6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN 3038-AF37

Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is proposing to amend its regulations to permit a foreign board of trade (FBOT) registered with the Commission to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the United States and registered with the Commission as an introducing broker (IB) for submission of customer orders to the FBOT's trading system for execution. The Commission is also proposing to establish a procedure for an FBOT to request revocation of its registration, and to remove certain outdated references to "existing no-action relief."

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comments, identified by "Foreign Boards of Trade" and RIN 3038-AF37, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov*. Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instruction as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in section 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this proposed rule will be retained in the public comment file and will be considered as required under the Administrative Procedure Act (APA) and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (646) 746-9792, *astamoulis@cftc.gov*, 290 Broadway, 6th Floor, New York, NY 10007; Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5344, *rsmith@cftc.gov*, 77 West Jackson Blvd., Suite 800, Chicago, IL 60604; Maura Dundon, Special Counsel, (202) 418-5286, *mdundon@cftc.gov*, Commodity Futures Trading Commission, Division of Market Oversight, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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[1] 17 CFR 145.9. The Commission's regulations referred to in this release are found at 17 CFR chapter I (2022), available on the Commission's website at *https://www.cftc.gov/LawRegulation/CommodityExchangeAct/index.htm*.

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I. Background

Under part 48 of the Commission's regulations, an FBOT must be registered with the Commission in order to provide its members or other participants located in the United States with direct access to its electronic trading and order matching system.[2] Part 48 is authorized by section 738 of the Dodd-Frank Act, which amended section 4(b) of the Commodity Exchange Act (CEA), to provide that the Commission may adopt rules and regulations requiring FBOTs that wish to provide U.S. persons with direct access to register with the Commission.[3] Prior to enactment of the part 48 FBOT registration procedures in 2011, FBOTs relied on no-action letters that were requested by the FBOT and granted by Commission staff in order to provide direct access to U.S. persons.[4]

Part 48 provides the procedures, requirements, and conditions to be met by FBOTs that seek to provide their members and other participants in the U.S. with direct access to the FBOT's trade matching system. The regulations set forth, among other things, procedures an FBOT must follow in applying for registration, requirements that

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[2] *See* Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011); 17 CFR part 48. "Direct access" is defined as an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade. CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).
[3] *See* Sec. 738, Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1726-1728 (2010) (*codified at* 7 U.S.C. 6(b)).
[4] *See* 76 FR 80674 at 80674-80675.

an FBOT must meet in order to obtain registration, conditions that an FBOT must satisfy on a continuing basis upon obtaining registration, and provisions for the termination of registration.

The Commission has not amended part 48 since it was first promulgated in 2011. Based on the Commission's experience engaging with registered FBOTs and applying part 48 over the ensuing years, the Commission is proposing certain amendments to the regulation. The proposed amendments are limited in scope and would not change the overall registration structure or framework of part 48. Rather, the proposal would amend § 48.4 to broaden the types of intermediaries eligible for direct access for submission of customer orders to the FBOT to include IBs registered with the Commission as such and located in the United States.[5] An IB is generally defined as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders.[6] Currently, § 48.4 only includes certain futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) as intermediaries that are eligible for entering orders

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[5] Intermediaries are entities that act on behalf of another person with respect to a trade. They are generally required to register with the Commission and, depending on the nature of their activities, may be subject to various financial, disclosure, reporting, and recordkeeping requirements.

[6] IB is defined, subject to certain exclusions and additions, in CEA section 1a(31) as any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) (i) who (I) is engaged in soliciting or in accepting orders for (aa) the purchase or sale of any commodity for future delivery, security futures product, or swap; (bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (cc) any commodity option authorized under section 4c; or (dd) any leverage transaction authorized under section 19; and (II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) who is registered with the Commission as an IB. 7 U.S.C. 1a(31). IB is further defined, subject to certain exclusions and additions, in Commission regulation 1.3(mm) as (1) Any person who, for compensation or profit, whether direct or indirect: (i) Is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the CEA; any commodity option transaction authorized under section 4c; or any leverage transaction authorized under section 19; or who is registered with the Commission as an IB; and (ii) Does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. 17 CFR 1.3(mm). IBs are subject to registration with the Commission under CEA section 4d(g) and Commission regulation 3.4(a). 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

on behalf of customers or commodity pools (in the case of CPOs) via direct access on a registered FBOT.

In addition, the proposed amendments would amend § 48.9 to provide registered FBOTs with a procedure to request revocation of their FBOT registration. Further, the Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOT's acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect.

