchange to take action against each Trading Participant for any breach of the conditions.
6)	We will maintain books and records of transactions with all clients resident in the U.S. including records of marketing activities conducted in U.S. for a minimum of five years	This requirement is imposed to facilitate the Exchange's inspection for compliance with the Regulation 30.10 Relief by the Trading Participant. The period of 5 years is following CFTC regulations that require that books and records be kept for a period of five years.
7)	We will comply with the requirements relating to the segregation of client funds as contained in the Rules of Bursa Derivatives and Capital Markets and Services Act 2007	This is self explanatory.
8)	We will supervise and accept liability for all conduct by our employees or other representatives taking place in the U.S. with respect to marketing activities	This is to ensure that the Trading Participants monitors and complies with the conditions imposed under the Limited Marketing Order.
9)	We will only conduct marketing activities within the U.S. that are reasonably limited in duration and frequency	The Trading Participant must be mindful of the duration that it is permitted to be in U.S. to do the marketing which currently is for not more than 30 business days in a calendar year
10)	All accounts opened and all orders for foreign futures or options accepted as a result of any client communications in the U.S. will be effected directly through our office in Malaysia	The Trading Participant may conduct soliciting and marketing activities in the U.S. but all client account openings and the effecting of orders must be

	Representation	Remark
		carried out in the Trading Participant's office in Malaysia.
11)	Soliciting or marketing activities occurring within the U.S. will be limited to such activities directed to specified persons, acting either for their own account or the account of another entity which is described in the CFTC's Limited Marketing Order and we will comply with the requirements in the Limited Marketing Order	The Trading Participant must ensure that marketing activities are targeted at persons specified in the Limited Marketing Order only.
12)	We undertake to comply with the provisions of Malaysian laws and the Rules of Bursa Derivatives including those provisions which form the basis upon which the exemption from certain provisions of the CEA is granted	This is self explanatory.
13)	We will notify Bursa Derivatives immediately if we or any of our principals as defined under Regulation 3.1 or employees are disqualified from registration under section 8a(2) of the CEA	The Exchange must inform CFTC of such disqualification. As such the Exchange requires the Trading Participant to provide the Exchange with such information.
14)	We will notify Bursa Derivatives immediately if there is request for books, records or information by the Commission or NFA and we will notify Bursa Derivatives of the books, records or information we will be submitting to the Commission or NFA prior to submission	As the information relates to the business of futures broking activities of the Trading Participant, the Exchange needs to be appraised on the information that will be submitted to another authority.
15)	We will notify Bursa Derivatives immediately if we become aware of any information that in our judgment affects our financial and operational viability of doing business under Part 30	<p>The Exchange has an obligation to inform CFTC of such events that would affect financial and operational viability of doing business under Part 30. As such the Exchange would require the Trading Participant to inform the Exchange of the happening of such events if it becomes aware of the same.</p> <p>Examples of the type of events that would affect a Trading Participant's financial and operational viability of doing business under Part 30 would be when a Trading Participant becomes insolvent, fails to meet capital requirements, suspension/revocation of the Trading Participant's Capital Markets and Services licence for trading in futures contracts and suspension/revocation of rights as a Trading Participant.</p>

	Representation	Remark
16)	We will notify Bursa Derivatives immediately of any change in our status that would affect our continued eligibility for the exemption granted hereunder, including the termination of our activities in the U.S.	<p>The Exchange must inform CFTC if a Trading Participant who has been granted Regulation 30.10 Relief is no longer engaged in doing business with U.S. customers located in U.S.</p> <p>Pursuant to the above, a Trading Participant must inform the Exchange immediately if it no longer intends to do any business with U.S. Customers.</p> <p>Upon receipt of the above information, the CFTC will withdraw the Regulation 30.10 Relief granted in respect of the Trading Participant. If the Trading Participant wishes to do business with U.S. customers at a further point in time, the Trading Participant would have to re-apply for the Regulation 30.10 Relief based on the process stated in Section D above.</p>
17)	All representation made to the Commission, NFA and Bursa Derivatives in relation to our application for exemptive relief under the Order are true	This is self explanatory.
18)	We will comply with conditions imposed by the Commission, NFA and Bursa Derivatives in relation to our application for exemptive relief under the Order	This is to ensure that a Trading Participant complies with the conditions imposed. Non compliance with the conditions imposed will tantamount to a breach of directive issued by the Exchange to which the Exchange can take action against the Trading Participant.
19)	We agree that any misrepresentation or any non-compliance with any of the conditions imposed by the Commission, NFA and Bursa Derivatives is a breach of the directives issued by the Exchange and thus a breach of the Rules of Bursa Derivatives	All representations and conditions imposed are regarded as part of the Rules. This is because the Part 30,10 Relief governs the conduct of the Trading Participant when dealing with customers in the U.S. and as such forms part of the conduct of Trading Participant's futures broking activities
20)	We will inform the Exchange immediately if there is any change in any of the representations given to the Exchange here or the CFTC pursuant to the Order.	This is self-explanatory.

G: REPRESENTATION BY THE EXCHANGE TO CFTC

Under the terms of the Regulation 30.10 Relief, the Exchange must make certain representations to the CFTC in respect of each Trading Participant seeking to avail itself of the Regulation 30.10 Relief. CFTC will amongst others rely on the representations made by the Exchange to determine the eligibility of the Trading Participant for the Regulation 30.10 Relief. The template for the following representations is found in Annexure 5. An explanation and clarification of the representation required is provided below.

	Representations	Remarks
1)	The Trading Participant for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Malaysia; the Trading Participant is engaged in business with customers in Malaysia as well as in the U.S.; and the Trading Participant 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)	Regulation 30.10 Relief will be only given to a Trading Participant and to relevant representative of the Trading Participant who is fit and proper and who intends to do business with a U.S. Customer located in the U.S.
2)	It will monitor the Trading Participant 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 the Trading Participant that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.	The Exchange is obligated to inform the CFTC of any change in the status of a Trading Participant that may affect its continued eligibility for the relief such as suspension of the Trading Participant. If there is any change in the status, the Regulation 30.10 Relief granted may be suspended immediately as to that Trading Participant. That suspension will remain in effect pending further notice by the CFTC or the NFA to the Trading Participant and the Exchange.
3)	All transactions with respect to customers resident in the U.S. will be made on or subject to the regulations of Bursa Derivatives and the Commission will receive prompt notice of all material changes to the relevant laws in Malaysia, any regulations promulgated thereunder and Bursa Derivatives regulations	This is self explanatory.
4)	Customers located in the U.S. will be provided no less stringent regulatory protection than Malaysian customers under all relevant provisions of Malaysian law	This is to ensure that U.S. Customers receive equal protection as any other customers who trade futures contracts on the Exchange.
5)	It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, 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 Trading Participant doing business in the U.S. under the exemption granted by	This is self explanatory. Circumstances that affect financial or operational viability have been explained in Section F.

	Representations	Remarks
	this Order	

H. CONTACT DETAILS

The Exchange's contact persons in respect of the submission of all applications for filing with the NFA are:

Encik Ahmad Sufian Mokhtar
 Head, Participants Affairs
 Participants Supervision Division
 Tel: 603-2034 7242
 Email: Sufian@bursamalaysia.com

and

Encik Shaharun Shaari
 Senior Manager, Participants Affairs
 Participants Supervision Division
 Tel: 603-2034 7376
 Email: Shaharun@bursamalaysia.com

The NFA's contact person in respect of the appointment of NFA as an agent for service of process and for further enquiries relating to Regulation 30.10 Relief is:

Ms. Yvette Christman
 Senior Manager
 Registration
 Tel: 1312.781.1427
 Email: ychristman@nfa.futures.org

[End of Information Sheet]

ANNEXURE 1

conducted beginning with fiscal year 2009 and every fifth year thereafter. More detailed instructions are given on the report forms and instructions.

