

dissection for disease or physiological analysis, and genetic sampling. The release and/or disposition of maturing fish are for experimental purposes. The release of mature ESA-listed fish is valid in 1997 only. The sacrifice of excess hatchery-produced jacks is valid for the duration of permit 1010. Permit 1010 expires on December 31, 2000.

Issuance of the permit and the modification to a permit, as required by the ESA, was based on a finding that such actions: (1) Were requested/proposed in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: September 5, 1997.

**Nancy Chu,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### Performance of Certain Functions by National Futures Association With Respect to Non-U.S. Firms and Non-U.S. Markets

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is authorizing National Futures Association (NFA) to perform fitness checks with respect to (1) foreign firms acting in the capacity of futures commission merchants (FCMs) seeking relief under Rule 30.10 and (2) any applicant for registration or registrant having or seeking to add a foreign principal, subject to any limitations by individual offshore jurisdictions that fitness information solely be communicated to and among regulators. In addition, the Commission is authorizing NFA (1) to receive filings from foreign firms acting in the capacities of commodity pool operators (CPOs) and commodity trading advisors (CTAs) filing for exemption from registration under Rule 30.5, (2) to monitor compliance with Rule 30.10, Rule 30.5, and the provisions of Deutsche Terminborse (DTB) terminal placement relief, (3) to receive filings from FCMs with respect to order transmittal procedure relief for foreign

futures and options orders, (4) to receive documentation pertaining to Globex and New York Mercantile Exchange (NYMEX) ACCESS "pass-the-book" relief, and (5) to maintain and serve as the official custodian of certain Commission records.

**EFFECTIVE DATE:** September 11, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418-5430.

### United States of America

### Before the Commodity Futures Trading Commission Order Authorizing the Performance of Certain Functions With Respect to Non-U.S. Firms and Non-U.S. Markets

#### I. Authority and Background

Section 8a(10) of the Commodity Exchange Act<sup>1</sup> (Act) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act<sup>2</sup> and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act<sup>3</sup> provides that the Commission may require NFA to perform Commission registration functions, in accordance with the Act and NFA rules. The Commission's Division of Trading and Markets (Division) received a letter from NFA expressing NFA's willingness to perform certain functions now performed by the Commission, to undertake to protect the confidentiality, security and integrity of information received and to abide by any additional use requirements or limitations regarding the receipt and handling of information from foreign jurisdictions, as discussed below.<sup>4</sup>

Upon consideration, the Commission has determined to authorize NFA, effective September 11, 1997, to perform the following functions, subject to any limitations by individual offshore jurisdictions that fitness information solely be communicated to and among governmental regulators: (1) For foreign firms acting in the capacity of an FCM,

fitness checks and monitoring of compliance with Rule 30.10<sup>5</sup> relief granted to the firm's regulator or self-regulatory organization (SRO); (2) for foreign firms acting in the capacities of CPOs and CTAs, accepting filings that comply with Rule 30.5; (3) conducting fitness inquiries directed to foreign regulatory and self-regulatory bodies with respect to any firm applying for registration under the Act or any registrant having or adding a foreign principal; (4) receiving documentation pertaining to Globex and NYMEX ACCESS "pass-the-book" relief; (5) receiving filings from FCMs with respect to order transmittal procedure relief for foreign futures and options orders; (6) monitoring DTB terminal placement relief; and (7) maintaining and serving as the official custodian of records for the filings and acknowledgment requirements submitted by (a) exchange member firms seeking "pass-the-book" relief, (b) FCMs seeking order transmittal procedure relief, or (c) firms intending to operate DTB computer terminals in the U.S., and maintaining requests and related materials submitted pursuant to Rules 30.10 and 30.5 or obtained in the course of conducting foreign fitness inquiries. As discussed below, each of these functions involves the registration or exemption from registration of non-U.S. persons or is related to trading by U.S. persons on non-U.S. markets. In the future, the Commission may delegate other similar administrative and processing functions by letter and Commission Advisory.

#### A. Foreign FCM Fitness and Compliance With Rule 30.10

Rule 30.10 allows the Commission to exempt a foreign firm acting in the capacity of an FCM from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or SRO can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act.<sup>6</sup> This petition process requires

<sup>5</sup> Commission rules referred to herein can be found at 17 CFR Ch. I (1997).