II. Proposed Amendments

A. Section 48.4 – Registration eligibility and scope

The Commission proposes to amend § 48.4(b) to permit FBOTs to provide direct access to eligible IBs to enter orders directly into an FBOT's trading and order matching system on behalf of U.S. customers.[7] Section 48.4(b) identifies the types of members or other participants located in the U.S. that may enter orders directly into the trading and order matching system of a registered FBOT, and the types of accounts for which orders may be submitted by such members or other participants. In this regard, the types of members or other participants currently identified in § 48.4(b) represent the types of members or other participants that were trading via direct access on FBOTs that operated in reliance on CFTC staff no-action letters at the time part 48 was promulgated.[8] Specifically, § 48.4(b)(1) provides that any member or other participant located in the U.S. may enter orders for their proprietary accounts.[9] Further, § 48.4(b)(2) provides that registered FCMs may submit orders on behalf of their customers. Section 48.4(b)(3)

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[7] The term "eligible IB" is used in this release to mean an IB that is located in the United States and registered with the Commission as an IB. Direct access, as defined in the CEA and part 48, refers explicitly to members or other participants of an FBOT that are located in the United States. *See* footnote 2, *supra*. For purposes of this rulemaking and as used herein, the terms "U.S. customer" and "United States customer" refer to customers located in the United States, its territories or its possessions.

[8] *See* footnote 14, *infra*, and accompanying text.

[9] Under § 48.2(l), member or other participant is defined as a member or other participant of an FBOT and any affiliate thereof that has been granted direct access by the FBOT. 17 CFR 48.2(l). Proprietary account is defined in § 1.3, 17 CFR 1.3.

permits certain CPOs to submit orders on behalf of U.S. commodity pools and certain CTAs to submit orders on behalf of U.S. customers provided, however, all trades by the CPO or CTA effected through submission of such orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.[10] The Commission proposes to amend § 48.4(b), by inserting a new paragraph (b)(4) to provide that eligible IBs may submit orders on behalf of their customers – subject to the same condition now in place for CPOs and CTAs submitting orders on behalf of U.S. commodity pools or U.S. customers: all trades effected through submission of U.S. customer orders must be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. The Commission also proposes to amend paragraph (b)(3) to insert the words "registered as such" following "futures commission merchant" to clarify that the reference is limited to FCMs registered with the Commission as such.[11]

Direct access is defined in the CEA and part 48 of the Commission's regulations to mean an explicit grant of authority by an FBOT to an identified member or other participant located in the U.S. to enter trades directly into the trade matching engine of the FBOT.[12] This means that the FBOT itself, as opposed to its members or participants, has identified and permitted a member or participant to enter trades directly into the FBOT's order matching and trade entry system from the United States.[13] For example, a registered FBOT may authorize its member firms or other participants eligible to handle U.S. customer orders to enter orders on behalf of their customers in the U.S. or to

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[10] A § 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA. Used herein, U.S. commodity pool refers to a commodity pool that does not meet the criteria set forth in § 3.10(c)(5)(iii)(A) through (F), 17 CFR 3.10(c)(5)(iii)(A) through (F).

[11] The proposed addition of the words "registered as such" here is intended as a technical change rather than a substantive change; *i.e.*, that the reference is intended to refer to registered FCMs is already implied by the subsequent clause "or a firm exempt from such registration…"

[12] CEA section 4(b)(1)(A), 7 U.S.C. 6(b)(1)(A); 17 CFR 48.2(c).

[13] Conversely, a person located in the U.S. who accesses an FBOT through an intermediary (whether such intermediary is located in the United States or not) and without an explicit grant of authority by the FBOT (*i.e.*, such person is not an identified member or other participant of the FBOT) would not meet the definition of "direct access" for purposes of part 48. *See, e.g.,* 76 FR 80674 at 80688.

otherwise permit their customers in the U.S. to access the trading system using the member firm's or participant's identifier and grant of authority. In such cases the FBOT permits an identified exchange member or other participant to allow their customers in the U.S., who have not been granted explicit authority by the FBOT as a member or other participant of the FBOT, to have access to the exchange's trading systems, subject to a guarantee from an exchange participant firm. The proposed amendment to § 48.4(b) would permit registered FBOTs to grant explicit authority to eligible IBs to act in such capacity, provided that all trades effected by the IB through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

In promulgating § 48.4(b) the Commission set forth criteria based on then-existing staff no-action letters for FBOTs, noting that persons that would be permitted by the FBOT to trade by direct access from the U.S. pursuant to the registration rules would be the types of persons that are currently able to trade by direct access pursuant to staff issued no-action relief letters.[14] However, the referenced staff no-action letters did not include any provision for IBs. In the proposing release for part 48, the Commission requested comments concerning additional entities that should be eligible for direct access to the trading and order matching systems of FBOTs from the U.S.[15] At that time, no comments were received in response to that request and the Commission adopted § 48.4(b) as proposed and without direct comment.