(b) *Who must report-* (1) *Mandatory reporting.* A report is required from each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had transactions (either sales or purchases) directly with foreign persons in all financial services combined in excess of \$3,000,000 during its fiscal year covered by the survey on an accrual basis. The \$3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$3,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters that file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries, or parts, combined that are financial services providers or intermediaries, are \$3,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. However, submission of this information is voluntary. Because the \$3,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply to sales, to purchases, or to both.

(3) *Exemption claims.* Entities that receive the BE-180 survey but are not subject to the mandatory reporting requirements and choose not to report data voluntarily must file an exemption claim by completing pages one through

five of the BE-180 survey and returning them to BEA.

(c) *BE-180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, 2007, Sector 52-Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55-Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *Covered types of services.* The BE-180 survey covers the following types of financial services transactions (sales or purchases) between U.S. financial companies and foreign persons: Brokerage services related to equity transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services;

financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

[FR Doc. 2010-14996 Filed 6-21-10; 8:45 am]

BILLING CODE 3510-06-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is granting an exemption to firms designated by Bursa Malaysia Derivatives Berhad (Bursa Derivatives), a subsidiary of Bursa Malaysia Berhad (Bursa Malaysia), from the application of certain of the Commission's foreign futures and options regulations based upon substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Regulation 30.10, which permits persons to file a petition with the Commission for exemption from the application of certain of the Regulations set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

DATES: *Effective Date:* June 22, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew V. Chapin., Associate Director or Andrea Musalem, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418-5430 or (202) 418-5167. *E-mail:* achapin@cftc.gov or amusalem@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of

Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein.

Commission Regulations governing the offer and sale of commodity futures and option contracts traded on or subject to the regulations of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's regulations.¹ These regulations include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S., and subject to a comparable regulatory structure in the jurisdiction in which they were located, to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" (Appendix A), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Regulation 30.10.² These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the

program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Regulation 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (NFA); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.³

On July 13, 2009, Bursa Malaysia Berhad (Bursa Derivatives' holding company) originally petitioned the Commission on behalf of its member firms, located and doing business in Malaysia, for an exemption from the application of the Commission's Part 30 Regulations to those firms. Subsequently, however, and due to the corporate restructuring following the joint venture between Bursa Malaysia and the CME Group, Inc., Bursa Malaysia amended its original petition by withdrawing the request for Part 30 relief on behalf of Bursa Malaysia. The amended petition, submitted by letter to the Commission on December 30, 2009, was filed by and requests Regulation 30.10 relief solely to Bursa Derivatives and all eligible Bursa Derivatives Trading Participants. In support of its petition, Bursa Derivatives states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and option transactions on behalf of customers located in the U.S. would not be contrary to the public interest nor 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 regulations thereunder.

Based upon a review of the petition, supplementary materials filed by Bursa Derivatives and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A thereof, have been met and that compliance with

applicable Malaysian law and Bursa Derivatives rules may be substituted for compliance with those sections of the Act and regulations thereunder more particularly set forth herein.

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

- Registration with the Commission for firms and for firm representatives;
- The requirement in Commission Regulation 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 Regulation 1.55(b), 17 CFR 1.55(b), and Commission Regulation 33.7, 17 CFR 33.7, or as otherwise approved under Commission Regulation 1.55(c), 17 CFR 1.55(c);
- The separate account requirement contained in Commission Regulation 30.7, 17 CFR 30.7;
- Those sections of Part 1 of the Commission's financial regulations 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 regulations 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 Malaysia.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in Malaysia 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

¹ Commission regulations referred to herein are found at 17 CFR Ch. I (2009).

² 52 FR 28990, 29001 (Aug. 5, 1987).

³ 52 FR 28980, 28981 and 29002.

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, Bursa Derivatives, and the Malaysian 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 Malaysia, position data, and data on firms' standing to do business and financial condition.

Commission staff has concluded, upon review of the petition of Bursa Derivatives and accompanying exhibits, that Malaysia's regulation of futures and options exchanges is comparable to that of the U.S. in the areas specified in Appendix A of Part 30, as described above.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, such as the antifraud provision in Regulation 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 regulations of Bursa Derivatives for products that customers located in the U.S. may trade.⁴ The relief does not extend to regulations 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.⁵ Similarly, if such a firm were carrying positions on a U.S. exchange on behalf of foreign clients and submitted such transactions for clearing on an omnibus basis through a firm registered as a futures commission merchant under the Act, it would be subject to the reporting requirements applicable to foreign brokers.⁶ 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

Regulation 30.10 petition must represent in writing to the Commission⁷ 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 Malaysia; such firm is engaged in business with customers in Malaysia 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 regulations of Bursa Derivatives and the Commission will receive prompt notice of all material changes to the relevant laws in Malaysia, any regulations promulgated thereunder and Bursa Derivatives regulations;

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

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, 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.

(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 Regulation 30.5, 17 CFR 30.5;

(c) Agrees to provide 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 Malaysia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be

reasonable under the circumstances after notice of the request;

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

(e) 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, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Malaysian laws and Bursa Derivatives regulations that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted; and

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.⁸ Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that Bursa Derivatives members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.⁹ The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated Bursa Derivatives firm when the consents set forth in paragraphs (2)(a)–(g) have been filed. Upon filing of the notice required under paragraph (1)(b) as to any such firm, the

⁸ 62 FR 47792, 47793 (Sept. 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

⁹ See 57 FR 49644 (November 3, 1992) (permitted limited marketing of foreign futures and foreign option products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994) (expanding the relief set forth in the 1992 release to conduct directed towards "accredited investors", as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

⁴ See, *e.g.*, Sections 2(a)(1)(C) and (D) of the Act.

⁵ See, *e.g.*, 17 CFR Part 18 (2009).

⁶ See, *e.g.*, 17 CFR Parts 17 and 21 (2009).

⁷ As described below, these representations are to be filed with NFA.

relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and Bursa Derivatives.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Regulation 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option regulations and will make necessary adjustments if appropriate.

Dated: June 15, 2010.

By the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010-15021 Filed 6-21-10; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0512]

RIN 1625-AA00

Safety Zone; Marquette 4th of July Fireworks, Marquette Harbor, Lake Superior, Marquette, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Marquette Harbor, Lake Superior, Marquette, MI. This zone is intended to restrict vessels from a portion of Marquette Harbor during the Marquette 4th of July Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective from 9 p.m. on July 4, 2010, until 11 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0512 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0512 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone: 906-635-3222, e-mail: Gregory.C.Ford@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect person's and vessels against the hazards

associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for only two hours on the day of the zone enforcement. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft, piers and shore areas presents a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water presents a significant risk of serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at this event and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Marquette 4th of July fireworks display. The fireworks display is planned to occur between 9:45 p.m. and 10:15 p.m. on July 4, 2010. If the fireworks event is postponed for any reason, the fireworks display would occur between 9:45 p.m. and 10:15 p.m. on July 5, 2010.

The safety zone will be enforced from 9 p.m. to 11 p.m. on July 4, 2010. If the event is postponed for any reason, the zone will be enforced from 9 p.m. to 11 p.m. on July 5, 2010.

The safety zone for the fireworks will encompass all waters of Marquette Harbor within a 1,000-foot radius of the

ANNEXURE 2

COMMODITY-FUTURES ¶26,166, Limited Marketing Activities From a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Rule 30.10., (Aug. 17, 1994), Commodity Futures Trading Commission, (Aug. 17, 1994)

<http://prod.resource.cch.com/resource/scion/document/default/%28%40%40CFA01+59FR42156%294413d1c3da8951f7818ebaf75d2450e2?cfu=Legal>

Limited Marketing Activities From a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Rule 30.10.

Commodity Futures Trading Commission. 59 F.R. 42156. August 17, 1994. Order in full text.

Orders--Limited Marketing Activities--U.S. Location.--The category, of persons to whom firms operating pursuant to the Limited Marketing Order issued on October 28, 1992 may direct limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives has been expanded to include conduct directed towards all "accredited investors" as that term is defined in the SEC's Regulation D issued pursuant to the Securities Act of 1933.

See ¶12,825, "Liabilities--Prohibitions" division, Volume 1.

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC"), subject to the conditions specified below, is expanding the category of persons to whom firms operating pursuant to the Limited Marketing Order issued on October 28, 1992 may direct limited marketing conduct with respect to the foreign futures or option contracts within the United States through their employees or other representatives. The relief as originally issued was limited to conduct directed towards institutions and governmental entities identified in condition 5 of the Limited Marketing Order whose description in terms of status and assets has been derived generally from the definition of "qualified eligible participant" ("QEP") as that term is defined in Commission rule 4.7(a)(1)(ii), 17 CFR 4.7(a)(1)(ii). This Order will expand the relief to conduct directed towards all "accredited investors" as that term is defined in the Securities and Exchange Commission's ("SEC") Regulation D issued pursuant to the Securities Act of 1933.

EFFECTIVE DATE: August 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Francey L. Youngberg, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-89-55.

SUPPLEMENTARY INFORMATION: On October 28, 1992, the Commission issued an Order under rule 30.10, 17 CFR 30.10, to permit firms that have received rule 30.10 relief, to engage in limited marketing conduct with respect to foreign futures or option contracts within the United States through their employees or other representatives. 57 FR 49644 (November 3, 1992).

Among other conditions,¹ the Order provided that such solicitation or marketing activities occurring within the United States be limited to such activities directed towards certain institutions and governmental entities whose description in terms of status and assets has been derived generally from the definition of QEP as that term is defined in Commission rule 4.7(a)(1)(ii), 17 CFR 4.7(a)(1)(ii). The Commission noted that the Order was a first step and that absent any problems that would warrant a reconsideration of the appropriateness of permitting rule 30.10 firms to operate in accordance with the Order, the Commission may in due course expand the scope of the relief. Upon consideration of the matter, in particular, that no issues have arisen in connection with the operation of the Limited Marketing Order in the two years since its issuance, the CFTC is amending condition (5) of the Order issued on October 28, 1992 expanding the relief to be generally consistent with the term "accredited investors" as defined in section 230.501(a) of Securities Exchange Commission Regulation D promulgated pursuant to the Securities Act of 1933, 17 CFR

230.501(a), who are not already included within the scope of current condition (5) of the Limited Marketing Order.

Accordingly, condition (5) of the Order is amended as follows (new language is italic):

“(5) Such soliciting or marketing activities occurring within the United States will be limited to such activities directed to the following persons, acting either for their own account or the account of another entity which is described below:

- (a) A futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor registered as such with the Commission;
- (b) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;
- (c) An investment company registered under the Investment Company Act of 1940 or a business development company defined in section 2(a)(48) of that Act;
- (d) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (“Securities Act”), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act;
- (e) An insurance company as defined in section 2(13) of the Securities Act;
- (f) 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;
- (g) 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 such Act, which is a bank, savings and loan association, insurance company or registered investment adviser, or that the employee benefit plan has total assets in excess of \$5,000,000; or, *if a self-directed plan, with investment decision made solely by persons that are accredited investors as defined in 17 CFR 230.501(a);*
- (h) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940.
- (i) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of \$5,000,000;
- (j) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of \$5,000,000;
- (k) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of \$5,000,000;
- (l) A government entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency or department of any of the foregoing;
- (m) *A Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;*
- (n) *Any natural person whose individual net-worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000;*
- (o) *Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year, and*
- (p) *Any entity in which all of the equity owners are accredited investors as defined in 17 CFR 230.501 (a).”*

In all other respects, the terms and conditions of the Commission’s Part 30 Order issued on October 28, 1992, including the requirement that the foreign regulatory or self-regulatory organization to which the Commission’s rule 30.10 Order was issued obtain a written confirmation from the Commission that the Order applies to firms in its jurisdiction with confirmed rule 30.10 relief, remain unchanged.

List of Subjects in 17 CFR Part 30

Commodity futures, Consumer protection, Fraud.

Issued in Washington, DC, on August 4, 1994.

Jean A. Webb,

Secretary of the Commission.

Accordingly, Chapter I of Title 17 of the CFR is amended as set forth below:

PART 30--FOREIGN FUTURES AND FOREIGN 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. Appendix A to part 30 is amended by adding new center heading and listing at the end of the appendix to read as follows:

Appendix A to Part 30--Interpretative Statement With Respect to the Commission's Exemptive Authority Under §30.10 of its Rules

Marketing Activities by Firms Granted Rule 30.10 Relief

FR date and citation: November 3, 1992, 57 FR 49644; August 17, 1994, 59 FR [insert FR page number].

¹The Limited Marketing Order also required that the regulatory or self-regulatory organization to which the Commission issued 30.10 relief or its equivalent obtain written confirmation from the Commission that the Order applies to such rule 30.10 order. To date, the following regulatory or self-regulatory organizations have requested and received confirmation from the Commission that the Order will apply to their members: 1) Commission des Operations de Bourse (December 4, 1992); 2) The Securities and Investment Board (December 30, 1992); 3) Investment Management Regulatory Organization (December 30, 1992); 4) Securities and Futures Authority (December 30, 1992); 5) The Montreal Exchange (February 10, 1993); and 6) Sydney Futures Exchange (June 30, 1993). In this connection, the Commission would need to confirm the application of this expanded relief to each of the organizations referred to above.

COMMODITY-FUTURES ¶25,506, Limited Marketing Activities From a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Rule 30.10., (Nov. 03, 1992), Commodity Futures Trading Commission, (Nov. 3, 1992)

<http://prod.resource.cch.com/resource/scion/document/default/%28%40%40CFA01+57FR49644%294d7f4ad7becc7af42925483e48590d52?cfu=Legal>

Limited Marketing Activities From a United States Location by Certain Firms and Their Employees or Other Representatives Exempted Under Commodity Futures Trading Commission Rule 30.10.

Commodity Futures Trading Commission. 57 F.R. 49644. November 3, 1992. Order in full text.

Limited Marketing Activities--Rules--Relief--Foreign Transactions.--The CFTC is granting relief under Reg. §30.10 to permit firms that have received Reg. §30.10 relief to engage in limited marketing conduct with respect to foreign futures or option contracts within the U.S. through their employees or other representatives.

See ¶12,825, "Liabilities--Prohibitions" division, Volume 1.