<sup>6</sup> The specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Commission Rule 30.10 are set forth in Appendix A to part 30, "Interpretative Statement with Respect to Commission's Exemptive Authority

<sup>1</sup> 7 U.S.C. § 12a(10) (1994).

<sup>2</sup> 7 U.S.C. § 21(j) (1994).

<sup>3</sup> 7 U.S.C. § 21(o)(1) (1994).

<sup>4</sup> The Division received the letter from NFA on August 27, 1997.

that the Commission issue an Order granting general relief subject to certain conditions<sup>7</sup> and that individual firms then be granted confirmation of such relief. Firms seeking confirmation of Rule 30.10 relief must make the required representations<sup>8</sup> set forth in

Under Section 30.10 of its Rules'' and include the following: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons (both individuals and firms) through which customer orders are solicited and accepted; (2) minimum financial requirements for these persons who accept customer funds; (3) protection of customer funds from misapplication; (4) minimum sales practice standards, including the disclosure of the risks of futures transactions; (5) recordkeeping and reporting requirements; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) the existence of appropriate information-sharing arrangements.

<sup>7</sup> These conditions usually require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to represent in writing to the Commission the following: (1) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards of its place of domicile; such firm is engaged in business with customers located in the location of the regulator or SRO as well as in the U.S.; and, such firm would not statutorily be disqualified from registration under Section 8a(2) of the Act; (2) 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 which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.; (3) all transactions on the exchanges under the jurisdiction of the regulator or SRO with respect to customers resident in the U.S. will be made on or subject to the rules of each respective exchange and the Commission will receive prompt notice of all material changes in such exchanges' codes and regulations; (4) customers resident in the U.S. will be provided no less stringent regulatory protection than customers in the country where the regulator or SRO is located under all relevant provisions of law; and (5) it will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A to the Part 30 rules on an "as needed" basis, and becomes aware of any information which in its judgment affects the financial or operational viability of a firm doing business in the U.S. pursuant to an exemption granted under Rule 30.10.

<sup>8</sup> These representations generally require the firm to: (1) Consent to jurisdiction in the U.S. and designate an agent for service of process in the U.S. in accordance with the requirements set forth in Rule 30.5; (2) agree to make its books and records available upon the request of any representative of the Commission or the U.S. Department of Justice; (3) agree that all futures or regulated option transactions with respect to U.S. customers will be made on or subject to the rules of the applicable exchange and will be undertaken consistent with rules and codes under which such firm operates; (4) represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and notify the Commission promptly of any change in that representation; (5) disclose the identity of each U.S. affiliate or subsidiary; (6) agree to be subject to NFA arbitration; (7) consent to the release of certain financial information; (8) refuse U.S. customers the

the Rule 30.10 Order issued to the regulator or SRO from the firm's home country. The regulator or SRO forwards to the Commission the firm's representations along with a request for confirmation of Rule 30.10 relief as to the particular firm. The Commission grants a particular firm Rule 30.10 relief after verifying the firm's fitness<sup>9</sup> and compliance with the conditions of the appropriate Rule 30.10 Order and with Division of Trading and Markets Advisory 41-93, if applicable.<sup>10</sup>

The Commission believes that, once it has examined the foreign jurisdiction's regulatory structure and issued an Order under Rule 30.10 granting general relief based upon the comparability of that structure to the structure under the Act, the steps needed to determine if relief is appropriate for particular firms are similar to those undertaken in the course of fitness checks performed by NFA with respect to applicants for registration under the Act. The Commission further believes that it is appropriate for NFA to undertake the performance of these steps to the extent the appropriate foreign regulator and/or other market authority can share information directly with NFA, since it has previously been authorized to perform similar steps for applicants. Accordingly, by this Order, NFA is authorized to receive requests for Rule

option of not having their funds segregated from the firm's proprietary funds, even if that option is generally available under local law; (9) consent to report the value of funds required to be segregated on behalf of U.S. customers; and (10) undertake to comply with the provisions of law and rules which form the basis for granting the exemption. These representations may vary from order to order depending upon the regulatory structure of the firm's home country. To date, eleven orders have been issued for the following regulators and self-regulatory organizations: Sydney Futures Exchange, 53 FR 44856 (November 7, 1988); Singapore International Monetary Exchange Limited, 54 FR 806 (January 10, 1989); Montreal Exchange, 54 FR 11179 (March 17, 1989); United Kingdom regulators and/or SROs (Securities and Investments Board, Securities and Futures Association, and Investment Management Regulatory Organization), 54 FR 21599, 21604, 21609, and 21614 (May 19, 1989), 56 FR 14017 (April 5, 1991); Toronto Futures Exchange, 55 FR 10611 (March 22, 1990); Tokyo Grain Exchange, 58 FR 10953 (February 23, 1993); MEFF Renta Fija, 60 FR 30462 (June 9, 1995); New Zealand Futures and Options Exchange, 61 FR 64985 (December 10, 1996); and MEFF Renta Variable, 62 FR 16687 (April 8, 1997).

