connection with the proposed disclosure requirements.

General comments may be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and to the Securities and Exchange Commission's Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act number 3235-0307, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20543.

Dated: September 5, 1995.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36270]

Order Extending Exemption for Certain Brokers and Dealers From Broker-Dealer Registration

September 22, 1995.

AGENCY: Securities and Exchange

Commission.

ACTION: Extension of exemption.

SUMMARY: The Securities and Exchange Commission is extending the exemption for persons acting as brokers or dealers with respect to certain categories of over-the-counter derivative instruments, to the extent that such instruments are securities, from the broker-dealer registration requirement under Section 15(a) of the Securities Exchange Act of 1934. As extended, the exemption is retroactive to June 6, 1934, the date of the enactment of the Securities Exchange Act of 1934, and will expire September 30, 1996.

EFFECTIVE DATE: September 22, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Patrice Gliniecki, Senior Counsel, or Glenn Jessee, Senior Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 5–10, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 1994, the Securities and Exchange Commission

("Commission") issued an order under Section 15(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") exempting persons acting as brokers or dealers with regard to certain categories of over-the-counter ("OTC") derivative instruments, to the extent such instruments are securities, from the broker-dealer registration requirement under Section 15(a) ("Exemptive Order").1 In issuing the Exemptive Order, the Commission recognized the importance of derivative instruments as financial management tools, and sought to provide assurance to market participants in light of questions regarding the proper statutory and regulatory designation of certain OTC contracts. Such concerns, it was noted, are compounded by the trend among dealers to conduct a range of OTC derivatives activities in unregistered entities, either here or abroad, or in separately capitalized derivative product companies.

Market participants have indicated to the Commission staff that the exemption set forth in the Exemptive Order has proved useful in addressing concerns regarding the status of various OTC derivative instruments.2 Therefore, in order to continue to provide certainty to participants in the OTC derivatives market with respect to their registration obligations under the Exchange Act, the Commission is exercising its authority under Section 15(a)(2) of the Exchange Act to extend the exemption covering persons acting as brokers or dealers regarding certain categories of OTC derivative instruments, to the extent such instruments are securities, from the broker-dealer registration requirement under Section 15(a).

II. Discussion

A. Scope of Order

This order extends the exemption for persons acting as brokers or dealers with regard to transactions in certain classes of OTC options, to the extend such options are securities, from the broker-dealer registration requirement under

Section 15(a) of the Exchange Act. This exemption only applies to transactions involving individually negotiated, cashsettlement OTC options on debt securities or groups or indexes of such securities that (1) are documented as swap agreements, and (2) satisfy the terms of the exemption from regulation under the Commodity Exchange Act adopted by the Commodity Futures Trading Commission ("CFTC"), which is set forth at 17 CFR Part 35 ("Part 35 Rules").3 In addition, to the extent any person satisfies the conditions of the exemption, the Division of Market Regulation has indicated that it would not recommend enforcement action if such persons do not comply with the various statutory and regulatory requirements otherwise imposed on a "broker" or "dealer" as defined in Sections 3(a)(4) and 3(a)(5) of the Exchange Act.⁴ Such persons, however, remain subject to the antifraud provisions under the federal securities laws including, but not limited to, the provisions of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15(c) of the Exchange Act, and Rules 10b-5 and 15c1-2 thereunder.

B. Clarification

The Commission notes that questions have arisen regarding the specific application of the requirements set forth above. For example, certain persons seeking to avail themselves of the exemption have asked whether transactions within the scope of the exemption must be documented using master agreements formulated by the **International Swaps and Derivatives** Association ("ISDA"). Some market participants prefer to use their own documentation for these transactions rather than standardized agreements. Also, certain OTC derivatives transactions based on foreign debt securities or documented using non-U.S. master agreements developed specifically for foreign domestic markets. Accordingly, the requirement

¹ Exchange Act Release No. 35135 (Dec. 22, 1994), 59 FR 67358 (Dec. 29, 1994). The Exemptive Order was issued concurrently with the issuance of an order instituting proceedings pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Exchange Act, and findings and other imposing remedial sanctions in the Matter of BT Securities Corporation. Exchange Act Release No. 35136 (Dec. 22, 1994).

² See Letter from Zachary Snow, Chairman, OTC Derivative Products Committee, Securities Industry Association ("SIA"), to Brandon Becker, Director, Division of Market Regulation, dated July 31, 1995; Letter from Brandon Becker, Director, Division of Market Regulation, to Zachary Snow, Chairman, SIA OTC Derivative Products Committee, dated June 28, 1995.

³ Individually negotiated, cash-settled OTC options on debt securities that may satisfy these criteria could include (1) options on prices of debt securities; (2) options on yields of debt securities; (3) options on the difference, or spread, between the yields of two or more debt securities, the spread between the prices (or other value) of two or more debt securities, or the spread between yields and prices involving two or more debt securities; and (4) options on the spread between the price (or other value) or yield on one or more debt securities and the price (or other value) or yield of any other asset or index (other than a equity security or a group or index of equity securities).

⁴ In addition, the Commission staff will respond promptly to no-action, exemptive, or other requests submitted by brokers or dealers that require relief from specific provisions of the federal securities laws.