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is granting relief under rule 30.10, 17 CFR 30.10 (1992), to permit firms that have received rule 30.10 relief,¹ to engage in limited marketing conduct with respect to foreign futures or option contracts within the United States through their employees or other representatives. The relief granted by this order, which responds to requests for clarification from certain persons granted rule 30.10 relief as to what marketing activities such relief permits to be undertaken in the United States, will apply only to firms which have both received such relief and which are located in a foreign jurisdiction whose comparable regulatory regime extends to the supervision of the activities engaged in by a firm, its employees or other representatives operating in a jurisdiction other than the licensing or "home" jurisdiction.

EFFECTIVE DATE: December 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Robert Rosenfeld, Esq., division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: Part 30 of the Commission's regulations establishes a regulatory framework governing the offer and sale of foreign futures and option contracts to persons located in the United States.² Commission rule 30.10, adopted on July 23, 1987, provides a framework pursuant to which persons located in a foreign jurisdiction which imposes a comparable regulatory regime may be exempted from certain of the Commission's part 30 rules and regulations subject to, among other things, appropriate information sharing arrangements between the Commission and relevant foreign authorities and assurances that the activities subject to regulation will be supervised by the appropriate regulatory authorities in that jurisdiction.

In adopting the exemptive provision of rule 30.10 the Commission stated that the exemption would be available only to persons located outside the United States who are subject to a comparable regulatory system and who engage in activities subject to regulation and supervision in their home jurisdiction by their home regulator.³ This restrictive application of relief was premised, in part, on the desire of the Commission to proceed in a cautious manner in the implementation of a new program which could implicate the customer protections accorded United States customers. Specifically, the Commission was concerned that conduct not occur in the United States which would not be supervised either by the Commission or the foreign regulator.

Consistent with the above, foreign firms which have received rule 30.10 relief could, from a location outside of the United States, offer or sell foreign futures or option contracts to persons located in the United States,

as long as such conduct did not violate the anti-fraud provision of Commission rule 30.9 and was not otherwise inconsistent with the provisions of the Commodity Exchange Act ("Act") or regulations thereunder or the law of the other jurisdictions in which the firm is located. This conduct could include telephone calls, mailings (both printed material as well as electronically encoded material such as compact discs or computer diskettes), or advertising in media such as radio, television or newspapers (including the transmission of advertising via computer screens).⁴ Such solicitation activities, which (in addition to the acceptance of orders)⁵ otherwise would require registration with the Commission regardless of the point of origin, currently may be undertaken by foreign firms which have been exempted from the registration requirement under a rule 30.10 order based on that firm's compliance with the rules of a comparable regulatory system.

The Commission notes, however, that policies established under one set of circumstances may not necessarily be appropriate in light of change circumstances. In particular, the existence of a four year operational history under the part 30 program, as well as requests from various foreign regulations for a more flexible interpretation of the rule 30.10 orders or equivalent arrangements to permit limited conduct within the United States, warrant a reexamination of the Commission's policy under rule 30.10 so as to determine whether conduct in the United States by employees or other representatives of rule 30.10 firms directed to existing and prospective customers can be permitted consistent with the Commission's responsibilities under the Act.

The Commission initially observes that its experience with the operation of the part 30 program has been positive. To date, over 100 firms have received rule 30.10 relief and the Commission is aware of no problems under the program. The Commission believes that the success of the rule 30.10 program as well as the existence of working relationships established under that program with foreign regulatory and self-regulatory authorities provide assurances that the conduct of rule 30.10 exempted firms through their employees or other representatives located in the United States, if of a limited duration and subject to proper supervisory controls, will not be inconsistent with the Commission's obligations under the Act to ensure appropriate customer protection.

In addition, Commission staff previously has broadened the ability of certain foreign firms to communicate with United States persons from United States locations. For example, Commission staff made clear that the use by such a firm of a United States registered introducing broker ("IB"), whether affiliated or unaffiliated, as a sales agent would not disqualify the foreign firm from eligibility for rule 30.10 relief.⁶ A Commission staff no-action position permitted representatives of a firm exempted under rule 30.10 to solicit certain U.S. institutional entities under certain specified circumstances and conditions.⁷ This relief was of limited duration, however, and required, among other things, that the representatives of the foreign firm be accompanied by a registered associated person of an affiliated Commission registered firm and that any accounts ultimately opened with the foreign firm be introduced by the Commission registered firm. More recently, Commission staff has provided guidance to a foreign futures exchange with respect to the permissible scope of activities that the members of that exchange could engage in during a limited one-day promotional event in the United States at a specified location to promote the exchange and its products to certain United States institutional customers.⁸

The above positions were based on a recognition by Commission staff that in order for rule 30.10 relief to better serve the interests of existing and prospective United States customers of rule 30.10 firms consistent with relevant customer protection concerns, certain direct contacts between such firms and their customers which would not contravene the Commission's original intent to permit marketing by firms without permanent locations in the United States could be permitted. The Commission concurs and, accordingly, has determined that firms subject to a rule 30.10 exemption should be permitted to engage in reasonably limited marketing activities in the United States with respect to foreign futures and options from a United States location with certain customers or potential customers as described and subject to the conditions specified below.

As specified below, the Commission initially is limiting its relief to conduct directed towards certain institutions and governmental entities whose description in terms of status and assets has been derived generally from the definition of "qualified eligible participant" ("QEP") as that term is defined in recently adopted Commission rule 4.7(a)(1)(ii), 57 FR 34853, 34860 (August 7, 1992). The Commission believes that direct

contacts by rule 30.10 firms through their employees or other representatives with such institutions and governmental entities, who have a high degree of sophistication and financial resources, may facilitate appropriate supervision by the relevant foreign regulator.⁹

The Commission's policy is intended only to permit marketing activities in the United States for limited periods by rule 30.10 exempted firms and their employees or other representatives. Clearly, any person who establishes a fixed location for the solicitation or acceptance of business in the United States, or whose marketing activities involve long or repeated periods within the United States that can be characterized as a *de facto* fixed presence, will be required to register with the Commission. In order to eliminate requests for guidance and to permit its new marketing policy to be implemented generally on a self-executing basis, the Commission Order includes as a condition an objective standard governing the permissible duration and frequency of conduct in the United States. Essentially, the Commission believes that for purposes of this Order marketing activity subject to regulation under part 30 which in the aggregate does not exceed thirty business days in any calendar year does not constitute a *de facto* fixed presence which would disqualify the rule 30.10 firm from eligibility for such relief.¹⁰ This relief is conditioned on the requirement that the foreign regulatory or self-regulatory organizations granted rule 30.10 relief interpret their authority to encompass supervision of firms which engage in marketing conduct from United States locations and undertake to use such authority to impelment measures to monitor compliance with the criteria of this Order.¹¹ In addition, the foreign regulatory organization to which the Commission's rule 30.10 order is issued must request that the Order herein apply to firms in its jurisdiction with confirmed rule 30.10 relief and the Commission must confirm its applicability in writing.