<sup>9</sup> The firm's fitness is verified by checking the following sources for any information on the firm: (1) The Office of Proceedings for reparations cases; (2) the Division of Trading and Markets for contract market exchange actions; and (3) NFA's Clearinghouse of Disciplinary Information (CDI) for NFA actions.

<sup>10</sup> Division of Trading and Markets Advisory 41-93 outlines procedures for firms applying for confirmation of exemptive relief under Rule 30.10 that have affiliates or subsidiaries in the U.S. It is reprinted as CFTC Interpretative Letter No. 93-65, (1992-1994 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶25,784 (July 26, 1993).

30.10 relief on behalf of firms which are acting in the capacity of an FCM for purposes of handling orders for foreign futures or futures options products for U.S. persons and which are regulatees of a foreign regulator or members of a foreign SRO to which the Commission has issued an order pursuant to Rule 30.10, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and Division of Trading and Markets Advisory 41-93, and to exempt qualifying firms from registration pursuant to Rule 30.10.

#### *B. Foreign CPO and CTA Compliance With Rule 30.5*

Rule 30.5 provides an exemption from registration as a CPO, CTA or introducing broker (IB) to any qualifying non-domestic person, other than a person required to be registered as an FCM, who solicits U.S. residents to trade foreign futures or options. To qualify for the exemption from registration under Rule 30.5, the non-domestic person must enter into a written agency agreement with one of the following: (1) The FCM carrying the foreign futures or options account that the non-domestic person solicited in the U.S.; (2) any futures association registered under the Act;<sup>11</sup> or (3) any other person located in the U.S. in the business of acting as an agent for service of process. The agreement must provide that the FCM, registered futures association or other designated person is authorized to serve as the agent of the non-domestic person for purposes of accepting delivery and service of communications from the Commission, U.S. Department of Justice, any SRO or any foreign futures or foreign options customer.<sup>12</sup> Qualifying persons who act in the capacities of IBs, CPOs and CTAs and who are located outside of the U.S. may be eligible to use the procedure provided by Rule 30.5. By this Order, NFA is authorized to accept filings for exemption from registration under Rule 30.5 and supporting agreements from qualifying persons acting as CPOs or CTAs<sup>13</sup> provided such persons offer their products and services solely to qualified eligible participants (QEPs) or qualified eligible clients (QECs) as described in Rule 4.7.<sup>14</sup> Under Rule

<sup>11</sup> NFA is currently the only futures association so regulated.

<sup>12</sup> 52 FR 28980, 28990 (August 5, 1987).

<sup>13</sup> NFA already accepts filings for exemption from registration under Rule 30.5 and supporting agreements from qualifying persons acting as IBs.

<sup>14</sup> Such persons are generally, FCMs, CPOs, CTAs, broker-dealers, investment companies, banks, insurance companies, employee benefit

30.5(d), any person exempt from registration with the Commission in accordance with the provisions of Rule 30.5 must, upon the request of any representative of the Commission or the U.S. Department of Justice, provide the records such person is required to maintain under Rule 30.5 at the place in the U.S. designated by the representative within 72 hours after the person receives the request.

*C. Foreign Fitness Inquiries of Any Applicant for CFTC Registration or Registrant Having a Foreign Principal*

