Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Association of Futures Brokers and Dealers.

FR date and citation: May 19, 1989; 54 FR ——.

[FR Doc. 89–12092 Filed 5–18–89; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by The Securities Association ("TSA") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Shauna Turnbull, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by The Securities Association from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated June 24, 1988, TSA, which has been recognized as a self-regulating organisation in the United Kingdom pursuant to Section 10 of the Financial Services Act, petitioned the Commission on behalf of member firms for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, TSA states that granting such an exemption with respect to member firms which it has designated would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by TSA, the Order of the Commission issued on this

[1] 52 FR 28980, 28981 and 29002.

day granting the petition of the Securities and Investments Board ("SIB") in the United Kingdom, which has oversight responsibilities with respect to TSA, and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law, SIB and TSA rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify TSA if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing information between the Commission, SIB [2] and TSA for monitoring purposes on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms, standing to do business and financial condition, and for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rules 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to do investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transactions on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and

[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memorandum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU"), and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States self-regulatory organizations, including TSA and the NFA.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer or sale in the United States of such option product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer or sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in TSA's rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(e) In the event TSA has approved a particular firm's proprietary options model, that TSA will certify that the use of such proprietary option model results in a financial resource requirement for that firm which is no less stringent than that required under TSA's rules generally;

(f) Acknowledges that the Side Letter to the UK/US MOU makes provision for access to or delivery of the books and records of firms and confirms that TSA will cooperate in providing access to such books and records to the Commission through SIB in accordance with the terms of the Side Letter to the UK/US MOU; and

(g) It will cooperate with the Commission in connection with information sharing pursuant to the Addendum to the FISMOU;[5] will cooperate with the Department of Trade and Industry and the SIB in connection with requests made pursuant to the UK/US MOU; and will cooperate with the SIB in connection with requests made pursuant to the Side Letter to the UK/US MOU.[6]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988), unless a currently effective valid and binding agency agreement has previously been filed by or on behalf of such firm in connection with the interim relief granted by the Commission with respect to certain persons on January 29, 1988, 53 FR 3338 (February 5, 1988), as extended on April 4, 1988, 53 FR 11491 (April 7, 1988), and by letters dated July 5, 1988, November 2, 1988 and December 22, 1988;

(b) Acknowledges that it can be required by TSA to provide to TSA immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that TSA will cooperate in providing access to such books and records to the Commission through the SIB in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of TSA and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by TSA prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission, SIB and TSA;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of TSA and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 17.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to TSA, or at such other times as may be specified by TSA, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and TSA rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated under the Commission's interim order or

[5] *See* the Addendum to the FISMOU attached hereto as Exhibit A.

[6] *See* Side Letter to the UK/US MOU attached hereto as Exhibit B.

hereinafter designated the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Interim relief will be extended to firms subject thereto until this Order becomes effective as to such firms, but in no event shall interim relief extend past one hundred and twenty (120) days after the date of publication of the Order in the **Federal Register.** Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and TSA.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or othewise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organisations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) On an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,
by Wendy L. Gramm.

National Futures Association,
by Robert K. Wilmouth.

Securities and Investments Board,
by David Walker.

The Securities Association,
by John Young.

The Association of Futures Brokers and Dealers Limited,
by Phillip Thorpe.

Investment Management Regulatory Organisation Ltd.,
by J.A. Morgan.

Exhibit B—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") on the exchange of information relating to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the

Securities and Investments Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and option transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTRC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and The CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7 (a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board,

M.B. Gittins,

Director—Futures and Options Division.

Commodity Futures Trading Commission,

Andrea M. Corcoran,

Director, Division of Trading and Markets.

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's Rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or conciliation process and reminding you of your right to access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

Customer.

Date.

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

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

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to §30.10

* * * * *

Firms designated by The Securities Association.

FR date and citation: May 19, 1989; 54 FR ______.

[FR Doc. 89-12091 Filed 5-18-89; 8:45 am]

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17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to firms designated by the Investment Management Regulatory Organisation Limited ("IMRO") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, 17 CFR 30.10 (1988), which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq. or Shauna Turnbull, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Investment Management Regulatory Organisation Limited from the Application of Certain of the Foreign Futures and Option Rules the Later of Thirty Days after Publication of the Order Herein in the Federal Register or after Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

On July 23, 1987, the Commission adopted final rules governing the domestic offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade. 52 FR 28980 (August 5, 1987). These rules, which are codified in Part 30 of the Commission's regulations, generally extend the Commission's existing customer protection regulations for products offered or sold on contract markets in the United States to foreign futures and option products sold to United States customers by imposing requirements with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures that are generally comparable to those applicable to wholly domestic transactions.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to United States customers, among other things, the Commission considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission, as set forth in Commission Rule 30.10, determined to permit persons located outside the United States and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements imposed by the Part 30 rules based upon substituted compliance with the comparable regulatory requirements imposed by the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Commission Rule 30.10, 52 FR 28980, 29001. These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining adequate standards of customer and market protection within the United States.