Based upon the foregoing analysis and pursuant to its authority under sections 2(a)(1)(A), 4 and 4c of the Act, 7 U.S.C. 2, 6 and 6c, the Commission hereby authorizes any firms soliciting or accepting orders for foreign futures or options from U.S. customers for whom relief under rule 30.10 has been confirmed to market their services from non-permanent locations in the United States without prior notification to the Commission, *Provided, That*:

- (1) The regulatory or self-regulatory organization to which rule 30.10 relief has been granted undertakes to supervise conduct by firms with such relief which takes place outside of that foreign jurisdiction through such firms' employees or other representatives under this Order;
- (2) Any such firm supervises and accepts liability for all conduct by its employees or other representatives taking place in the United States with respect to its marketing activities;
- (3) Marketing activities within the United States are reasonably limited in duration and frequency. (For this purpose, visits which do not in the aggregate exceed thirty business days in any one calendar year will be deemed to be reasonably limited);
- (4) All accounts opened and all orders for foreign futures or options accepted as a result of any customer communications in the United States will be effected directly through the foreign office of the rule 30.10 firm;
- (5) Such soliciting or marketing activities occurring within the United States will be limited to such activities directed to the following persons, acting either for their own account or the account of another entity which is described below:
 - (a) An FCM, IB, commodity pool operator or commodity trading advisor registered as such with the Commission;
 - (b) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;
 - (c) An investment company registered under the Investment Company Act of 1940 or a business development company defined in section 2(a)(48) of that Act;
 - (d) A bank as defined in section 3(a)(2) of the Securities Act of 1933 ("Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act;
 - (e) An insurance company as defined in section 2(13) of the Securities Act;
 - (f) 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;

(g) 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 such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of \$5,000,000;

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

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

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

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

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

Provided Further That:

(6) Before the Order herein may become effective as to any rule 30.10 order, the regulatory or self-regulatory organization to which rule 30.10 relief has been granted requests, and the Commission confirms in writing, the applicability of the Order herein to such rule 30.10 order.

The Commission wishes to make clear that firms and their employees or other representatives which engage in marketing conduct within the United States pursuant to this Order will be deemed by the Commission to have consented to the agent named in the agency agreement filed by the firm as a condition of rule 30.10 relief as their agent for service of process with respect to their activities regulated under the Act.

Any rule 30.10 firm operating under this Order will remain subject to all of the requirements contained in Part 30 of the Commission's regulations concerning the offer and sale of foreign futures or options to United States persons, including the antifraud prohibitions of rule 30.9. The Commission intends to evaluate the operation of this Order to determine whether the conditions noted above for the limited presence of foreign firms in the United States are appropriate. The Commission reserves the right to modify or revoke this Order, in its discretion, as it deems appropriate, including to terminate the authority granted hereunder to any specific firm operating hereto.

Issued in Washington, DC on October 28, 1992.

Lynn K. Gilbert,

Deputy Secretary to the Commission.

¹ For purposes of this Order, the term "rule 30.10 relief" will include any comparability order of the Commission under rule 30.10 granting relief from the application of certain of the Commission's part 30 rules, including registration, as well as any order which in its effect is identical to such relief (e.g., Mutual Recognition Memorandum of Understanding, 55 FR 23902 (June 13, 1990)). To date the Commission has granted the following orders under rule 30.10: 55 FR 23903 (June 13, 1990) (Mutual Recognition Memorandum of Understanding between the CFTC and the French Commission des Operations de Bourse); 54 FR 21614 (May 19, 1989) (Investment Management Regulatory Organization Limited); 54 FR 21609 (May 19, 1989) (The Securities Association ("TSA")) and 54 FR 21604 (May 19, 1989) (Association of Futures Brokers and Dealers ("AFBD")) [the AFBD and TSA have since merged to form the Securities and Futures Authority]; 54 FR 21599 (May 19, 1989) (Securities and Investments Board); 54 FR 21599 (May 19, 1989) (Montreal Exchange); 54 FR 806 (January 10, 1980) (Singapore International Monetary Exchange Limited); and 53 FR 44856 (November 7, 1988) (Sydney Futures Exchange Limited).

² 17 CFR Part 30 and Appendix A thereto, which was adopted by the Commission on July 23, 1987, 52 FR 23880 (August 5, 1987). Rule 30.1, 17 CFR 30.1, defines "foreign futures" and "foreign option" in terms contracts that are "made or to be made on or subject to the rules of any foreign board of trade. The relief granted in the order applies only with respect to foreign futures and options.

³ See 52 FR 28W, 28981 (August 5, 1997) (“It is not the Commission’s intention to grant such exemptions to persons located in the United States that solicit or accept orders for execution on a foreign board of trade”); see also Division of Trading and Markets Interpretative Letter 90-14, July 24, 1990, 2 Comm. Fut. L. Rep. (CCH) ¶24,888, and Division of Trading and Markets Interpretative Letter 88-3, January 15, 1988. Comm. Fut. L. Rep. (CCH) ¶24,085

⁴ Such activities have been deemed by the Securities and Exchange Commission (“SEC”) to constitute “solicitation” in the context of broker-dealer registration. As noted by the SEC in its release adopting rule 15a-6 (exemptions from broker-dealer registration for foreign firms), “the term solicitation includes efforts to induce a single transaction or to develop an ongoing securities business relationship. Conduct deemed to be solicitation includes telephone calls from a broker-dealer encouraging use of the broker-dealer to effect transactions, as well as advertising one’s function as a broker or market maker in newspapers or periodicals of general circulation in the United States or on any radio or television station whose broadcasting is directed into the United States.” 54 FR 30013, 30018 (July 18, 1989). See also 55 FR 18306, 18310 (May 2, 1990) (adopting SEC Regulation S).

⁵ The Commission wishes to make clear that its registration requirements do not distinguish between the solicitation or acceptance of orders. See e.g., Rule 30.4(a), 17 CFR 30.4(a).

⁶ See Division of Trading and Markets Interpretative Letter 88-3, January 15, 1988. Comm. Fut. L. Rep. (CCH) ¶24.888.

⁷ See, Division of Trading and Markets Interpretative Letter 90-14, July 24, 1990. 2 Comm. Fut. L. Rep. (CCH) 124,888.

⁸ See letter dated August 17, 1992 from Andrea Corcoran, Commission, to Patrick Stephen, Marche a Terme International de France.

⁹ The QEP definition includes a portfolio test for certain persons which is intended to reflect objective evidence of investment experience. Such prior investment experience was deemed necessary by the commission in order to ensure that investors who do not receive the specific commodity-pool related disclosures of rule 4.21 would have a relatively high degree of investment acumen and resources. See 57 FR 34853, 34855 (August 7, 1992). In the contest of direct United States marketing contacts between rule 30.10 firms and certain institutions in the United States with whom such firms could communicate directly from offshore locations, the Commission does not believe that such a portfolio standard is necessary. Specifically, the portfolio test of rule 4.7 is intended to assure prior investment experience and thereby diminish the need for the mandated disclosures in rule 4.21. In contrast, the disclosure obligations to United States customers contacted directly pursuant to this Order by a firm with rule 30.10 relief will not in any way be diminished by this Order, as rule 30.10 contemplates disclosure pursuant to the Act.

The Commission notes, however, that this Order should be viewed as a first step. Absent any problems that would warrant a reconsideration of the appropriateness of permitting rule 30.10 firms to operate in accordance with the terms of this Order, the Commission may in due course expand the Order to include any customer located in the United States.

¹⁰ This order addresses marketing and other sales activities by firms with rule 30.10 relief and their employees or other representatives from United States locations and does not encompass any other activities subject to regulation under the Act. To the extent that a rule 30.10 firm has an affiliate (which is separately incorporated or otherwise has a separate legal existence) in the United States which is registered with the Commission (e.g., an IB), the Commission wishes to make clear that such registrant’s conduct will not be attributed to the rule 30.10 firm for purposes of the limitation on duration and frequency of activities in the United States imposed by this Order. The Commission recognizes that employees or other representatives of a rule 30.10 firm may routinely conduct business in the United States that is unrelated to the Act. It is the Commission’s intent that the 30 day limit apply only with respect to conduct subject to regulation under the Act.