As part of the registration process, NFA reviews the fitness of any foreign principal of an applicant for registration and any foreign principal subsequently listed with a registrant by means of a criminal background check through INTERPOL.<sup>15</sup> In addition, in cases of a foreign-domiciled applicant firm with a foreign principal, NFA's fitness review encompasses a check with a foreign regulator or SRO. Under current practice, NFA must forward the request for fitness information to the Division, which then requests the information from the foreign regulator and/or SRO in the jurisdiction of the principal's residence. Information received from the foreign regulator and/or SRO by the Commission's staff is subsequently forwarded to NFA. NFA evaluates this information based on the standards set forth in its Registration Investigation Procedures Manual in making its determination as to whether to grant registration. These standards were reviewed by the Commission in February 1996.<sup>16</sup> The Division has recommended that NFA consider expanding foreign fitness inquiries to include previous employment locations within the prior five years in addition to requesting information from authorities in the foreign jurisdiction where the applicant resides.<sup>17</sup> The Division also recommended that NFA consider enhancing foreign fitness inquiries to include any principal with a U.S. residence who has worked abroad

plans, business development companies, certain business entities with total assets in excess of \$5,000,000, natural persons with net worth in excess of \$1,000,000 (or with individual income in each of the two most recent years in excess of \$200,000 or joint income of \$300,000), certain governmental entities and non-U.S. persons.

<sup>15</sup> For these purposes, NFA considers a foreign principal to be any person with a current address outside of the U.S. It does not include a foreign national who has recently moved to the U.S. but would include a U.S. citizen who has moved abroad.

<sup>16</sup> *Review of the Registration Fitness Program of National Futures Association*, Commodity Futures Trading Commission, Division of Trading and Markets (February 1996) (hereinafter, the Review).

<sup>17</sup> Review, Recommendation No. 3b at 7-8.

for a period of at least six months during the prior five years. By this Order, NFA is authorized to request fitness information directly from the relevant foreign regulator(s) and/or SRO(s) of any applicant for registration or registrant having a foreign principal to the extent the Commission has advised NFA such regulator is willing to transfer such information directly to NFA. The relevant foreign regulator(s) and/or SRO(s) of any applicant for registration includes foreign regulators and/or SROs in all employment locations of the applicant for the five years prior to the date of the application. NFA is further authorized to request fitness information on any principal who has worked outside of the U.S. for at least six months during the five years preceding the filing of Form 8-R to the same extent.<sup>18</sup>

*D. Globex and NYMEX ACCESS "Pass-the-Book" Relief*

The Chicago Mercantile Exchange's (CME's) Globex trading system and NYMEX's ACCESS trading system permit the trading of contracts of those respective exchanges, and those of certain foreign exchanges, via electronic media outside of regular U.S. trading hours. In response to a request for relief on behalf of FCM member firms of the CME and the Chicago Board of Trade (CBT),<sup>19</sup> the Division adopted a no-action position with respect to certain Commission registration requirements that would apply to the member firms and their foreign affiliates in France and the United Kingdom that "pass the book"<sup>20</sup> of customer orders for entry into the Globex<sup>21</sup> electronic trading system and to personnel involved in that process.<sup>22</sup> The Division required the exchanges to notify the Commission

<sup>18</sup> Each firm applying for registration must file a Form 8-R for each principal, and registrants must file a Form 8-R for each new principal. Rules 3.10(a)(2), 3.32.

<sup>19</sup> CBT was a participant in Globex from June 1992 through May 1994.

<sup>20</sup> The term "pass the book" refers to the process which orders for exchange contracts received for or on behalf of customers of an exchange member firm are transferred for entry into Globex terminals located in a non-U.S. office of a foreign affiliate of that exchange member firm outside normal U.S. business hours.

<sup>21</sup> The June 20, 1988 agreement between the Chicago Mercantile Exchange and Reuters Holdings PLC which established certain rights and responsibilities of the parties related to Globex is set to expire in 1998. CME intends to continue to provide an electronic execution system that will retain the Globex name.

<sup>22</sup> CFTC Interpretative Letter No. 92-11, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,325 (June 25, 1992), superseded in part by CFTC Interpretative Letter No. 93-83, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,849 (August 9, 1993).

to confirm the applicability of the no-action relief with respect to the placement of Globex terminals in other jurisdictions, and such notice has been received with respect to Hong Kong<sup>23</sup> and Japan.<sup>24</sup> The Division also granted similar relief to FCM member firms of the NYMEX and their foreign affiliates in the United Kingdom who "pass the book" of customer orders and engage in certain order acceptance activities involving the NYMEX ACCESS trading system.<sup>25</sup> The Division also has received a notice from NYMEX as to the placement of Sydney Computerized Overnight Market (SYCOM) terminals in Australia that would permit Sydney Futures Exchange member firms to execute NYMEX transactions for NYMEX member firms and their foreign affiliates.<sup>26</sup>

Exchange member FCMs seeking to avail themselves of the Globex and NYMEX no-action relief must comply with filing, acknowledgment, and other requirements described in CFTC Interpretative Letter No. 93-83.<sup>27</sup> Currently, the Commission receives a

<sup>23</sup> The Division received the notice with respect to Hong Kong on August 15, 1993.