Moreover, the Commission specifically stated in adopting Commission Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Consensually submit to jurisdiction in the United States by designating an agent for service of process in the United States with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the United States to Commission and Department of Justice representatives; and (3) notify the NFA of the commencement or termination of business in the United States.[1]

By letter dated July 15, 1989, the IMRO, which has been recognized as a self-regulating organisation in the United Kingdom pursuant to Section 10 of the Financial Services Act, petitioned the Commission on behalf of member firms for an exemption from the application of the Commission's foreign futures and option rules. In support of its petition, IMRO states that granting such an exemption with respect to member firms which it has designated would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory scheme comparable to that imposed by the Commodity Exchange Act ("Act") and the regulations thereunder.

Based upon a review of the petition, supporting materials filed by IMRO, the

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[1] 52 FR 28980, 28981 and 29002.

Order of the Commission issued on this day granting the petition of the Securities and Investments Board ("SIB") in the United Kingdom, which has oversight responsibilities with respect to IMRO, and the recommendation of the staff, the Commission has concluded that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable United Kingdom law, SIB and IMRO rules may be substituted for compliance with those sections of the Act more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7 (1988);
—Those sections of Part 1 of the Commission's financial regulations that apply to foreign futures and options sold in the United States as set forth in Part 30; and
—Those sections of Part 1 of the Commission's regulations relating to books and records which apply to transactions subject to Part 30;

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in the United Kingdom.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing the persons in the United Kingdom who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of firms;

(2) Financial requirements for authorized persons including, without limitation, a requirement that all firms immediately notify IMRO if the firms' adjusted net capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer funds which is designed to preclude the use of customer funds to satisfy house obligations and requires separate accounting for such funds, augmented by a compensation scheme designed to compensate customers whose funds are segregated and who have suffered a loss as a result of fraud and/or insolvency of an authorized person;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf which include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities which take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing information between the Commission, SIB [2] and IMRO for monitoring purposes on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds, position data, data on firms, standing to do business and financial condition, and for cooperating with the Commission in inquiries, compliance matters, investigations and enforcement proceedings.

This Order does not provide an exemption from any provision of the Act or regulations thereunder not specified herein, for example, without limitation, the antifraud provision in Commission Rule 30.9, 17 CFR 30.9 (1988), or the disclosure provisions of Commission Rule 30.6, 17 CFR 30.6 (1988).[3] Moreover, the relief granted is directed to brokerage activities on or subject to the rules of recognized investment exchanges ("RIEs") in the United Kingdom [4] or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, which is a designated investment exchange under SIB Conduct of Business Rule 1.04, undertaken by firms authorized to investment business in the United Kingdom from a location in the United Kingdom. These RIEs currently include the London International Financial Futures Exchange, London Commodity Exchange, London Metal Exchange, Baltic Futures Exchange and the International Petroleum Exchange of London. The relief does not extend to rules or regulations relating to trading, directly or indirectly, on United States exchanges. For example, such a firm trading in United States markets for its own account would be subject to the Commission's large trader reporting requirements. *See, e.g.*, 17 CFR Part 18 (1988). Similarly, if such a firm were carrying a position on a United States exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers. *See, e.g.*, 17 CFR Parts 17 and 21 (1988). The relief herein is inapplicable where the firm solicits or effects transactions on United States markets for United States customers. In that case, the firm must comply with all applicable United States laws and

[2] *See, e.g.*, "Memorandum of Understanding on Exchange of Information between the United States Securities and Exchange Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and Between the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures" signed on September 23, 1986, as supplemented by "Memoradum Relating to UK/US MOU" signed on November 22, 1988 adding the SIB as a signatory to the MOU (hereinafter collectively referred to as "UK/US MOU") and the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on September 1, 1988 by, among others, the SIB, the Commission and United Kingdom and United States self-regulatory organizations, including IMRO and the NFA.

[3] Commission Rule 30.6 requires that customers resident in the United States who enter into foreign futures and option transactions also be furnished with the options risk disclosure statement in Commission Rule 33.7, 17 CFR 33.7 (1988). No option product traded on any RIE in the United Kingdom may be offered or sold to customers resident in the United States until the Commission issues an Order pursuant to Commission Rule 30.3(a), 17 CFR 30.3(a) (1988), approving the offer and sale in the United States of such product. In that connection, in considering any petition requesting that United Kingdom option products subject to Part 30 be approved for offer and sale in the United States, the Commission will assess the degree to which the United Kingdom's options risk disclosure statement addresses the same matters as those set forth in the Commission's options risk disclosure statement in determining whether the United Kingdom's statement may be substituted for the language in Commission Rule 33.7.

