

part, it shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign option transaction for or on behalf of any foreign futures or foreign options customer other than by or through a futures commission merchant on a fully-disclosed basis.

[52 FR 28998, Aug. 5, 1987, as amended at 61 FR 10895, Mar. 18, 1996]

§ 30.4 Registration required.

Except as provided in § 30.5 of this part, it shall be unlawful for any person, with respect to a foreign futures or foreign options customer:

(a) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that*, a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as a futures commission merchant; one, in order to accept orders from or to carry a U.S. futures commission merchant's foreign futures and options customer omnibus account, as that term is defined in § 30.1(d); two, in order to accept orders from or to carry a U.S. futures commission merchant's proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; and/or three, in order to accept orders from or carry a U.S. affiliate account which is proprietary to the foreign futures and options broker, as "proprietary account" is defined in paragraph (y) of § 1.3 of this chapter. Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the activity listed in this paragraph are not required to register as futures commission merchants if they comply with the conditions listed in § 30.10(b)(1) through (6).

(b) Except an individual who elects to be and is registered as an associated person of a futures commission merchant, to solicit or accept orders for or involving any foreign futures contract or foreign options transaction, and who in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked;

(c) To engage in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, to solicit, accept, or receive funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading, directly or indirectly, in any foreign futures contract or foreign options transaction unless such person shall have registered, under the Act, with the Commission as a commodity pool operator and such registration shall not have expired nor been suspended nor revoked: *Provided, however*, That the registration requirement set forth in this paragraph shall not apply to any investment trust, syndicate, or similar form of enterprise located outside the United States, its territories or possessions which is registered as an investment company under the Investment Company Act of 1940 and whose securities are registered in accordance with the Securities Act of 1933, or which is otherwise exempt from such registration requirements: *And, provided further*, That no more than 10% of the assets of, such investment trust, syndicate or similar form of enterprise located outside the United States, its territories or possessions, are held by or on behalf of foreign futures and foreign options customers.

(d) To solicit or enter into an agreement to direct, or to guide such customer's account by means of a systematic program that recommends specific transactions in any foreign option or

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foreign futures contract unless such person shall have registered, under the Act, with the Commission as a commodity trading advisor and such registration shall not have expired nor been suspended nor revoked: *Provided*, That the term “commodity trading advisor” does not include

(1) Any bank or trust company or any person acting as an employee thereof,

(2) Any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher,

(3) The publisher or producer of any print or 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.

[52 FR 28998, Aug. 5, 1987, as amended at 69 FR 49803, Aug. 12, 2004]

§ 30.5 Alternative procedures for non-domestic persons.

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, may apply

for an exemption from registration under this part by filing with the National Futures Association a Form 7-R completed and filed in accordance with the instructions thereto and designating an agent for service of process, as specified below. A person who receives confirmation of an exemption pursuant to this section must engage in all transactions subject to regulation under part 30 through a registered futures commission merchant or a foreign broker who has received confirmation of an exemption pursuant to § 30.10 in accordance with the provisions of § 30.3(b).

(a) *Agent for service of process.* Any person who seeks exemption from registration under this part shall enter into a written agency agreement with the futures commission merchant located in the United States through which business is done, with any registered futures association, or any other person located in the United States in the business of providing services as an agent for service of process, pursuant to which agreement such futures commission merchant 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 agreement is entered into with any person other than the futures commission merchant through which business is done, the futures commission merchant or foreign broker who has received confirmation of an exemption pursuant to § 30.10 with whom business is conducted 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 National Futures Association. For the purposes of this section, the term