¹¹ It should be noted of course that notwithstanding the supervision that a foreign regulator may apply to the activities of a rule 30.10 firm operating from relevant foreign jurisdictions or in the United States

pursuant to this Order, the Commission retains its direct jurisdiction over such firms and their employees or representatives who engage in activities subject to part 30. In this connection, the Commission notes that every order granting rule 30.10 relief has required a firm seeking relief under such an order to consent to jurisdiction in the United States under the Act and file a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission rule 30.5, 17 CFR 30.5.

ANNEXURE 3

**NOTICE PURSUANT TO
EXEMPTIVE ORDER UNDER CFTC REGULATION 30.10
BY TRADING PARTICIPANT OF
BURSA MALAYSIA DERIVATIVES BERHAD**

The undersigned hereby delivers this notice on behalf of the below named Trading Participant (the "Trading Participant") of Bursa Malaysia Derivatives Berhad ("Bursa Derivatives") in connection with the Trading Participant's application to the Commodity Futures Trading Commission ("Commission") for relief under the "*Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein,*" dated June 22, 2010 (the "Order"). The Trading Participant seeks to conduct foreign futures and option transactions on behalf of customers located in the U.S. pursuant to the terms of the Order.

(1) The name of the Trading Participant is:

(2) The business address of the Trading Participant is:

(3) The firm representative of the Trading Participant is:

(4) The Trading Participant hereby represents to the Commission that it:

(a) is located outside the U.S., its territories and possessions and (*check one*)

_____ has no subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates);

_____ has the following subsidiaries or affiliates as stated below domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates):

Insert the name, address and principal business in the U.S. of each such subsidiary or affiliate if applicable.

(b) consents to jurisdiction in the U.S. under the Commodity Exchange Act (the "Act") and has filed a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5, 17 CFR 30.5.

Attach a copy of the agency agreement.

(c) agrees to provide 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 Malaysia upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) has no principal or employee who solicits or accepts orders from customers located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) 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, and consents to notify customers located in the U.S. of the availability of such a program; and

(f) undertakes to comply with the applicable provisions of Malaysian laws and Bursa Derivatives regulations that form the basis upon which the exemption from certain provisions of the Act and Regulations thereunder is granted.

IN WITNESS WHEREOF, I have hereunto set my hand this ___ day of _____,
2010.

Name of Trading Participant

By: _____
Name:
Title:

ANNEXURE 4

**NOTICE AND REPRESENTATION
BY TRADING PARTICIPANT TO
BURSA MALAYSIA DERIVATIVES BERHAD IN RELATION TO THE EXEMPTIVE
ORDER UNDER CFTC REGULATION 30.10**

We, _____, are desirous to apply to the Commodity Futures Trading Commission of U.S. (“Commission”) for relief under the “*Order Under CFTC Regulation 30.10 Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein,*” dated June 15, 2010 (the “Order”), to conduct foreign futures and option transactions on behalf of customers located in the U.S. pursuant to the terms of the Order.

Pursuant to the above we would like Bursa Derivatives’ to designate us as an entity that is eligible for the relief under the Order and thereafter to make the application for the relief under the Order on our behalf to the Commission.

For the purpose of the above application we have attached here the representation to the Commission as required under the Order.

We also further represent to Bursa Derivatives that:

- (1) we are located outside the U.S., its territories and possessions, and will disclose the identity of each of our subsidiary or affiliate domiciled in the U.S. with a related business (e.g., banks and broker affiliates) if any and provide a brief description of each subsidiary’s or affiliate’s principal business in the U.S.;
- (2) we consent to jurisdiction in the U.S. under the Commodity Exchange Act (the “CEA”) for activities conducted in the U.S. related to activities permitted under the Order and will file a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirement set forth in CFTC Rule 30.5, unless a currently effective valid and binding agency agreement has previously been filed by or on our behalf.;
- (3) we agree to provide access to our books and records related to transactions under Part 30 required to be maintained under applicable statutes and regulations in effect in Malaysia upon the request of any representatives of the Commission or the U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period as specified by that representative as may be reasonable under the circumstances after notice of the request;
- (4) each principal and employee is registered, licensed or otherwise in good standing under the standards in place in Malaysia, we intend to engage in business with customers located in the U.S. and we have no principal or employee who solicits or accepts orders from clients located in the U.S. who would be disqualified from doing business in the

U.S. under Section 8a(2) of the CEA and we agree to notify the Commission promptly of any change in that representation consistent with CFTC Rule 3.31;

- (5) we consent to participate in the NFA's arbitration program that offers a procedure for resolving client disputes where such disputes involve representations or activities with respect to transactions under Part 30 and will notify the clients of the availability of the NFA program;
- (6) we will maintain books and records of transactions with all clients resident in the U.S. including records of marketing activities conducted in U.S. for a minimum of five years;
- (7) we will comply with the requirements relating to the segregation of client funds as contained in the Rules of Bursa Derivatives and Capital Markets and Services Act 2007;
- (8) we will supervise and accept liability for all conduct by our employees or other representatives taking place in the U.S. with respect to marketing activities;
- (9) we will only conduct marketing activities within the U.S. that are reasonably limited in duration and frequency;¹
- (10) all accounts opened and all orders for foreign futures or options accepted as a result of any client communications in the U.S. will be effected directly through our office in Malaysia;
- (11) soliciting or marketing activities occurring within the U.S. will be limited to such activities directed to specified persons, acting either for their own account or the account of another entity which is described in the CFTC's Limited Marketing Order and we will comply with the requirements in the Limited Marketing Order;
- (12) we undertake to comply with the provisions of Malaysian laws and the Rules of Bursa Derivatives including those provisions which form the basis upon which the exemption from certain provisions of the CEA is granted;
- (13) we will notify Bursa Derivatives immediately if we or any of our principals as defined under Regulation 3.1 or employees are disqualified from registration under section 8a(2) of the CEA;
- (14) we will notify Bursa Derivatives immediately if there is a request for books, records or information by the Commission or NFA and we will notify Bursa Derivatives of the books, records or information we will be submitting to the Commission or NFA prior to submission;

¹ For this purpose, visits which do not in the aggregate exceed 30 business days in any one calendar year will be deemed to be reasonably limited. See Limited Marketing Activities From the United States Location by Certain Firms and their Employees or other Representatives Exempted under Commodity Futures Trading Commission Rule 30.10 ("Limited Marketing Order"), 57 Fed. Reg. 49644 (November 3, 1992) as amended by 59 Fed. Reg. 42156 (August 17, 1994).

- (15) we will notify Bursa Derivatives immediately if we become aware of any information that in our judgment affects our financial and operational viability of doing business under Part 30;
- (16) we will notify Bursa Derivatives immediately of any change in our status that would affect our continued eligibility for the exemption granted hereunder, including the termination of our activities in the U.S.;
- (17) all representations made to the Commission, NFA and Bursa Derivatives in relation to our application for exemptive relief under the Order are true;
- (18) we will comply with all conditions imposed by the Commission, NFA and Bursa Derivatives in relation to our application for exemptive relief under the Order;
- (19) we agree that any misrepresentation or any non-compliance with any of the conditions imposed by the Commission, NFA and Bursa Derivatives is a breach of the directives issued by the Exchange and thus a breach of the Rules of Bursa Derivatives; and
- (20) we will inform the Exchange immediately if there is any change in any of the representations given to the Exchange here or the Commission pursuant to the Order.