In that connection, notwithstanding the fact that the Commission has approved the offer or sale in the United States of certain option products traded on the Singapore International Monetary Exchange, the Sydney Futures Exchange and the Montreal Exchange, no firm exempted hereunder may offer or sell such option products to persons resident in the United States pending a resolution of the options risk disclosure issue.

[4] *See* Financial Services Act ("FSA"), section 37.

regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organisation responsible for monitoring the compliance of such firm with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in the United Kingdom; such firm is engaged in business with customers located in the United Kingdom as well as in the United States; and, to the best of its knowledge and belief, such firm and its employees and company representatives who engage in activities subject to Part 30 would not be statutorily disqualified from registration under section 8a(2) of the Act, 7 U.S.C. 12a(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm which would affect it continued eligibility for the exemption granted hereunder, including the termination of its activities in the United States;

(c) It will promptly notify the Commission of all material changes in IMRO's rules;

(d) Customers resident in the United States will be provided no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(e) Acknowledges that the Side Letter to the UK/US MOU makes provision for access to or delivery of the books and records of firms and confirms that IMRO will cooperate in providing access to such books and records to the Commission through SIB in accordance with the terms of the Side Letter to the UK/US MOU; and

(f) It will cooperate with the Commission in connection with information sharing pursuant to the Addendum to the FISMOU; [5] will cooperate with the Department of Trade and Industry and the SIB in connection with requests made pursuant to the UK/US MOU; and will cooperate with the SIB in connection with requests made pursuant to the Side Letter to the UK/US MOU.[6]

(2) Each firm seeking relief hereunder must apply in writing whereby it:

(a) Consents to jurisdiction in the United States under the Act by filing a valid and binding appointment of an agent in the United States for service of process in accordance with the requirements set forth in Commission Rule 30.5, 17 CFR 30.5 (1988);

(b) Acknowledges that it can be required by IMRO to provide to IMRO immediate access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in the United Kingdom and that IMRO will cooperate in providing access to such books and records to the Commission through the SIB in accordance with the terms of the Side Letter to the UK/US MOU;

(c) Consents that all futures or regulated option transactions with respect to customers resident in the United States will be made on or subject to the rules of an RIE or any other exchange, other than a contract market designated as such pursuant to section 5 of the Act, designated by the SIB under SIB Conduct of Business Rule 1.04, and will be undertaken consistent with the rules of IMRO and applicable provisions of the Financial Services Act;

(d) Represents that no principal of such firm would be disqualified from directly applying to do business in the United States under section 8a(2) of the Act, 7 U.S.C. 12a(2), and notifies the Commission promptly of any change in that representation based on a change in control as generally defined in Commission Rule 3.32, 17 CFR 3.32 (1988);

(e) Discloses the identity of each subsidiary or affiliate domiciled in the United States with a related business (*e.g.*, banks and broker/dealer affiliates) and provides a brief description of such subsidiary's or affiliate's principal business in the United States;

(f) Subject to NFA's stated policy to reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange, consents to participate in any NFA arbitration program which offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30; provided, however, that the firm may require its customers resident in the United States to execute the consent attached hereto as Exhibit C concerning the exhaustion of certain mediation or conciliation procedures made available by IMRO prior to bringing an NFA arbitration proceeding; and, provided further, that the firm must undertake to provide the customer with information concerning how to commence such procedures and documentation of the commencement of such procedures pursuant to the consent attached hereto as Exhibit C;

(g) Consents to the release of financial information relating to the firm as specified in the FISMOU, as amended, between, among others, the Commission, SIB and IMRO;

(h) Consents to refuse customers resident in the United States the option of not segregating funds notwithstanding relevant provisions of the United Kingdom regulatory system and otherwise consents to provide all customers resident in the United States no less stringent regulatory protection than United Kingdom customers under all relevant provisions of United Kingdom law;

(i) In the event a firm is using an approved bank undertaking to meet any part of the financial resources requirement of IMRO and the value of segregated funds held by the firm on behalf of customers resident in the United States exceeds 12.5 times the absolute minimum financial resource requirement applicable to the firm, consents to report on its quarterly financial statement to IMRO, or at such other times as may be specified by IMRO, the value of funds required to be segregated on behalf of customers resident in the United States; and

(j) Undertakes to comply with the applicable provisions of United Kingdom law and IMRO rules which form the basis upon which this exemption from certain provisions of the Act is granted.

