

will prevent confusion as new editions are issued.

Although this suggestion has considerable merit, each statement of incorporation by reference in regulatory text must specifically identify the material to be incorporated, including the title, date, edition, author, publisher, and identification number of the publication.<sup>21</sup> Therefore, the Commission does not have discretion to refer generally to the “latest” or “current” edition of API Publication 1509 in the Rule.<sup>22</sup> Because Publication 1509 is in its Fifteenth Edition, the Commission is incorporating it by reference by publishing an amendment to the Code of Federal Regulations in the current rulemaking.

#### IV. Conclusion

The comments provide evidence that the Rule serves a useful purpose, while imposing minimal costs on the industry; and the Commission has no evidence to the contrary. Accordingly, with the exception of incorporating by reference API Publication 1509, Fifteenth Edition, and adding an updated explanation of incorporation by reference in Section 311.4, the Commission has determined to retain the Recycled Oil Rule in its current form.

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis with the final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605. The Rule permits rather than requires any container of recycled oil to bear a label indicating that it is substantially equivalent to new engine oil, if such determination has been made in accordance with the prescribed test procedures. The Rule imposes no reporting or recordkeeping requirements, and it permits recycled

oil to be labeled with information that is basic and easily ascertainable. In addition, the Rule does not require recycled oil manufacturers to conduct substantial equivalency tests themselves and maintain their own testing equipment. Rather, they may use third parties to minimize testing costs. In any event, the Commission believes the Rule, as amended, does not affect a substantial number of small entities because relatively few companies currently manufacture and sell recycled oil as engine oil, and that most would not be “small entities” under applicable regulations, 13 CFR part 121. Although there may be some “small entities” among private-label retail sellers or distributors of recycled engine oil, the Rule’s labeling standards should continue to have only a minimal impact on such entities, because the Rule is limited to voluntary labeling disclosures beyond the labeling costs that such entities already incur. Accordingly, for the reasons above, the Commission certifies that the Rule, as amended, will not have a significant economic impact on a substantial number of small entities. This document serves as notice of that determination to the Small Business Administration.

#### VI. Paperwork Reduction Act

Under the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501–3520, federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The amended Rule does not involve the “collection of information” under the PRA and, therefore, OMB approval is not required.

#### List of Subjects in 16 CFR Part 311

Energy conservation, Incorporation by reference, Labeling, Recycled oil, Trade practices.

#### Text of Amendments

■ For the reason set forth in the preamble, 16 CFR part 311 is amended as follows:

#### PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

■ 1. The authority citation for part 311 continues to read as follows:

**Authority:** 42 U.S.C. 6363(d).

■ 2. Revise § 311.4 to read as follows:

#### § 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institutes of Standards and Technology (“NIST”) on July 27, 1995, entitled “Engine Oil Licensing and Certification System,” American Petroleum Institute (“API”), Publication 1509, Thirteenth Edition, January 1995. API Publication 1509, Thirteenth Edition has been updated to API Publication 1509, Fifteenth Edition, April 2002. API Publication 1509, Fifteenth Edition, April 2002, is incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials incorporated by reference may be obtained from: API, 1220 L Street, NW., Washington, DC 20005. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration (“NARA”). For information on the availability of this material at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. E7–5678 Filed 3–27–07; 8:45 am]

**BILLING CODE 6750–01–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 Taiwan Futures Exchange (TAIFEX) 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

<sup>21</sup> See, National Archives and Records Administration, Office of the Federal Register, “Federal Register Document Drafting Handbook,” ch. 6 (1998). This handbook contains the rules federal agencies must follow to incorporate materials by reference into regulatory text. This handbook is issued under the Federal Register Act (44 U.S.C. 1501–1511) and the regulations of the Administrative Committee of the Federal Register (1 CFR 15.10).

<sup>22</sup> Comments made in connection with the Recycled Oil rulemaking in 1995 similarly suggested that the final rule require use of test procedures found in the “latest” or “current” version of API Publication 1509. In addressing comments made in connection with the 1995 rulemaking, the Commission’s Federal Register notice detailed why such proposals were not feasible. (60 FRN 55417–55418).

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:* March 28, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Lawrence B. Patent, Esq., Deputy Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* (202) 418-5439.

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

Order Under CFTC Regulation 30.10 Exempting Firms Designated by the Taiwan Futures Exchange (TAIFEX) 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 TAIFEX, 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. the 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 of licensing, fitness review or qualification of persons that solicit and accept customer orders; (2) minimum financial requirements for those persons that solicit and accept customer orders; (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 September 20, 2005, TAIFEX petitioned the Commission on behalf of its member firms, located and doing business in Taiwan, for an exemption from the application of the Commission's Part 30 Regulations to those firms. In support of its petition, TAIFEX 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 TAIFEX 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 Taiwanese law and TAIFEX 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 TAIFEX 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 application statutes and regulations in effect in Taiwan.

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

<sup>1</sup> Commission regulations referred to herein are found at 17 CFR Ch. I (2006).

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

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

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, TAIFEX, and the Taiwanese 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 Taiwan, position data, and data on firms' standing to do business and financial condition.