<sup>24</sup> The Division received the notice with respect to Japan on December 16, 1993.

<sup>25</sup> The Division issued the letter granting relief to NYMEX members that "pass the book" to their foreign affiliates in the United Kingdom utilizing NYMEX ACCESS terminals in the United Kingdom on October 29, 1993 and expanded it to Hong Kong on June 10, 1997.

<sup>26</sup> The Division received the notice with respect to Australia on September 28, 1995.

<sup>27</sup> CFTC Interpretative Letter No. 93-83, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,849 (August 9, 1993). For example, each exchange member FCM intending to operate pursuant to pass-the-book relief must, among other undertakings: (1) Identify itself, its foreign affiliates, and "designated persons" at such affiliates authorized to solicit, accept or enter orders from customers on behalf of the exchange member firm in writing to appropriate exchanges, NFA and the Commission; (2) carry all customer accounts on the books of the exchange member firm as customer accounts of that firm, including for purposes of computing net capital; (3) ensure that all written communication with customers is by the exchange member firm on its own stationery; (4) maintain all monies, securities, and property of customer accounts in accordance with appropriate statutory and regulatory requirements as segregated or secured amount funds, depending upon whether the transaction is effected on or subject to the rules of a contract market or a foreign exchange, respectively; (5) have the right to terminate the authority of any designated person at the foreign affiliate to solicit, accept, or enter orders on behalf of customers; and (6) be liable under the Act, the Commission's regulations and exchange rules for all solicitations, acceptances or entries of orders for exchange contracts on Globex by the foreign affiliate through its designated persons for or on behalf of customers of the exchange member firm. Generally, the filing and acknowledgment requirements are intended to give exchanges the ability to monitor and to investigate trading on Globex involving passing the book equivalent to their ability to do so in connection with orders placed directly at the exchange member firm.

letter from each firm intending to operate pursuant to pass-the-book relief setting forth these filings, acknowledgments and representations, and the Division verifies the completeness of the letter. By this Order, NFA is authorized to serve as the repository for the filings, acknowledgments and representations submitted by exchange member FCMs seeking to avail themselves of Globex and NYMEX pass-the-book relief and is authorized to verify that the filings, acknowledgments and representations made by the firms are complete as described in CFTC Interpretative Letter No. 93-83.

#### *E. FCM Order Transmittal Procedure Relief*

The Division permits certain customers<sup>28</sup> of FCMs to transmit foreign futures and options orders directly to qualified foreign firms that: (1) Are affiliated with the customer's FCM through a parent/subsidiary relationship or through common ownership; and (2) carry such FCM's omnibus account. When the order transmittal procedure relief was granted initially, the foreign firm receiving these orders must already have been granted relief under Rule 30.10.<sup>29</sup> The Division subsequently

expanded the order transmittal procedure relief to allow U.S. FCMs to implement the order transmittal procedures with their foreign affiliates which had not received Rule 30.10 relief, provided that certain additional conditions were met and representations were given.<sup>30</sup> When a U.S. FCM and its foreign affiliate wish to operate pursuant to the order transmittal procedure relief, they write a letter to the Commission representing that they will comply with the conditions outlined in Letter No. 93-115 and, if applicable, with the conditions outlined in Letters No. 95-8 and No. 95-83.<sup>31</sup> The Division then verifies that the U.S. FCM and its foreign affiliate have made the

foreign affiliate, and (c) the customer has five days to object to the conditions imposed on the direct order transmittal procedure. CFTC Interpretative Letter No. 93-115.

<sup>30</sup> CFTC Interpretative Letter No. 95-8, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,300 (January 25, 1995). In addition to compliance with all the terms and conditions set forth in Interpretative Letter No. 93-115, foreign affiliates of U.S. FCMs which do not have Rule 30.10 relief and the U.S. FCMs are required to comply with the terms and conditions summarized as follows: (1) The U.S. FCM must accept liability under the Act and the Commission's rules for all acts of the foreign affiliate undertaken by certain persons; (2) the designated persons of the foreign affiliate authorized to solicit, accept and enter orders must be listed and procedures must be established to ensure that customers deal only with such designated persons; (3) at least one designated person must be registered with the Commission as an associated person (AP) and all designated persons must be supervised by an AP; (4) all designated persons who accept or enter orders must be registered with the Commission as an AP; (5) all designated persons not registered as APs must acknowledge that they are subject to the Act and the Commission's rules, and must not be subject to statutory disqualification from registration under Section 8a(2) of the Act; (6) the Commission must be assured access to original books and records related to the solicitation, acceptance or entry of U.S. institutional customer orders on behalf of the U.S. FCM at the foreign affiliate; and (7) the foreign affiliate must appoint the U.S. FCM as its agent for service of process with respect to any materials arising out of its activities concerning these orders.