This Order will become effective as to any firm designated hereunder the later of thirty days after publication of the Order in the **Federal Register** or after filing of the consents hereinabove required. Upon filing of any notice required under paragraph (1)(b) as to any firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and IMRO.

This Order is issued pursuant to Commission Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to

[5] *See* the Addendum to the FISMOU attached hereto as Exhibit A.

[6] *See* Side Letter to the UK/US MOU attached hereto as Exhibit B.

which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Commission Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion. For example, the relief granted to a specific firm may be suspended upon the firm's failure to provide access to its books and records. If necessary, provisions will be made for servicing existing client positions.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC, on May 15, 1989.

Jean A. Webb,

Secretary of the Commission.

Exhibit A—Addendum Dated May 15, 1989, to the Financial Information Sharing Memorandum of Understanding

1. We refer to the Financial Information Sharing Memorandum of Understanding ("FISMOU") entered into on 1 September 1988 by, among others, the Securities and Investments Board ("SIB"), Commodity Futures Trading Commission ("CFTC"), United Kingdom Self-Regulating Organisations ("SROs") and United States SROs, as defined in the FISMOU.

2. We further refer to the Order of the CFTC dated May 15, 1989, granting an exemption under Rule 30.10 of the CFTC's rules to the SIB and certain U.K. SROs and to those firms which they designate pursuant to which the CFTC will, among other things, defer to the financial regulation rules of the relevant U.K. regulator.

3. In consideration of the foregoing, and of the need to share financial information from time to time and on a regular basis with respect to firms in the United Kingdom granted an exemption under Rule 30.10, the undersigned parties hereby agree to this Addendum as permitted by paragraph (2) of Article VI of FISMOU:

(a) In accordance with paragraph 3(c) of Article III of FISMOU, the SIB or the relevant U.K. SRO will use its best efforts to notify and discuss with the CFTC if it becomes aware, through a U.K. SRO or otherwise, of any information which in its respective judgment materially and adversely affects the financial or operational viability of any firm domiciled in the United Kingdom and doing business in the United States under a comparability exemption granted pursuant to Rule 30.10 of the CFTC's rules.

(b) The SIB or the relevant U.K. SRO will provide to the CFTC, commencing with the first filing due after the effective date of this Addendum, as promptly as practicable after receipt of the relevant report, the following information with respect to a firm domiciled in the United Kingdom doing business in the United States under a comparability exemption granted pursuant to Rule 30.10:

(i) Copies of: (A) On an annual basis, a statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (B) the annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (A) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(ii) Details of any notifications received under the rules of the SIB or relevant U.K. SRO regarding any breach of the financial resources requirements.

(c) The SIB or relevant U.K. SRO will provide the Commission simultaneously with its notification of the sponsorship of a firm domiciled in the United Kingdom wishing to do business in the United States under a comparability exemption pursuant to Rule 30.10 with the following information:

Copies of: (i) A statement containing, with respect to such firm, financial information analogous to that set forth in the cover sheet required to be provided by U.S. SROs to the relevant U.K. regulator pursuant to Article III of FISMOU concerning an FCM; or (ii) the most recent annual audited financial statement, including the annual auditors report, required under the rules of the SIB or the relevant U.K. SRO. In either case, the SIB or relevant U.K. SRO will represent that it has reviewed the annual audited financial statement and that, based solely on its review of the information in that filing, it has no reason to believe (or it has reason to believe) that there exists a violation of the financial resources requirements of the SIB or relevant U.K. SRO promulgated under the FSA. If the SIB or relevant U.K. SRO provides the cover sheet in accordance with (i) above, the SIB or relevant U.K. SRO will provide a copy of the firm's annual audited financial statement upon request of the CFTC.

(d) The CFTC may make information received pursuant to this Addendum available to National Futures Association.

(e) Except as otherwise provided herein, the provisions of the FISMOU shall apply to this Addendum, to the extent relevant.

Signed this 15th day of May 1989.

United States Commodity Futures Trading Commission,
by Wendy L. Gramm.

National Futures Association,
by Robert K. Wilmouth.

Securities and Investments Board,
by David Walker.

The Securities Association,
by John Young.

The Association of Futures Brokers and Dealers Limited,
by Phillip Thorpe.

Investment Management Regulatory Organisation Ltd.,
by J.A. Morgan.

Exhibit B—Side Letter Relating to UK/US MOU

1. We refer to the Memorandum of Understanding between the Department of Trade and Industry, the Securities and Exchange Commission and the Commodity Futures Trading Commission ("CFTC") on the exchange of information relating to securities and futures and options which was signed on 23 September 1986, as supplemented on 22 November 1988 by the Memorandum Relating to UK/US MOU (hereinafter collectively referred to as "UK/US MOU") adding the Securities and Investments Board Ltd. ("SIB") as a signatory.

