

issued by one or more entities that are not parties to the litigation but are affected by the litigation, if:

(1) The securities are publicly traded or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all affected entities (including securities exempted under § 2640.202(a)) does not exceed \$25,000.

7. Section 2640.204 is amended by revising Example 1 which follows the section to read as follows:

**§ 2640.204 Prohibited financial interests.**

\* \* \* \* \*

*Example 1 to § 2640.204:* The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at \$2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than \$15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 436

#### Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

**AGENCY:** Federal Trade Commission.

**ACTION:** Invitation to Comment on Requested Exemption from Trade Regulation Rule.

**SUMMARY:** The Commission is requesting public comment with respect to a request from Daewoo Motor America, Inc., for an exemption from the requirements of the Franchise Rule.

**DATES:** Written comments with be accepted until November 6, 2000.

**ADDRESSES:** Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326-2222.

**FOR FURTHER INFORMATION CONTACT:** Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3135.

**SUPPLEMENTARY INFORMATION:** On December 21, 1978, the Federal Trade Commission promulgated a trade

regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("the Rule"). 16 CFR Part 436. In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business, and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class or persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule.

Daewoo Motor America, Inc. ("DMA" or "Petitioner") has filed a petition for an exemption from the Franchise Rule pursuant to Section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). DMA's petition asserts that an exemption should be granted because DMA dealers are sophisticated business persons with experience in the industry, and the information-exchange and negotiation process leading to execution of a dealership agreement takes place over a period of several months, ensuring adequate time for review. Petitioner also explains that prospective

Daewoo dealer[s] are highly unlikely to enter into any dealer agreement without a full disclosure of all material information needed for them to fully understand its terms. DMA will not resist supplying such information because its ability to succeed in the domestic market will ultimately depend on its dealers successfully selling Daewoo products according to the terms set forth in the Dealer Agreement.

Pet. at 10. Petitioner asserts that the experience and sophistication of prospective dealers and the company's selection process leading to the execution of dealership agreements make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to DMA unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits

comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of automobile franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issues of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Daewoo Franchise Rule Exemption Comment," and three copies should be submitted.

#### List of Subjects in 16 CFR Part 436

Franchising, Trade Practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed Rule; Interpretative Statement.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to clarify its interpretation of the foreign futures or foreign options secured amount requirement set forth in Commission Rule 30.7 ("secured amount requirement").<sup>1</sup> The Commission previously interpreted Rule 30.7 to require futures commission merchants

<sup>1</sup> Commission rules referred to herein are found at 17 CFR Ch. I (2000).

("FCMs") and certain firms exempt from such registration to perform an inquiry with respect to the treatment of the foreign futures or foreign options secured amount by any depository handling those funds. Under that interpretation, if a firm determines that any depository, including those beyond the initial depository, would not hold the funds set aside to cover the secured amount in a manner consistent with the provisions of the rule, then the firm must set aside funds with an acceptable depository in order to include such funds in the daily computation of the secured amount. As part of the Commission's ongoing program of regulatory reform, the Commission is proposing to revise its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's proposed interpretation set forth herein would become the new Appendix B to Part 30.

**DATES:** Comments must be received by September 21, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to "Commission Rule 30.7."

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5430.

**SUPPLEMENTARY INFORMATION:** The current Appendix B to Part 30 sets forth option contracts permitted to be offered or sold in the U.S. pursuant to Rule 30.3(a). The Commission previously amended Rule 30.3(a) to eliminate the requirement that the Commission authorize the offer and sale of a particular foreign exchange-traded commodity option before it can be offered or sold in the U.S., except for those involving stock indices or foreign government debt futures.<sup>2</sup> That action rendered existing Appendix B to Part 30 generally irrelevant. Accordingly, the Commission proposes to remove the

current Appendix B and replace it with the Interpretative Statement to Rule 30.7 contained herein. Persons concerned with what options on foreign stock index or government debt futures can be lawfully offered or sold to customers located in the U.S. may consult the foreign instruments approval backgrounder on the Commission's website at <http://www.cftc.gov/opa/backgrounder/part30.htm>.

#### List of Subjects in 17 CFR Part 30

Consumer Protection, Definitions, Foreign futures, Foreign options, Treatment of foreign futures or foreign options secured amount.

Accordingly, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

#### PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Appendix B is proposed to be revised to read as follows:

#### Appendix B—Interpretative Statement With Respect to the Secured Amount Requirement Set Forth in § 30.7.

1. Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts such money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers.<sup>1</sup> This amount is denominated as the "foreign futures or foreign options secured amount" and that term is defined in Rule 1.3(rr). The separate accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c). Further, each FCM must obtain and retain in its files for the period provided in Rule 1.31 an acknowledgment from the depository that the depository was informed that such money, securities or

property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

2. In a series of orders issued pursuant to Rule 30.10, the Commission required that certain foreign firms exempt from registration as FCMs essentially comply with the standards of Rule 30.7.<sup>2</sup> Specifically, the Commission stated that "[the secured amount] requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations."<sup>3</sup> The Commission further interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to take appropriate action (i.e., set aside funds in a "mirror" account) in the event that it becomes aware of facts leading it to conclude that foreign futures and foreign options customer funds are not being handled consistent with the requirements of Commission rules or relevant order for relief by any subsequent intermediary or exchange clearing organization.

3. Upon further analysis and reconsideration of this matter, the Commission has determined to revise its prior interpretation of the Rule 30.7 secured amount requirement. The Commission notes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of

<sup>2</sup> Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Commodity Exchange Act ("Act") and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization ("SRO"). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief (referred to herein as "Rule 30.10 firms") must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. For a list of those foreign regulators and SROs that have been issued a Rule 30.10 order, see Appendix C to Part 30.

In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction be granted broader relief to engage in transactions on exchanges other than in its home jurisdiction (referred to herein as "expanded relief"), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions. Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7. For the most recent order granting expanded relief, see 64 FR 50248 (September 16, 1999) (Singapore Exchange Derivatives Trading Limited).

<sup>3</sup> 64 FR 50248, 50251, n.19 (emphasis added).

<sup>2</sup> 61 FR 10891 (March 1996).

<sup>1</sup> "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.3] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7]." Rule 30.1(c). "Foreign futures" means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a). "Foreign option" means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade."

protection in the event that the intermediating FCM or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whether the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.<sup>4</sup>

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) ("Rule 1.55(f) customers").<sup>5</sup> While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transaction.<sup>6</sup>

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7);<sup>7</sup> or (2) Paragraphs

6 and 8 of Appendix A to Rule 1.55(c).<sup>8</sup> Rule 30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulator) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, only applies to the maintenance of the account or accounts

dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

<sup>8</sup> Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of Appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. If an FCM receives from the initial depository the acknowledgment described in Rule 30.7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by its home regulator.

7. If an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers an acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of the effective date of this interpretation. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of Part 30.

Issued in Washington, D.C. on August 29, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

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<sup>4</sup> Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Appendix A to Part 30.

<sup>5</sup> 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of "eligible swap participants" in Rule 35.1.

<sup>6</sup> *Id.* at 8569.

<sup>7</sup> Rule 1.55(b)(7) reads as follows:

Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 103

**RIN 1076-AD73**

#### Loan Guaranty, Insurance, and Interest Subsidy

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Interior (DOI), Bureau of Indian Affairs (BIA) proposes to revise the regulations that implement the Loan Guaranty, Insurance, and Interest Subsidy Program. This Program authorizes the Secretary of DOI to guaranty or insure loans made by private lenders to individual Indians and to organizations of Indians, and to assist qualified borrowers with a portion of their