

Miami, FL, Kendall-Tamiami Executive, ILS OR LOC RWY 9R, Amdt 10

Miami, FL, Kendall-Tamiami Executive, RNAV (GPS) RWY 9R, Amdt 1

Miami, FL, Kendall-Tamiami Executive, Takeoff Minimums and Obstacle DP, Amdt 7

Mattoon/Charleston, IL, Coles County Memorial, RNAV (GPS) RWY 29, Orig

Mount Vernon, IL, Mount Vernon, GPS RWY 5, Orig-A, CANCELLED

Mount Vernon, IL, Mount Vernon, GPS RWY 23, Orig, CANCELLED

Mount Vernon, IL, Mount Vernon, RNAV (GPS) RWY 5, Orig

Mount Vernon, IL, Mount Vernon, RNAV (GPS) RWY 23, Orig

Morehead, KY, Morehead-Rowan County Clyde A Thomas Rgnl, RNAV (GPS) RWY 2, Orig

Morehead, KY, Morehead-Rowan County Clyde A Thomas Rgnl, RNAV (GPS) RWY 20, Orig

Morehead, KY, Morehead-Rowan County Clyde A Thomas Rgnl, Takeoff Minimums and Obstacle DP, Orig

Mitchellville, MD, Freeway, VOR RWY 36, Orig-B, CANCELLED

Traverse City, MI, Cherry Capital, RNAV (GPS) RWY 10, Orig

Cape Girardeau, MO, Cape Girardeau Rgnl, ILS OR LOC RWY 10, Amdt 11

Cape Girardeau, MO, Cape Girardeau Rgnl, LOC/DME BC RWY 28, Amdt 7

Hattiesburg, MS, Hattiesburg Bobby L. Chain Muni, VOR RWY 13, Amdt 12

Jackson, MS, Hawkins Field, GPS RWY 16, Orig, CANCELLED

Jackson, MS, Hawkins Field, GPS RWY 34, Orig, CANCELLED

Jackson, MS, Hawkins Field, RNAV (GPS) RWY 16, Orig

Jackson, MS, Hawkins Field, RNAV (GPS) RWY 34, Orig

Carson City, NV, Carson, RNAV (GPS)-A, Orig

Carson City, NV, Carson, Takeoff Minimums and Obstacle DP, Orig

New York, NY, LaGuardia, Takeoff Minimums and Obstacle DP, Amdt 8

Newburgh, NY, Stewart Intl, Takeoff Minimums and Obstacle DP, Amdt 5

McMinnville, OR, McMinnville Muni, Takeoff Minimums and Obstacle DP, Amdt 4

McMinnville, OR, McMinnville Muni, VOR/DME-B, Amdt 6

Ontario, OR, Ontario Muni, Takeoff Minimums and Obstacle DP, Amdt 3

State College, PA, University Park, ILS OR LOC RWY 24, Amdt 9

State College, PA, University Park, RNAV (GPS) RWY 6, Amdt 1

State College, PA, University Park, RNAV (GPS) RWY 24, Orig

State College, PA, University Park, VOR-B, Amdt 10

Lebanon, TN, Lebanon Muni, GPS RWY 19, Orig, CANCELLED

Lebanon, TN, Lebanon Muni, NDB RWY 19, Amdt 1

Lebanon, TN, Lebanon Muni, RNAV (GPS) RWY 19, Orig

Ogden, UT, Ogden-Hinckley, VOR/DME RWY 7, Amdt 6

Richlands, VA, Tazewell County, LOC/DME RWY 25, Orig

Ellensburg, WA, Bowers Field, VOR-B, Amdt 3

Pasco, WA, Tri-Cities, VOR/DME RWY 30, Amdt 3

*Correction:* On September 11, 2008 (73 FR 52779), the FAA published an Amendment in Docket No. 30624, Amdt No. 3284 to Part 97 of the Federal Aviation Regulations under section 97.29. The 1st entry for *Pittsburgh, PA, Pittsburgh Intl*, effective September 25, 2008, is hereby corrected to read as follows: Pittsburgh, PA, Pittsburgh Intl, CONVERGING ILS RWY 28R, Amdt 4, CANCELLED