2. Whereas the SIB is performing important regulatory functions delegated to it under the Financial Services Act 1986 ("FSA"), including compliance and surveillance functions and oversight of compliance and surveillance functions performed by certain United Kingdom self regulating organisations related to firms engaged in investment business in the United Kingdom;

3. In consideration of the SIB's regulatory responsibilities with respect to persons and Recognized Investment Exchanges authorized to do investment business pursuant to section 27(2) and 37 of the FSA, respectively and the CFTC's rules governing foreign futures and option transactions in Part 30 of its rules which, among other things, contains procedures for the CFTC to approve certain foreign option products and for granting specified firms in foreign jurisdictions engaged in transactions subject to Part 30 of the CFTC's rules an exemption from the application of certain of the requirements thereunder based upon a determination that the regulatory system in effect in the foreign jurisdiction is comparable to the system in effect in the United States;

4. In order to ensure that the arrangements under the UK/US MOU will continue to operate effectively having regard to the regulatory requirements in effect in the United States and the United Kingdom; desiring to facilitate the international trading in and efficient international clearance and settlement of futures and options; and

recognizing the need for the establishment of exchanges of information as needed for the proper monitoring and operation of such trading, clearing and settlement;

The SIB and CFTC understand the following:

(a) This Side Letter concerns requests for information (including any request for immediate access to or delivery of the books and records of firms) required for the purposes of enabling or assisting the SIB and the CFTC to fulfill their respective functions relating to monitoring compliance with applicable Part 30 rules and the terms and conditions of Orders issued by the CFTC under Part 30 of its rules:

(i) To specified firms in the United Kingdom exempting such firms from the application of certain of the Part 30 rules; or

(ii) Relating to the offer or sale in the United States of certain United Kingdom option products.

(b) As modified by paragraphs (c), (d), (e) and (f) below, the provisions of the UK/US MOU will be deemed to apply to any request for information made under this Side Letter to monitor compliance with the provisions mentioned in paragraph (a) above which, for the purposes of this Side Letter, will be deemed to be legal rules or requirements within the meaning of the UK/US MOU.

(c) Any request for information made under this Side Letter will be deemed to be in compliance with paragraphs 7(a), (b) and (d) of the UK/US MOU if such request states that it is so made and satisfies the following requirements:

(i) Where ever possible it shall be in writing but in case of urgency it may be oral, but confirmed in writing within 10 days.

(ii) It shall clearly specify the following:

(A) The information required and, if known, the identity of the person or persons whose compliance with a legal rule or requirement is being monitored;

(B) The general purpose for which the information is sought, indicating in particular the legal rule or requirement pertaining to the matter which is the subject of the request;

(C) The ground for concern giving rise to the request.

(iii) The requested information must be reasonably related to the purpose for which the information is sought.

(iv) Where it is apparent to the SIB or CFTC when requesting the information that another person may obtain such information for a purpose other than monitoring, enforcing or securing compliance with the legal rule or requirement, to the extent permitted by the laws of the United Kingdom, when the SIB is requesting the information, or United States, when the CFTC is requesting the information, the SIB or CFTC must disclose the particulars of the person and his interest.

(d) For the purposes of requests made under this Side Letter, the contact officers will be Director, Futures and Options Division, SIB, and Director, Division of Trading and Markets, CFTC.

(e) Where an investigation as contemplated by paragraph 8 of the UK/US MOU is initiated on the basis of information provided pursuant to a request under this Side Letter, the Director of Enforcement, SIB, or the Director, Division of Enforcement, CFTC, will give notice to his counterpart at the CFTC or SIB.

(f) Information received pursuant to a request under this Side Letter may only be used consistent with the UK/US MOU; or in connection with any Commission Order relating to United Kingdom firms or products issued pursuant to Part 30 of the Commission rules; provided, however, in the latter case, the CFTC will, to the extent practicable, give prior notice of such action to the SIB.

(g) This Side Letter will become effective as to any Order relating to United Kingdom firms or products issued under Part 30 of the Commission's rules upon the issuance by the Commission of such an Order.

Signed this 15th day of May 1989.

Securities and Investments Board

M.B. Gittins,

Director—Futures and Options Division.

Commodity Futures Trading Commission

Andrea M. Corcoran,

Director, Division of Trading and Markets.

Exhibit C—Form of Consent

In the event that a dispute arises between you [name of customer resident in the United States] and [name of United Kingdom firm] with respect to transactions subject to Part 30 of the Commodity Futures Trading Commission's rules, various forums may be available for resolving the dispute, including courts of competent jurisdiction in the United States and United Kingdom and arbitration programs made available both in the United States and United Kingdom.

