

electronic data of general and regular dissemination, including its employees, (4) the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (5) any foreign board of trade or clearing organization of such board of trade, (6) an insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof, and (7) such other persons not within the intent of the term “commodity trading advisor” as the Commission may specify by rule, regulation, or order: *And, provided further*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Registration as a commodity trading advisor shall not be required if such person is registered with the Commission as a futures commission merchant, introducing broker, commodity pool operator or associated person, or is otherwise exempt from registration pursuant to § 30.5.

(e) Any person required to be registered as a futures commission merchant under this section must maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person.

§ 30.5 Alternative procedures for non-domestic persons.

(a) *Agent for service of process.* Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission, other than a person required to be registered as a futures commission merchant, will be exempt from such registration requirement if such person enters into a written agency agreement with the futures commission merchant through which business is done in accordance with the provisions of § 30.3(b) of this part, with any registered futures association or any other person located in the United States in the business of providing such services, pursuant to which agreement such futures commission mer-

chant or other person is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer. If the written agency is entered into with any person other than the futures commission merchant through which business is done, such futures commission merchant must be expressly identified in such agency agreement. Service or delivery of any communication issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer, pursuant to such agreement shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required by this section shall be filed with the Vice President-Registration, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606, with a copy to the Vice President-Compliance, National Futures Association. For the purposes of this section, the term “communication” includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence relating to any activities of such person subject to regulation under this part.

(b) *Termination of agreement.* Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant or any other person which is party to the agreement shall immediately notify the Vice President-Compliance of the National Futures Association and the futures commission merchant through which business is done, as appropriate. Upon notice, a futures commission merchant shall not accept from the person that has entered into such agreement any order, other than liquidating order(s), for, or on behalf of a foreign futures or foreign options customer. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued

by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization or any foreign futures or foreign options customer pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into on or before the date of the termination of the agreement.

(c) *Applicability of other rules.* Any person who is located outside of the United States, its territories or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as an introducing broker, commodity pool operator or commodity trading advisor under this part, shall nonetheless comply with the provisions of §30.6 of this part and §§1.37 and 1.57 of this chapter as if registered in such capacity.

(d) *Access to records.* Any person exempt from registration with the Commission in accordance with the provisions of paragraph (a) of this section must, upon the request of any representative of the Commission or U.S. Department of Justice, provide such records as such person is required to maintain under this part as requested at the place in the United States designated by the representative within 72 hours after the person receives the request.

§30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.* Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures or option account for a foreign futures or option customer unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in §1.55(b) of this chapter or as otherwise approved under §1.55(c) of this chapter (except for non-substantive additions such as captions), which has been acknowledged in accordance with §1.55 of this chapter; *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or

the first page of such documents and as the only material on such page.

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to §30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that it intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to §30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first provides each prospective participant or client with the Risk Disclosure Statement set forth in §4.24(b) in the case of a commodity pool operator or §4.34(b) in the case of a commodity trading advisor.

(2) The disclosure statement required to be provided in paragraph (b)(1) of this section may be given as a separate document or, if part of the Disclosure Document required to be furnished customers or potential customers pursuant to §4.21 or §4.31 of this chapter, must be prominently disclosed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission or any applicable federal or state securities laws and regulations.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with §1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligations under §33.7 of this chapter: *Provided, however,* That a new disclosure statement is not required to be furnished if