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[14] Registration of Foreign Boards of Trade, Notice of Proposed Rulemaking, 88 FR 61432, 70977 (Nov. 19, 2010). *See also,* Q & A – Final Rule on Registration of Foreign Boards of Trade, What entities will be eligible to trade via direct access from the U.S.?, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_qa_final.pdf* ("[t]he registration regulations identify the types of entities to which a registered FBOT could grant direct access: identified members and other participants that trade for their proprietary accounts; FCMs that submit orders on behalf of U.S. customers; and CPOs or CTAs, or entities exempt from such registration, that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. This is consistent with the existing no-action relief."); *and* Fact Sheet, Final Rules Regarding the Registration of Foreign Boards of Trade, *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/fbot_factsheet_final.pdf*.

[15] 88 FR 61432 at 70977.

The Commission believes that permitting eligible IBs to submit customer orders via direct access to FBOTs may be beneficial to market participants and affected markets. Designated contract markets (DCMs) may provide for IBs to act as executing brokers for customer accounts that in turn use FCM clearing members to whom executed trades are given up for clearing and through which such customer accounts are carried, typically in an omnibus customer account or a fully disclosed basis. FBOTs may similarly permit IBs located outside of the United States to enter trades directly into the trade matching system of the FBOT on behalf of their customer accounts. The proposed amendment to § 48.4 would permit registered IBs located in the U.S. to act in a comparable capacity on registered FBOTs in cases where an FBOT will be providing direct access to the IB for the purpose of submitting customer orders for execution. The Commission preliminarily believes that allowing eligible IBs to have direct access to registered FBOTs to execute transactions on behalf of their clients may provide market participants that wish to trade in foreign futures contracts with greater choice in brokers and broker arrangements, and may increase competition among firms offering execution brokerage services to customers on registered FBOTs. The Commission furthermore preliminarily believes that affording greater choice in brokers and broker arrangements would not undermine or otherwise adversely affect customer protections available to U.S. customers as their trades would be guaranteed by a registered FCM or firm exempt from FCM registration under § 30.10,[16] and would be subject to required risk disclosures relating to foreign

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[16] Including the proposed provision relating to the guarantee of U.S. customer trades in proposed new § 48.4(b)(4) would ensure that U.S. customer trades executed by eligible IBs via direct access are guaranteed by a firm that is registered as an FCM or exempt from FCM registration under § 30.10. In so doing, the proposed rule would act to reinforce adherence with part 30, insofar as part 30 generally requires intermediaries holding funds of U.S. customers in connection with the offer or sale of foreign futures and options contracts to be registered as FCMs or exempt from FCM registration under § 30.10. Part 30 of the Commission's regulations governs the offer and sale of foreign futures and options contracts to customers located in the United States. These regulations are designed to carry out Congress's intent that foreign futures and foreign options products offered or sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions. Section 30.4 of the Commission's regulations requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a person must be

futures transactions.[17]

REQUEST FOR COMMENT

The Commission requests comments on all aspects of the proposal to amend § 48.4(b) to permit registered FBOTs to provide direct access to eligible IBs to enter orders directly into the FBOT's trading and order matching system on behalf of customers, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. In particular, the Commission requests comment on the following questions.

(1) Would extending direct access eligibility to eligible IBs for the purpose of submitting customer orders potentially result in any unintended consequences? Is there any reason the Commission should not amend § 48.4 to extend direct access eligibility to eligible IBs for the purpose of submitting customer orders? Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?

(2) The proposed regulation would require that an FCM registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 act as a clearing firm and guarantee, without limitation, all trades of the IB effected through submission of orders for U.S. customers to the trading system.

(a) Is this condition appropriate? Why or why not?

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registered as an FCM. *See* 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. *See* footnote 10, *supra*.

[17] Section 30.6 of the Commission's regulations requires FCMs and IBs to provide a statement to customers disclosing the risks of trading foreign futures and options outside the United States. 17 CFR 30.6. This requirement also applies to exempt foreign IBs, CPOs, and CTAs. 17 CFR 30.5(c). Petitions for exemptive relief under § 30.10 for firms seeking an exemption from FCM registration must demonstrate that such firms are subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law. 17 CFR part 30, appendix A, Sales Practice Standards.

(b) Does "act as a clearing firm and guarantee, without limitation, all trades of the introducing broker" effectively translate to and encapsulate the various comparable foreign regimes and market structures of FBOTs and their clearing organizations? Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?

(c) How could this condition impact trades submitted by an IB on behalf of a self-clearing firm? Do direct clearing members of FBOT clearing organizations use IBs to submit their orders to FBOTs? If so, does this proposed condition raise any operational issues, additional costs, or other issues for such direct clearing members (*e.g.*, relating to portfolio margining, risk management, or other)?