In the event you wish to initiate an arbitration proceeding against this firm to resolve such dispute under the applicable rules of the National Futures Association ("NFA") in the United States, you hereby consent that you will first commence mediation or conciliation in accordance with such procedures as may be made available by the relevant United Kingdom regulator, information on which is provided to you herewith. The outcome of such United Kingdom mediation or conciliation is nonbinding. You may subsequently accept this resolution, or you may proceed either to binding arbitration under the rules of the relevant United Kingdom regulator or to binding arbitration in the United States under the rules of NFA. In this connection, you should know that NFA will reject any request for arbitration involving a claim arising primarily out of delivery, clearing, settlement or floor practices on any foreign exchange. If you accept the mediated or conciliated resolution or elect to proceed to arbitration, or to any other form of binding resolution, under the rules of the relevant United Kingdom regulator or foreign exchange, you will be precluded from subsequently initiating an arbitration proceeding at NFA.

You may initiate an NFA arbitration proceeding upon receipt of documentation from the relevant United Kingdom regulator:

(i) Evidencing completion of the mediation or conciliation process and reminding you of your right of access to NFA's arbitration proceeding; or

(ii) Representing that more than nine months have elapsed since you commenced the mediation or conciliation process and that such process is not yet complete and reminding you of your right of access to NFA's arbitration proceeding.

The documentation referred to above must be presented to NFA at the time you initiate the NFA arbitration proceeding. NFA will exercise its discretion not to accept your demand for arbitration absent such documentation.

By signing this consent, you are not waiving any other rights to any other legal remedies available under law.

Customer

Date

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

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

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a (1982).

2. Appendix C to Part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

Firms designated by the Investment Management Regulatory Organisation.

FR date and citation: May 19, 1989; 54 FR .

[FR Doc. 89-12090 Filed 5-18-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0082]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a sanitizing solution composed of decanoic acid, octanoic

acid, lactic acid, phosphoric acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid or 1, 2-octanedisulfonic acid, the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine, and with FD&C Yellow No. 5 as an optional ingredient. The sanitizing solution is to be used on food-processing equipment and utensils including dairy-processing equipment. This action responds to a petition filed by Economics Laboratory, Inc.

DATES: Effective May 19, 1989; written objections and requests for a hearing by June 19, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1985 (50 FR 9521), FDA announced that a petition (FAP 5H3842) had been filed by Economics Laboratory, Inc., St. Paul, MN 55102 (the name and address of the company have been changed to Ecolab Inc., Ecolabl Center, St. Paul, MN 55102), proposing that the food additive regulations be amended to provide for the safe used of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be use on food-processing equipment and other food-contact articles.

Additionally, in a subsequent notice published in the **Federal Register** of January 26, 1989 (54 FR 3853), FDA amended the previous filing notice to make clear that the sanitizing solution also contains lactic acid, phosphoric acid, FD&C Yellow No. 5, and that the mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid may also contain 1,2-octanedisulfonic acid.

FDA has reviewed the safety of the individual chemicals that are components of the sanitizing solution, as well as, the safety of the starting materials. The condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of its production. These chemical impurities have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not and cannot require proof beyond any possible doubt that no harm will result under any conceivable circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer but contains a carcinogenic impurity may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

Sanitizing solutions are mixtures of chemicals. Each listed component in a sanitizing solution must have a functional effect. The subject sanitizing solution contains two short-chain fatty acids—decanoic acid and octanoic acid. In addition, the solution contains phosphoric acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid or 1, 2-octanedisulfonic acid, lactic acid, FD&C Yellow No. 5, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine. The functions of each component are described below.

A. Short Chain Fatty Acids

The two short chain fatty acids, decanoic acid and octanoic acid, are antimicrobial agents in the subject sanitizing solution and are used in a regulated sanitizing solution listed in 21 CFR 178.1010 (b)(27) and (c)(22). On the basis of the data submitted in support of that regulated use, and the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these fatty acids in the subject sanitizing solution is safe.

B. Phosphoric Acid

Phosphoric acid functions as a pH stabilizer in the subject sanitizing solution. Phosphoric acid is listed in 21 CFR 182.1073 as generally recognized as safe (GRAS) for direct use in food. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of phosphoric acid in the subject sanitizing solution is safe.

C. A Mixture of 1-Octanesulfonic Acid and 1-Octanesulfonic-2-Sulfinic Acid, or 1,2-Octanedisulfonic Acid (OSA Mixture)

This OSA mixture functions as a surface-active agent in the subject sanitizing solution. The mixture is a 40-percent aqueous solution of 1-octanesulfonic acid (25 percent minimum) and 1-octanesulfonic-2-sulfinic acid or 1,2-octanedisulfonic acid (9.0 percent maximum). This mixture is not regulated for use in sanitizing solutions. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of this mixture in the subject sanitizing solution is safe.