Commission staff have concluded, upon review of the petition of TAIFEX and accompanying exhibits, that Taiwan'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 TAIFEX for products that customers located in the U.S. may trade.<sup>4</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>5</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>6</sup> The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

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

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

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

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Taiwanese customers under all relevant provisions of Taiwanese 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 Taiwan 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 Taiwanese laws and TAIFEX 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>8</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.

This Order will become effective as to any designated TAIFEX 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 in effect pending further notice by the Commission, or the Commission's designee, to the firm and TAIFEX.

This Order is issued pursuant to Regulation 30.10 based on the representations made and supporting material provided to the Commission

<sup>8</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>4</sup> See, e.g., Sections 2(a)(1)(C) and (D) of the Act.

<sup>5</sup> See, e.g., 17 CFR part 18 (2006).

<sup>6</sup> See, e.g., 17 CFR parts 17 and 21 (2006).

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

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.

Issued in Washington, DC on March 23, 2007.

**Eileen A. Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. 07-1521 Filed 3-27-07; 8:45 am]

**BILLING CODE 6351-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200 and 232

[Release No. 34-55502]

#### Technical Amendment to Regulation S-T

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is amending Regulation S-T to make a correction with respect to mandated electronic submissions and to include persons or entities that submit filings for review by the Division of Market Regulation as persons or entities that are subject to the electronic filing requirements of Regulation S-T. The amendment will clarify that a filing

submitted on an electronic filing system other than the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system is not a mandated submission under Regulation S-T and will clarify that filers who submit forms on EDGAR for review by the Division of Market Regulation are subject to the requirements of Regulation S-T. The Commission is also amending the Rules of Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to adjust the filing date of an electronic submission and to grant or deny a continuing hardship exemption from electronic filing under Regulation S-T. The amendment will conserve Commission resources and will allow the Commission to make such adjustments and to grant or deny such exemptions in a timely manner.

**DATES:** *Effective Date:* April 27, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jerry Carpenter, Assistant Director, or Catherine Moore, Special Counsel, (202) 551-5710, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6628.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 4, 2004, the Securities and Exchange Commission ("Commission") adopted an amendment to Rule 19b-4<sup>1</sup> to require that Form 19b-4<sup>2</sup> be filed electronically on the Commission's Electronic Form 19b-4 Filing System ("EFFS").<sup>3</sup> At the same time, the Commission amended Rule 101(a) of Regulation S-T<sup>4</sup> to mandate that Form 19b-4 be submitted to the Commission in electronic format and amended Rule 101(c)(9) of Regulation S-T to except Form 19b-4 from the requirement that filings submitted to the Division of Market Regulation be submitted in paper format. However, Regulation S-T only applies to electronic filings that are submitted on EDGAR, and Form 19b-4 is not submitted through EDGAR. As a result, Rules 101(a) and 101(c)(9) of Regulation S-T should not have been amended with respect to Form 19b-4. The Commission is making a technical amendment to remove the reference to Form 19b-4 in Rule 101(a) and to revise Rule 101(c)(9) to clarify that forms submitted for review by the Division of Market Regulation electronically, whether on EDGAR or on another

electronic filing system such as EFFS, do not have to be submitted in paper format.

Additionally, the Commission is making a technical amendment to Rule 100 of Regulation S-T to include persons or entities that submit filings for review by the Division of Market Regulation as persons and entities that are subject to the electronic filing requirements of Regulation S-T. Because the EDGAR system was initially designed for the electronic submission of documents that are subject to review by the Divisions of Corporation Finance and Investment Management, Rule 100 currently only applies to registrants whose filings are submitted for review by those divisions and to such registrant's joint or third party filers. To reflect the fact that the Commission has recently added Forms 25, TA-1, TA-2, and TA-W, which are submitted for review by the Division of Market Regulation, to the list of mandated electronic filings in Section 101(a) of Regulation S-T, the Commission is amending Rule 100 to include the filers of any other forms that are submitted through EDGAR for review by the Division of Market Regulation as persons or entities that are subject to the electronic filing requirements of Regulation S-T.

The Commission is amending Rule 30-3 of the Rules of Organization and Program Management<sup>5</sup> to add new paragraphs (j) and (k) to delegate to the Director of the Division of Market Regulation authority to grant or deny a request submitted under Regulation S-T to adjust the filing date of an electronic filing and to grant or deny, as appropriate, a continuing hardship exemption to an electronic filer under Rule 202 of Regulation S-T. The delegation of authority to the Director of the Division of Market Regulation is designed to conserve Commission resources by permitting staff to adjust the filing date of an electronic filing and to grant or to deny exemptions where appropriate and in a timely manner. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate. The Directors of the Divisions of Corporation Finance and of Investment Management have previously been delegated such authority.<sup>6</sup>

##### **II. Certain Findings**

Under the Administrative Procedure Act ("APA"), notice of proposed

<sup>1</sup> 17 CFR 240.19b-4.

<sup>2</sup> 17 CFR 249.819.

<sup>3</sup> Securities Exchange Act Release No. 50486, 69 FR 60287 (October 8, 2004) [File No. S7-18-04].

<sup>4</sup> 17 CFR 232 *et seq.*

<sup>5</sup> 17 CFR 200.30-3, Delegation of authority to the Director of Division of Market Regulation.

<sup>6</sup> 17 CFR 200.30-1(j) and (k) and 200.30-6(j) and (k).