<sup>31</sup> As Japanese and Hong Kong laws require that original books and records of the U.S. FCM's foreign affiliate be maintained within the local jurisdiction, U.S. FCMs with foreign affiliates in Japan or Hong Kong may comply with the following terms and conditions in satisfaction of the requirement that an FCM and its foreign affiliate assure the Commission access to the foreign affiliate's original books and records: (1) The U.S. FCM and its Japanese or Hong Kong affiliate will provide authenticated copies of the foreign affiliate's original books and records upon request of a Commission representative; (2) the U.S. FCM and its affiliate will provide access to original books and records in the foreign jurisdiction; (3) to the U.S. FCM and its affiliate waive objection to the admissibility of the copies as evidence in a Commission action against the FCM or its affiliate; and (4) the U.S. FCM and its affiliate agree in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission. CFTC Interpretative Letter 95-83, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,559 (September 29, 1995).

appropriate representations. By this Order, NFA is authorized to receive filings for order transmittal procedure relief and to verify the completeness of the representations contained therein.

#### *F. DTB Terminal Placement Relief*

By letter dated February 29, 1996, the Division stated that it would not recommend that the Commission commence an enforcement action against DTB<sup>32</sup> in connection with the placement of DTB computer terminals in the U.S. in order to permit DTB members to execute transactions involving DTB futures and option products which are otherwise approved for trading by U.S. persons without the DTB being deemed a U.S.-based board of trade required to be designated as a contract market pursuant to Section 5 of the Act.<sup>33</sup> Relief was conditioned upon, among other conditions, the filing of materials identifying all DTB members that intend to operate pursuant to the relief. The Division has also established a procedure that requires firms to submit an acknowledgment of jurisdiction and compliance with the terms of the relief as outlined in the February 29, 1996 letter (the Acknowledgment).

By this Order, the NFA is authorized to receive and to review identification filings and Acknowledgments from firms intending to operate DTB terminals in the U.S. NFA is authorized to verify that the identification filings accurately identify the firms and that the Acknowledgments include the terms and conditions required for relief.<sup>34</sup>

<sup>32</sup> The DTB, located in Frankfurt, Germany, is a fully automated international options and futures exchange on which all trades are executed and cleared electronically. Trading is conducted via computer terminals. The market participants' computers and terminals are linked to the DTB computer center by means of a wide-ranging telecommunications network.

<sup>33</sup> CFTC Interpretative Letter No. 96-28, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,669 (February 29, 1996).

<sup>34</sup> These terms and conditions are listed in the February 29, 1996 letter, as supplemented by a May 9, 1997 letter, from the Division to DTB granting relief to DTB and are as follows: (1) DTB terminals will be located only in U.S. offices of DTB members or on the floor of the CME; (2) all DTB members that intend to operate pursuant to the relief will be identified to the Commission and the NFA; (3) pursuant to the DTB's rules, DTB members must apply to the DTB for DTB terminal placement and identify the location and connection of user devices to DTB's electronic trading system and, upon request, DTB shall provide information received from its members and in its possession to the Commission regarding the location of all such terminals in the U.S., and shall update such information on a periodic basis upon reasonable request; (4) all orders executed pursuant to the relief will be for "principal" accounts if executed by a non-FCM DTB member firm and the Division will be notified promptly in the event that there is

Continued

<sup>28</sup> Such customers are identified in Interpretative Letter No. 93-115 and are similar in description to persons that qualify as QEPs under Commission Rule 4.7. See CFTC Interpretative Letter No. 93-115, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,932 (December 23, 1993).

<sup>29</sup> In order to assure that the order transmittal procedure is structured in a manner that facilitates an FCM's ability to supervise its financial condition, the Division conditioned relief on the following: (1) The FCM's establishment of and adherence to written procedures that make explicit the internal control procedures that apply to any direct contacts between the FCM's customers and the foreign affiliate, including authorization, identification, and supervision of orders; (2) identification by the FCM to the foreign affiliate of the FCM's customers authorized to transmit orders directly to the foreign affiliate; (3) the foreign affiliate's identification of the customer on the order ticket at the time it is created; (4) written confirmation of receipt and execution of the customer's order by the foreign affiliate, along with an audit trail and designated personnel with authority to reconcile certain trades; (5) the FCM's establishment of and adherence to procedures to monitor customer positions aggregated across all markets, including the ability to assess whether a customer is assuming too high a degree of financial risk with respect to these and any other positions the customer may have with the FCM that is greater than the FCM, in its business judgment, based on reasonable reviews, believes is appropriate for that customer; (6) a written agreement between the FCM and its affiliate specifying that the FCM is directly liable to the foreign affiliate for margin payments related to the omnibus accounts; and (7) documentation provided to the customer from the FCM advising customers that (a) orders delivered pursuant to the direct order transmittal procedure are for their FCM's omnibus account with the foreign affiliate, (b) such customers are customers of the FCM only and are not customers of the

NFA is further authorized to conduct a fitness review of the firm such as is performed in connection with registration with the Commission.

#### *G. Recordkeeping Requirements*

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records for this agency.<sup>35</sup> The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and to serve as the official custodian of records for the filings and acknowledgment requirements submitted by: (1) Exchange member FCMs in connection with "pass-the-book" relief; (2) FCMs and their foreign affiliates in connection with order transmittal procedure relief; and (3) firms intending to operate DTB computer terminals in the U.S. In this connection, NFA has undertaken to abide by any special use restrictions applicable to information received from a foreign market authority to the full extent permitted by law. The Division also has determined to authorize NFA to maintain requests and related materials submitted pursuant to Rules 30.10 and 30.5 or obtained in the course of conducting foreign fitness inquiries. These determinations are based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records, as well as the need to facilitate NFA's preparations for assuming responsibility for the above-mentioned activities.

In maintaining the Commission's records pursuant to this Order, NFA

shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary to ensure the security and integrity of the records in NFA's custody and acceptable to the Commission; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

#### **II. Conclusion and Order**

The Commission has determined, in accordance with the provisions of Sections 8a(10) and 17(o)(1) of the Act and NFA's letter dated August 27, 1997, subject to any restriction by a given jurisdiction that information must pass directly between regulatory authorities, to authorize NFA to perform the following functions:

(1) To grant, either with or without conditions, exemptive relief to firms acting in the capacity of FCMs which are members of regulatory or self-regulatory bodies to which an order under Commission Rule 30.10 has been issued from the registration requirements of part 30;

(2) To maintain filings for exemption from the registration requirements of part 30 and supporting agreements submitted pursuant to the provisions of Commission Rule 30.5 by qualifying persons acting as CPOs or CTAs who offer their products and services solely to "qualified eligible participants" or "qualified eligible clients," as those terms are defined in Commission Rule 4.7;

(3) To grant, either with or without conditions, the registration of any applicant for registration with a foreign principal and the addition by a registrant of a foreign principal after NFA verifies the fitness of the foreign principal<sup>36</sup> with the relevant foreign regulatory authority,<sup>37</sup> where NFA previously would have forwarded the

request for fitness information to the Commission in order for the Commission to request the fitness information from the appropriate foreign regulatory body;

(4) To maintain the filings and acknowledgments submitted by exchange member FCMs in connection with Globex and NYMEX Access "pass-the-book" relief;

(5) To maintain filings of FCMs and their foreign affiliates made in connection with order transmittal relief where the filings contain the required representations for claiming such relief;

(6) To maintain identification filings and acknowledgments from firms intending to operate DTB terminals in the U.S. where such identification filings and acknowledgments contain the required representations and information for claiming relief; and

(7) To maintain filings, acknowledgments, and records pertaining to the functions previously delegated in this Order and to serve as the official custodian of those Commission records.<sup>38</sup>

