

§ 30.11

17 CFR Ch. I (4–1–07 Edition)

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and foreign option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foregoing undertakings and consent to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures or foreign option customers for the purpose of facilitating or effecting transactions in foreign futures or foreign option contracts.

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

§ 30.11 Applicability of state law.

Pursuant to section 12(e)(2) of the Act, the provisions of any state law, including any rule or regulation thereunder, may be applicable to any person required to be registered under this part who solicits foreign futures and foreign options customers and who shall fail or refuse to obtain such registration, unless such person is exempt from such registration in accordance with the provisions of § 30.4, § 30.5 or § 30.10 of this part.

§ 30.12 Direct foreign order transmittal.

(a) *Authorized customers defined.* For the purposes of this section, an “authorized customer” of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in § 30.1(c), or its designated representative, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and options customer omnibus account; and

(2)(i) Is an eligible swap participant, as defined in § 35.1(b)(2) of this chapter, or

(ii) Whose investment decisions with respect to foreign futures and foreign option transactions are made by a commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as a commodity trading advisor under the Act or Commission regulations, or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that the commodity trading advisor has total assets under management exceeding \$50,000,000 and that the commodity trading advisor places the foreign futures or foreign options order.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the futures commission merchant's most recent required filing of a Form 1-FR-FCM with the Commission:

(i) Possesses \$20,000,000 in adjusted net capital, as defined by § 1.17(c)(5) of this chapter; or

(ii) Possesses the greater of three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(A) of this chapter or three times the amount of adjusted net capital required by § 1.17(a)(1)(i)(B) of this chapter; and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraphs (c) or (d) of this section, and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer