which assure Commission access to relevant information of the type which previously may not have been available.[24] The Commission further recognizes that its ability to obtain information to confirm the existence of transactions executed on foreign exchanges[25] has been materially enhanced by the numerous information-sharing memoranda of understanding and cooperative arrangements that have been entered with foreign jurisdictions.[26]

Nor would elimination of the authorization requirement negatively affect the access of U.S. customers to existing customer complaint procedures, either under existing rule 30.10 orders for customers directly solicited by foreign firms or under NFA's arbitration rules governing disputes with a foreign party.

Customers solicited by foreign firms operating under a rule 30.10 order will, pursuant to the express terms of such orders, have access to arbitration procedures both abroad and through NFA. Customers transacting through a domestic firm will have the option of electing NFA arbitration procedures. NFA rules governing arbitration of disputes involving foreign parties provide that disputes involving a foreign party may, in the discretion of NFA, be arbitrated if the parties agree to such arbitration (see NFA foreign arbitration rule sec. 2(a)(1)). Demands for arbitration will be rejected, however, if the claim arises primarily out of delivery, clearance, settlement or floor practices of a foreign exchange unless the foreign jurisdiction has no program for the resolution of disputes, in which case NFA will hear such claims. The rule 30.10 order permits the 30.10 firm to require a customer to consent to use a foreign regulator's non-binding mediation or conciliation service prior to initiating an NFA arbitration case. (See NFA Arbitration Policy Statement (March 1, 1989)).

Thus, whether solicited by Commission registrants or foreign firms operating under rule 30.10, the Commission believes that the systems in place to address sales practice abuses and information sharing warrant reexamination of existing procedures.

Finally, the Commission notes that FCMs which are not members of foreign exchanges should assure themselves that there are no statutory or regulatory impediments on their ability to obtain information from foreign exchange-members firms necessary to enable such FCMs to comply with the CEA and regulations thereunder relative to confirming the execution of foreign option transactions.

In conclusion, the Commission believes that the differential treatment of foreign options no longer is justified. Indeed, to the extent that such differential treatment continues under circumstances when such treatment is not warranted based on existing economic and/or regulatory concerns, it risks conveying to traders the incorrect impression that the Commission can provide a greater level of protection with respect to foreign options than with respect to foreign futures. Moreover, as domestic exchanges increasingly seek to link their exchanges electronically with other exchanges worldwide, the presence of an authorization process for commodity options raises, under the current circumstances, an unnecessary obstacle that could competitively disadvantage domestic exchanges.

Proposal

The Commission is therefore proposing to eliminate rule 30.3's requirement that no foreign option may be offered or sold in the United States until the Commission, by order, authorizes such foreign commodity option to be offered or sold in the United States.

The Commission notes that the proposed elimination of the specific authorization requirement in rule 30.3(a) will not affect the existing product restrictions applicable to options on futures contracts based on stock index products (*i.e.*, the underlying stock index futures must be the subject of a no-action letter issued by the CFTC's Office of the General Counsel) and foreign government debt (i.e., the debt product must be designated by the SEC as an exempted security under SEC rule 13a–8) contained in section 2(a)(1)(B)(v) of the CEA.

Accordingly, the Commission invites comment from interested parties on its proposal. Moreover, the Commission specifically invites the contract markets to indicate any other areas in which the designation requirements for options and futures generally could be further harmonized.

Other Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that FCMs should be excluded from the definition of ''small entity'' based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619 (April 30, 1982). The Commission similarly determined that CPOs are not small entities for purposes of the RFA. 47 FR 18618, 18620 (April 30, 1982). With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule. 47 FR 18618, 18620 (April 30, 1982) (CTAs); 48 FR 35248, 35276 (August 3, 1983) (IBs).

The proposed amendment of rule 30.3 is intended to facilitate the ability of Commission registrants or exempted firms to provide customers with access to desired products by eliminating a current product-by-product authorization requirement, thus providing easier access to a greater number of persons.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. The Commission has determined that the proposed amendment does not have any paperwork burden.

Persons wishing to comment on the Commission's determination on the paperwork burden concerning this proposed rule should contact Jeff Hill,

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[24] Significantly, to date, the Commission has not had occasion to request any information under any information sharing arrangement in connection with the approval of a particular exchange foreign option product.

[25] In explaining its decision to suspend the offer and sale of foreign commodity options in the United States, the Commission noted in 1977, among other things, that:

The Commission's investigators and auditors have also encountered great difficulty in their attempts to verify the details of option transactions purportedly effected for Americans on foreign exchanges.

See 43 FR 16153, 16155 (April 17, 1977).

[26] For example, such regulatory and enforcement MOUs and cooperative arrangements have been entered into with authorities in Australia, Argentina, Brazil, Canada, France, Hong Kong, Italy, Japan, Mexico, the Netherlands, Singapore, Spain, Taiwan, and the United Kingdom.