The Commission is in the process of preparing an update to its systems of records (with respect to CFTC-12 and CFTC-20) to make permissible under the Privacy Act of 1974 the concomitant disclosure to NFA of personal information on individuals that may be contained in these filings, acknowledgments, and records.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and orders promulgated thereunder, particularly Rule 30.10 and Commission orders issued thereunder, and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

a change under applicable German laws or rules of the DTB concerning the definition of the word "principal"; (5) participating DTB members will provide, upon the request of the Commission or NFA, prompt access to original books and records and the premises where DTB terminals are installed in the U.S., and will consent to Commission jurisdiction for purposes of ensuring compliance with the conditions of the no-action relief; (6) DTB will continue to adhere to the "Principles for Oversight of Screen Based Trading Systems for Derivative Products," a statement of regulatory policy recommended by the International Organization of Securities Commissions and adopted by the Commission on November 21, 1990; (7) DTB will submit to the Commission, on at least a quarterly basis, information reflecting the volume of trades originated from U.S.-based computer terminals compared to DTB's overall trading volume; and (8) DTB will undertake to provide the Division with prompt notice of all material changes to DTB rules, the German Exchange Act, the German Securities Act, and other German laws relevant to futures and options which may impact on the issuance of DTB Terminal Placement relief.

<sup>35</sup> 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993).

<sup>36</sup> This should include a person residing in the U.S. who has resided outside of the U.S. for at least six months during the five years immediately prior to the filing of Form 8-R.

<sup>37</sup> The relevant foreign regulatory authority can include an authority in any jurisdiction where the principal has worked during the prior five years as well as the authority for the principal's current residence.

<sup>38</sup> The Commission may delegate other similar administrative and processing functions by letter and Commission Advisory. The Commission also will furnish to NFA existing Commission records that it identifies as pertaining to the matters discussed in this Order.

This Order does not, however, authorize NFA to render "no-action" opinions or interpretations with respect to applicable registration requirements.

Nothing in this Order or in Sections 8a(10) or 17(o) of the Act shall affect the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions, or to review the maintenance of registration by NFA.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous orders issued by the Commission under Part 30.

Issued in Washington, D.C. on September 5, 1997 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97-24015 Filed 9-10-97; 8:45 am]

BILLING CODE 6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

### Membership of the Commission's Performance Review Board

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Membership Change of Performance Review Board.

**SUMMARY:** In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

*Chairman:* Donald Tendick, Acting Executive Director. *Members:* Susan Lee, Executive Assistant to the Chairperson, Office of the Chairperson; Daniel Waldman, General Counsel, Office of General Counsel; Geoffrey Aronow, Director, Division of Enforcement; John Mielke, Acting Director, Division of Economic Analysis.

**DATES:** This action was effective September 5, 1997.

**ADDRESSES:** Commodity Futures Trading Commission, Office of Human Resources, Suite 7200, 1155 21st Street N.W., Washington, D.C. 20581.

### FOR FURTHER INFORMATION CONTACT:

Jayne Seidman, Director, Office of Human Resources, Commodity Futures Trading Commission, Suite 7200, 1155 21st Street N.W., Washington, D.C. 20581, (202) 418-5010.

**SUPPLEMENTAL INFORMATION:** This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, July 26, 1996.

Issued in Washington, D.C. on September 5, 1997.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 97-24036 Filed 9-10-97; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Proposed Collection; Comment Request

**AGENCY:** Deputy Chief of Staff for Personnel (DAPE-ZXI-RM), U.S. Army; DOD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by November 10, 1997.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333-5600 Attn: (Dr. Peter J. Legree). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to

obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614-0454.

*Title:* Modeling the Individual Enlistment Decision.

*Needs and Uses:* The career decision survey captures the attitudes of 16-21 year old youth toward service, as well as other available career options. It also addresses qualification for service, primarily in terms of aptitude, and their availability. This administration will be used to identify the items that best predict enlistment propensity, and to segment the population by quality and availability factors.

*Affected Public:* Individual or Households.

*Annual Burden Hours:* 2000.

*Number of Respondents:* 4000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 30 minutes.

*Frequency:* One time.

**SUPPLEMENTARY INFORMATION:** The new data collected will be used by analyst within the Army Research Institute and its prime contractor, the (HumRRO), to investigate the viability of alternative means of indirectly assessing cognitive ability and enlistment propensity. If the collection were not conducted, the Army would not have the information of improved relevance and validity needed to fulfill and improve upon its recruiting mission.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 97-24144 Filed 9-10-97; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet September 26, 1997, from 3:00 p.m. to 4:00 p.m. at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, D.C. 20350-2000. This session will be closed to the public.

The purpose of this meeting is to conduct the final briefing of the Business Simulation Task Force to the Chief of Naval Operations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the