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of _____, 2010.

Name of Trading Participant

By:_____

Name:

Title:

ANNEXURE 5

**NOTICE PURSUANT TO
EXEMPTIVE ORDER UNDER CFTC REGULATION 30.10
BY BURSA MALAYSIA DERIVATIVES BERHAD,
IN RELATION TO TRADING PARTICIPANT**

The undersigned hereby delivers this notice on behalf of Bursa Malaysia Derivatives Berhad ("Bursa Derivatives") in connection with the below named Trading Participant's (the "Trading Participant") application to the Commodity Futures Trading Commission ("Commission") for relief under the *CFTC Regulation 30.10 Order ,Exempting Firms Designated by Bursa Malaysia Derivatives (Bursa Derivatives) From the Application of Certain of the Foreign Futures and Options Regulations the Later of the Date of Publication of the Order Herein in the Federal Register or After Filing of Consents by Such Firms and Bursa Derivatives, as Appropriate, to the Terms and Conditions of the Order Herein*, dated June 22, 2010 (the "Order"). The Trading Participant seeks to conduct foreign futures and option transactions on behalf of customers located in the U.S. pursuant to the terms of the Order.

- (1) The name of the Trading Participant is:

- (2) The business address of the Trading Participant is:

- (3) Bursa Derivates hereby represents to the Commission that:
 - (a) the Trading Participant for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Malaysia; the Trading Participant is engaged in business with customers in Malaysia as well as in the U.S.; and the Trading Participant 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 the Trading Participant 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 the Trading Participant 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 regulations of Bursa Derivatives and the Commission will receive prompt notice of all material changes to the relevant laws in Malaysia, any regulations promulgated thereunder and Bursa Derivatives regulations;
 - (d) customers located in the U.S. will be provided no less stringent regulatory protection than Malaysian customers under all relevant provisions of Malaysian law; and

(e) it will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, 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 Trading Participant doing business in the U.S. under the exemption granted by this Order.

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of _____,
2010.

BURSA MALAYSIA DERIVATIVES BERHAD

By: _____

Name:

Title:

ANNEXURE 6

**REQUEST TO APPOINT
NATIONAL FUTURES ASSOCIATION
AS AGENT FOR SERVICE OF PROCESS**

Other Names Used by Firm:

Name of Firm

Contact Name

Street Address 1

International Telephone Number

Street Address 2

International Facsimile Number

Street Address 3

E-Mail Address

City

Province

Zip/Postal Code

Country

WHEREAS, the Commodity Futures Trading Commission of the United States of America ("CFTC") has provided for the registration and regulation of persons engaged in the offer or sale in the United States, its territories or possessions, of futures contracts and options transactions made or to be made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions;

WHEREAS, the firm desires to engage in activities which would require it to register with the CFTC as a futures commission merchant;

WHEREAS, the firm has been granted an exemption from registration pursuant to CFTC Regulation §30.10 on the condition that it appoint a United States agent for service of process and other communications;

WHEREAS, National Futures Association ("NFA") is a Delaware corporation authorized by the CFTC to act as agent for service of process and other communications for purposes of the alternative procedure; and

WHEREAS, Requestor desires to appoint NFA as its agent for service of process and other communications;

NOW THEREFORE, the firm agrees as follows:

1. Services. The firm appoints NFA as its agent for service of process and other communications, as contemplated by CFTC Regulation §30.5 (a) and (b). NFA shall accept service of process and other communications on behalf of the firm and shall transmit such communications to the firm. Such communications shall be transmitted to the address set forth above, or to such other address as the firm directs in writing, by guaranteed four-day delivery if the firm is located in a major metropolitan area serviced by generally recognized international air carriers or by the fastest available means of delivery if the firm is not located in such a major metropolitan area. Provided, however, that nothing in this Agreement shall require NFA to transmit communications by electronic or telephonic means except as provided below.

If communications served on NFA on behalf of the firm require a response in five days or less, NFA shall make a reasonable attempt to telephone the firm and advise it of the nature of the communication. At the firm's expense, NFA shall follow any reasonable instructions from the firm concerning the delivery of the communication. Provided, however, that NFA shall not be required to transmit any written communication by electronic or telephonic means without assurance, acceptable to NFA, that the firm will pay any costs connected with such transmission.

Nothing in this Agreement shall authorize or require NFA to do any of the following: determine validity of service or refuse to accept service; enter an appearance on behalf of the firm; or settle, compromise, or defend any claim or action on behalf of the firm.

2. Termination of Agreement. This Agreement shall remain in force until terminated. The firm may terminate this Agreement upon five days' written notice to NFA in accordance with Paragraph 10 of this Agreement. This Agreement can be terminated by NFA upon thirty days' written notice to the firm. The withdrawal of the firm's confirmation of exemption from registration pursuant to CFTC Regulation 30.10 shall automatically terminate this Agreement effective on the date of such withdrawal.

Notwithstanding the termination of this Agreement, NFA's appointment as agent shall continue in effect for, and this Agreement shall govern, service of process or other communications with respect to any foreign futures or foreign options transactions entered into on or before the date this Agreement terminated.

3. Liability. NFA shall not be liable for incidental, consequential, or other special damages arising out of any actual or alleged breach of contract, negligence, or other action or inaction by NFA, its directors, officers, employees or agents in regard to the performance or nonperformance of this Agreement. NFA shall not be liable for any losses or damages, including actual damages, which are or could be mitigated by the firm.

If the firm defaults in any of the terms of this Agreement, it shall pay all costs and expenses, including reasonable attorneys' fees incurred by NFA in enforcing this Agreement.

4. Indemnification. Except as provided in Paragraph 3 of this Agreement, the firm shall indemnify and hold NFA harmless from any and all claims, liability, loss, damage, or expenses, including reasonable attorneys' fees, arising from NFA's performance of the services specified under this Agreement.
5. No Assignment. This Agreement shall not be assigned by either party without the written consent of the other.
6. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, United States of America. Provided, however, that nothing in this Agreement shall be construed in any manner that is inconsistent with the Commodity Exchange Act and CFTC Regulations.
7. Execution of Agreement, Choice of Forum and Consent to Jurisdiction. This Agreement shall be deemed to have been made by both parties in Cook County, State of Illinois, United States of America. Each party hereto consents to the personal jurisdiction of the courts of the State of Illinois and the United States District Court for the Northern District of Illinois over any action at law, suit in equity, or judicial proceeding under or which may otherwise arise out of this Agreement and agrees not to contest venue for any such proceeding in Cook County, State of Illinois.

The firm agrees that any action at law, suit in equity, or judicial proceeding under or which may otherwise arise out of this Agreement shall be instituted by the firm only in the Courts of the State of Illinois or the United States District Court for the Northern District of Illinois.

8. Severability. If any provision of this Agreement is held by any Court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, the remaining provisions of this Agreement shall not be affected and this Agreement shall be construed and enforced as if this Agreement did not contain the provision which is held to be invalid, illegal, or unenforceable.
9. Heirs, Successors, and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing contained in this paragraph shall be construed as a consent by either party to any assignment of this Agreement except as provided in Paragraph 5 of this Agreement.
10. Notices. Except as otherwise provided in this Agreement, all notices or communications required by or given under this Agreement shall be deemed given as of the date of receipt or, if earlier, as of the date five days after such notices or communications are deposited in the United States mail, airmail postage prepaid, or in the mails of any other country, airmail postage prepaid, or delivered to any generally recognized international air carrier.

All notices to NFA shall be addressed as follows:

Vice President, Membership & Registration
National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606
U.S.A.

All notices to the firm shall be addressed to the address set forth at the beginning of this Agreement, or to such other address as the firm directs in writing.

11. Effective Date. Confirmation of the exemption from registration pursuant to CFTC Regulation 30.10 shall constitute NFA's acceptance of this Agreement and this Agreement shall be effective upon such confirmation.

Name of Firm

Print Name of Signatory

Title of Signatory

Signature

**GUIDELINES AND REQUIREMENTS FOR
AGENCY AGREEMENTS FILED WITH NFA
UNDER CFTC REGULATIONS 30.5 and 30.10**

Authorized Agent

CFTC Regulation 30.5 (17 C.F.R. § 30.5) sets out the requirements and procedures for appointing a U.S. agent for service of process. Among other things, § 30.5(a) generally limits the person who may act as agent to 1) a registered futures commission merchant through whom the foreign entity conducts business, 2) a registered futures association (i.e., NFA) or 3) any other person located in the United States in the business of acting as agent for service of process.

NFA will accept an agreement appointing a U.S. law firm as agent under the third category if the law firm provides or has provided NFA with a written representation that it acts as agent for service of process in the regular course of business. Other persons attempting to qualify under the third category must provide NFA with evidence, acceptable to NFA that they are in the business of acting as agent for service of process.

The Division of Clearing and Intermediary Oversight at the Commodity Futures Trading Commission may approve additional categories of entities to act as agent on a case-by-case basis.¹ A written request for such approval should be addressed as follows:

Director
Division of Clearing and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The request should include information regarding the relationship between the foreign firm and the proposed agent, as well as any other information relevant to the CFTC's determination. Copies of the request and the CFTC's reply should be sent to the Vice President, Membership and Registration, NFA.

¹ In this connection, the Division has confirmed that a foreign firm may appoint its U.S. subsidiary or affiliate as its agent if such subsidiary or affiliate is registered as an introducing broker or broker-dealer. [See CFTC Interpretive Letter No. 88-13, Comm. Fut. L. Rep. (CCH) ¶ 24,291 (July 28, 1988).] The foreign firm must provide NFA with evidence of the affiliation and of the agent's broker-dealer registration, if applicable.

Contents of Agreement

In order to comply with CFTC Regulation 30.5 (17 C.F.R. § 30.5), an agency agreement should contain the following:

1. The name, address and telephone number of the principal;
2. The name, address and telephone number of the agent;
3. Language making or acknowledging the agency appointment;²
4. An original signature on behalf of the principal and the title of the person signing the agreement;
5. An original signature on behalf of the agent and the title of the person signing the agreement;
6. Effective date; and

A signed original of the agreement must be sent to:

Vice President, Membership & Registration
National Futures Association
300 S Riverside Plaza
Suite 1800
Chicago, Illinois 60606

² There is no prescribed language for making the agency appointment. NFA will accept any language that is broad enough and sufficient to make the appointment. For your convenience, however, the following are examples of acceptable language:

X hereby appoints Y to act as its U.S. agent for service of process and other communications for purposes of CFTC Regulation(s) 30.5 (and 30.10), and Y hereby accepts such appointment.

X and Y hereby agree that Y will act as X's U.S. agent for service of process and other communications with respect to transactions subject to the jurisdiction of the Commodity Futures Trading Commission.

ANNEXURE 7

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)

Electronic Code of Federal Regulations

e-CFR

TM

e-CFR Data is current as of July 16, 2010

Title 17: Commodity and Securities Exchanges

PART 3—REGISTRATION

Subpart A—Registration

[Browse Next](#)

§ 3.1 Definitions.

(a) *Principal*. Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations:

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

(3) Any person who has contributed ten percent or more of the capital: *Provided, however,* That if such capital contribution consists of subordinated debt contributed by an unaffiliated bank insured by the Federal Deposit Insurance Corporation, United States branch or agency of an unaffiliated foreign bank that is licensed under the laws of the United States and regulated, supervised and examined by United States government authorities having regulatory responsibility for such financial institutions, or insurance company subject to regulation by any State, such bank, branch, agency or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(b) *Current*. As used in this subpart, a Form 8-R is current if, subsequent to the filing of that form and continuously thereafter, the registrant or principal has been either registered or affiliated with a registrant as a principal.

(c) *Sponsor*. Sponsor means the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by §3.12 of this part for the registration of an associated person of such sponsor.

(d) *Beneficial owner*. Any person who, without limitation, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership, or of avoiding making a contribution of ten percent or more of the capital, as part of a plan or scheme to evade being deemed a principal of an applicant or registrant under paragraph (a) of this section shall be deemed for purposes of such paragraph to be the beneficial owner or the contributor of capital.

(e) *Foreign futures authority*. Foreign futures authority means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign

government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule or regulation as it relates to a futures or options matter.

(f) [Reserved]

[49 FR 5521, Feb. 13, 1984, and 49 FR 8217, Mar. 5, 1984, as amended at 49 FR 39530, Oct. 9, 1984; 57 FR 23144, June 2, 1992; 66 FR 53518, Oct. 23, 2001; 72 FR 63979, Nov. 14, 2007]

[Browse Next](#)

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.

For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

[Section 508 / Accessibility](#)

ANNEXURE 8

The following is the text of Section 8(a)(2) of the CEA.

§ 8a. Registration of commodity dealers and associated persons; regulation of registered entities

The Commission is authorized—

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: Provided, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from

(i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or

(ii) engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property,

forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section [6c](#) or [23](#) of this title, or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that

(i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section [6c](#) or [23](#) of this title, or concerning a security,

(ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing,

(iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or

(iv) involves the violation of section [152](#), [1001](#), [1341](#), [1342](#), [1343](#), [1503](#), [1623](#), [1961](#), [1962](#), [1963](#), or 2314, or chapter 25 section [152](#), [1001](#), [1341](#), [1342](#), [1343](#), [1503](#), [1623](#), [1961](#), [1962](#), [1963](#), or 2314, or chapter 25, 47, 95, or 96 of title 18, or section [7201](#) or [7206](#) of title [26](#);

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party,

(i) to have violated any provision of this chapter, the Securities Act of 1933 [[15 U.S.C. 77a](#) et seq.], the Securities Exchange Act of 1934 [[15 U.S.C. 78a](#) et seq.], the Public Utility Holding Company Act of 1935,¹¹¹ the Trust Indenture Act of 1939 [[15 U.S.C. 77aaa](#) et seq.], the Investment Advisers Act of 1940 [[15 U.S.C. 80b-1](#) et seq.], the Investment Company Act of 1940 [[15 U.S.C. 80a-1](#) et seq.], the Securities Investors¹²¹ Protection Act of 1970 [[15 U.S.C. 78aaa](#) et seq.], the Foreign Corrupt Practices Act of 1977, chapter [96](#) of title [18](#), or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or

(ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying privileges on any registered entity to such person, denying, suspending, or revoking such person's membership in any registered entity or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a registered entity or with a member of a registered futures association;

(G) if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in sections [9](#) and [15](#) of this title; and

Provided, further, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission; ...