D. Lactic Acid

Lactic acid assists in stabilizing the subject sanitizing solution formulation. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of lactic acid in the subject sanitizing solution is safe.

E. FD&C Yellow No. 5

FD&C Yellow No. 5 functions as a colorant in the subject sanitizing solution and should be used at levels intended to perform its functional effect. On the basis of the data contained in the food additive petition submitted in support of this sanitizing solution and other available data, FDA finds that the use of FD&C Yellow No. 5 in the subject sanitizing solution is safe.

F. Ethoxylated Emulsifier

FDA estimates that the petitioned use of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine will result in extremely low levels of exposure to this additive. This substance functions as a defoaming agent in the subject sanitizing solution. The agency has calculated the estimated intake of this substance based on the probable concentration of the additive in the daily diet from its use on food-processing equipment and utensils. The estimated daily intake for the additive is 7.0 micrograms per person per day for a 60-kilogram person (2.3 parts per billion of the total daily diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in very low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the petitioner did submit data from an acute toxicity test in rats. No adverse effects were reported in this study.

As stated above, the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine may contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. These impurities may be present as a result of manufacturing procedures used to produce this emulsifier. Because the additive has not been shown to cause cancer, however, the anticancer clause does not apply to it.

FDA has evaluated the safety of this ethoxylated emulsifier under the general safety clause, using risk assessment procedures to estimate the upper bound risk presented by 1,4-dioxane and ethylene oxide that may be present as impurities in this additive. Based on this evaluation, FDA has concluded that the chemical is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). The risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. *1,4-Dioxane.* Based on the fraction of the daily diet that may be in contact with surfaces and articles containing residues of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymer with one mole of ethylenediamine, as well as the level of 1,4-dioxane that may be present in this additive, FDA estimated that the hypothetical worst case exposure to 1,4-dioxane from the use of this additive in the sanitizing solution would not exceed 0.07 nanograms per person per day (Ref. 5). The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer in the sanitizing solution. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound risk from potential exposure to 1,4-dioxane stemming from the proposed use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine.

Based on a worst case exposure of 0.07 nanograms per person per day, FDA estimates that the upper bound level of individual lifetime risk from potential exposure to 1,4-dioxane from the use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer is 2.5×10^{-12} or less than 1 in 400 billion. Because of the numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer.

2. *Ethylene oxide.* Based on the fraction of the daily diet that may be in contact with surfaces containing the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine, as well as levels of ethylene oxide that may be present in the additive, FDA estimated the hypothetical worst case exposure to ethylene oxide to be 0.07 nanograms per

person per day (Ref. 5). The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed the bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The committee further concluded that an estimate of the upper bound level of lifetime human cancer risk from potential exposure to ethylene oxide could be calculated from the bioassay.

Based on a worst case exposure of 0.07 nanograms per person per day, FDA estimates, using the linear proportional model, that the upper bound level of individual lifetime risk from potential exposure to ethylene oxide from the use of poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine is $1.3X10^{-10}$, or less than 1 in 8 billion. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that results from the use of the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer.

G. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the poly(oxyethylene)poly(oxypropylene) adduct of ethylenediamine defoamer. The agency finds that a specification is not necessary for the following reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are present as byproducts in the production of these additives, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound level of lifetime risk from exposure, even under worst case assumptions, is very low, less than 1 in 400 billion for 1,4-dioxane and less than 1 in 8 billion for ethylene oxide.

H. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculation for the components of the sanitizing solution and has determined that they are safe and effective for their proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the amended notice of filing for FAP 5H3842 (54 FR 3853). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

IV. References

The following information has been placed in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, July 1979, p. 59.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, October 24, 1983, Cambridge, MA.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

5. Memorandum dated June 20, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

V. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before June 19, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(36) and (c)(31) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(36) The sanitizing solution contains decanoic acid (CAS Reg. No. 334–48–5); octanoic acid (CAS Reg. No. 124–07–2); lactic acid (CAS Reg. No. 050–21–5); phosporic acid (CAS Reg. No. 7664–38–2); a mixture of 1-octanesulfonic acid

(CAS Reg. No. 3944–72–7), and 1-octanesulfonic-2-sulfinic acid (CAS Reg. No. 113652–56–5) or 1,2-octanedisulfonic acid (CAS Reg. No. 1934210); the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine (CAS Reg. No. 11111–34–5); and the optional ingredient FD&C Yellow No. 5 (CAS Reg. No. 001934210). In addition to use on food-processing equipment and utensils, this solution may be used on dairy-processing equipment.