*Rescinded:* On August 7, 2008 (73 FR 45861), the FAA published an Amendment in Docket No. 30620, Amdt No. 3280 to Part 97 of the Federal Aviation Regulations under section 97.25. The following entry, effective September 25, 2008, is hereby rescinded in its entirety: Ketchikan, AK, Ketchikan Intl, ILS OR LOC/DME Y RWY 11, Amdt 7

[FR Doc. E8-23913 Filed 10-10-08; 8:45 am]

BILLING CODE 4910-13-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 the Tokyo Financial Exchange, Inc. (TFX) from the application of certain of the Commission's foreign futures and option 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:* October 14, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Andrew V. Chapin, Associate Director; Helene Schroeder, Special Counsel; or Peter B. Sanchez, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading

Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430. E-mail: [DCIO@cftc.gov](mailto:DCIO@cftc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

Order Under CFTC Regulation 30.10 Exempting Firms Designated by the Tokyo Financial Exchange, Inc. (TFX) From the Application of Certain of the Foreign Futures and Option 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 TFX, 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.<sup>1</sup> 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.<sup>2</sup> These elements include: (1) Registration, authorization or other form

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. I (2007).

<sup>2</sup> 52 FR 28990, 29001 (August 5, 1987).

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.<sup>3</sup>

On August 10, 2007, TFX petitioned the Commission on behalf of its member firms, located and doing business in Japan, for an exemption from the application of the Commission's Part 30 Regulations to those firms.<sup>4</sup> In support of its petition, TFX 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 or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act (Act) and the regulations thereunder.

Based upon a review of the petition, supplementary materials filed by TFX 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 Japanese law and TFX regulations 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 TFX 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 Japan.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory framework governing persons in Japan who would be exempted hereunder provides:

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

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

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

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

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

(6) Procedures to audit for compliance with, and to redress violations of, the

customer protection and sales practice requirements referred to above, including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, TFX, and the Japanese 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 Japan, position data, and data on firms' standing to do business and financial condition.

Commission staff have concluded, upon review of the petition of TFX and accompanying exhibits, that Japan's regulation of financial 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 TFX for products that customers located in the U.S. may trade.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

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

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the

<sup>3</sup> 52 FR 28980, 28981 and 29002.

<sup>4</sup> The Commission previously reviewed petitions from two Japanese self-regulatory organizations—the Tokyo Grain Exchange (TGE) and the Tokyo Commodity Exchange (TOCOM). See 58 FR10953 (February 23, 1993) (TGE); 71 FR 6759 (February 9, 2006) (TOCOM).

<sup>5</sup> See, e.g., Sections 2(a)(1)(C) and (D) of the Act.

<sup>6</sup> See, e.g., 17 CFR Part 18 (2007).

<sup>7</sup> See, e.g., 17 CFR Parts 17 and 21 (2007).

Regulation 30.10 petition must represent in writing to the CFTC<sup>8</sup> that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Japan; such firm is engaged in business with customers in Japan 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 TFX and the Commission will receive prompt notice of all material changes to the relevant laws in Japan, any regulations promulgated thereunder and TFX regulations;

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

(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 Japan 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 Japanese laws and TFX regulations that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted.

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.<sup>9</sup> 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 TFX 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.<sup>10</sup> 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 TFX firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(f). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain

<sup>9</sup> 62 FR 47792, 47793 (September 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.

<sup>10</sup> 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).

in effect pending further notice by the Commission, or the Commission's designee, to the firm and TFX.

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: October 8, 2008.

By the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E8–24315 Filed 10–10–08; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 801

[TD 9426]

RIN 1545–BE45

#### Balanced System for Measuring Organizational and Employee Performance Within the Internal Revenue Service

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

<sup>8</sup> As described below, these representations are to be filed with NFA.