(c) * * *

(31) Solutions identified in paragraph (b)(36) of this section shall provide, when ready for use, at least 29 parts per million and not more than 58 parts per million decanoic acid; at least 88 parts per million and not more than 176 parts per million of octanoic acid; at least 69 parts per million and not more than 138 parts per million of lactic acid; at least 256 parts per million and not more than 512 parts per million of phosphoric acid; at least 86 parts per million and not more than 172 parts per million of 1-octanesulfonic acid; at least 51 parts per million and not more than 102 parts per million of 1-octanesulfonic-2-sulfinic acid or 1,2-octanedisulfonic acid; and at least 10 parts per million and not more than 20 parts per million of the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine. The colorant adjuvant FD&C Yellow No. 5 shall not be used in excess of the minimum amount required to accomplish the intended technical effect.

* * * * *

Dated: May 10, 1989.

Arvin P. Shroff,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–11992 Filed 5–18–89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 81

RIN 1880–AA35

General Education Provisions Act—Enforcement

AGENCY: Department of Education.

ACTION: Final rule; correction.

SUMMARY: On May 5, 1989, final regulations for 34 CFR Part 81, titled "General Education Provisions Act—Enforcement," were published at 54 FR 19512. The regulations are corrected as follows:

1. On page 19515, in the second column, under § 81.21 *Measure of recovery*, the first line is corrected to read "(b) In the case of a State or".

2. On page 19518, in the first column, the second line of paragraph (3) *Ineligible beneficiaries* is corrected to read "example in paragraph (2),".

3. On the same page, in the same column, the second line of paragraph (4) *Ineligible beneficiaries* is corrected to read "example in paragraph (2),".

FOR FURTHER INFORMATION CONTACT: Barry W. Stevens, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW, Room 4091, FOB–6, Washington, DC 20202;

Telephone: (202) 732–2730.

Authority: 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

Note: For an additional correction to the document cited in this correction, see the corrections sections of this issue.

Dated: May 15,1989.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 89–12021 Filed 5–18–89; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 750

[OPTS–60007A; FRL–3510–2]

Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending its procedural regulations, 40 CFR Part 750, Subpart A, to make it clear that the Agency believes a rulemaking proceeding under TSCA section 6 (15 U.S.C. 2605) may begin with publication in the **Federal Register** of a notice of proposed rulemaking (NPRM), an advance notice of proposed rulemaking (ANPR), or notice of other appropriate action, such as a formal regulatory investigation designed to lead to issuance of rules within a reasonable time. This clarification is necessary because of an opinion in United States District Court on October 24, 1986, in the case of *Service Employees International Union (SEIU)* v. *Thomas* (D.D.C., No. 84–2790).

DATE: This rule shall become effective on July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: On June 17, 1987, the Agency proposed this amendment at 52 FR 23054. EPA solicited public comment on the proposed rule, even though it was procedural in nature and opportunity for public comment was not required. Comments were received and analyzed. The rule is now promulgated unchanged from proposal.

I. Background and Rationale

Section 21 of TSCA, 15 U.S.C. 2620, provides that any person may petition EPA, for among other things, the issuance, amendment, or repeal of a rule under section 4, 6, or 8 of TSCA, 15 U.S.C. 2603, 2605, or 2607. EPA may grant or deny the petition within 90 days. In pertinent part, section 21 provides that, if EPA grants the petition, the Agency "shall promptly commence an appropriate proceeding in accordance with section 4, 6, or 8." If EPA denies the petition, the petitioner may file a civil suit in United States District Court to compel the initiation of appropriate proceedings. This suit must be filed within 60 days of the denial, or within 60 days of the end of the 90-day period if EPA does not grant or deny within the 90-day period. In the case of a petition to initiate a proceeding for the issuance of a rule, as opposed to amendments or repeals, the petitioner is entitled to a *de novo* proceeding.

40 CFR Part 750, Subpart A—"Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act," sets forth the Agency's requirements for informal rulemaking under TSCA section 6(a). This includes such Agency obligations as the need to issue a NPRM, provide opportunity for public comment, establish a rulemaking docket, and provide opportunity for limited cross-examination. The original version of § 750.2(a) stated:

> (a) Each rulemaking subject to this part shall begin with the publication of a Notice of Proposed Rulemaking in the **Federal Register**.

EPA stated in the preamble to the proposed rule that it views this language merely as a statement that the procedural rules of Part 750, Subpart A, apply after the issuance of an NPRM. The United States District Court, however, in an October 24, 1986, opinion in *SEIU* v. *Thomas* rejected EPA's view and assigned a more pervasive meaning to 40 CFR 750.2(a). The court determined