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations? What would be the effects of requiring such trades to be carried exclusively by clearing members that are registered with the Commission as FCMs?

(4) Are there additional registration requirements under § 48.7 that the Commission should consider for FBOTs that provide direct access to IBs under proposed § 48.4(b)(4)?

(5) In addition to the information that FBOTs provide to the Commission on an ongoing basis under § 48.8, is there additional information that the Commission should receive from FBOTs that provide direct access to IBs under proposed § 48.4(b)(4), and if so, why? For example, is there additional information that FBOTs could provide to assist the Commission in identifying, evaluating, and addressing situations that may adversely

impact consumers, IBs, market participants, and financial markets? Further, please describe whether this information should be provided on a periodic basis (*i.e.*, quarterly or monthly), or event-driven basis (*i.e.*, after a disciplinary action).

B. Section 48.8 – Conditions of registration

The Commission is proposing conforming amendments that will include eligible IBs in §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii) alongside FCMs, CPOs and CTAs.

Section 48.8(a)(4)(ii) requires all orders transmitted via direct access and pursuant to an FBOT's registration to be for a member's or other participant's proprietary trading account unless transmitted by a registered FCM, CPO or CTA (or exempt CPO or CTA). The Commission proposes to include IBs in this section along with FCMs, CPOs and CTAs, to conform with the proposed changes to § 48.4(b) that would allow eligible IBs to transmit orders via direct access on behalf of the accounts of their customers. The Commission also proposes to add the words "registered as such" following the final reference to "futures commission merchant" in § 48.8(a)(4)(ii) to conform to the proposed amendment to § 48.4(b)(3).[18]

Section 48.8(a)(5)(i) provides that a registered FBOT must require each current and prospective member or other participant granted direct access and not registered with the Commission as an FCM, CPO or CTA to agree to and submit to the jurisdiction of the Commission with respect to activities conducted pursuant to the FBOT's registration. Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise subject to the jurisdiction of the Commission as Commission registrants. Registered IBs are likewise subject to the jurisdiction of the Commission as registrants and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(i).

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[18] *See* footnote 11, *supra*, and accompanying text.

Section 48.8(a)(5)(iii) provides that a registered FBOT, its clearing organization, and each current and prospective member or other participant granted direct access that is not registered with the Commission as an FCM, CPO or CTA must maintain with the FBOT written representations stating that such entity will provide prompt access to books, records, and premises upon the request of the Commission, U.S. Department of Justice and, if appropriate, the National Futures Association (NFA). Registered FCMs, CPOs and CTAs are excluded from this requirement because they are otherwise required to provide such access to books, records, and premises as Commission registrants and, where applicable, NFA members.[19] Registered IBs, as Commission registrants and NFA members, are likewise required to provide such access to books, records, and premises by the Commission, U.S. Department of Justice, and NFA, and the Commission therefore proposes to include IBs alongside FCMs, CPOs and CTAs in § 48.8(a)(5)(iii).

REQUEST FOR COMMENT

The Commission requests comments on the proposed conforming changes to §§ 48.8(a)(4)(ii), 48.8(a)(5)(i) and 48.8(a)(5)(iii).

C. Section 48.9 – Revocation of registration

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. Section 48.9 addresses certain events which could lead the Commission to revoke an FBOT's registration, including the failure to satisfy registration requirements or conditions, and certain other specified events.[20] However, part 48 presently does not contain any provisions for an FBOT to request voluntary revocation of its registration. In order to allow registered FBOTs to more easily ascertain the steps required to request revocation, the Commission proposes to amend

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[19] Subpart C of part 170 of the Commission's regulations provides for certain exceptions to the general requirement that Commission-registered FCMs and CTAs must become NFA members. *See* 17 CFR 170.15 and 170.17.

[20] *See* 17 CFR 48.9.

§ 48.9(b) ("Other Events that Could Result in Revocation") by adding a new paragraph (b)(5). New § 48.9(b)(5) would clarify that the Commission may revoke an FBOT's registration in response to a voluntary request by an FBOT to do so, and provide that an FBOT can make such request via email to the Commission.

REQUEST FOR COMMENT

The Commission requests comments on all aspects of the proposed amendment to § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration.

D. Section 48.6 – Foreign boards of trade providing direct access pursuant to existing no-action relief

Section 48.6 provides for a limited application procedure for FBOTs that had been operating under existing staff no-action letters and FBOTs that had submitted a complete application for a staff no-action letter that was pending as of the effective date of part 48. Those limited application provisions are no longer applicable because all FBOTs with previously existing staff no-action letters have been registered under part 48 and all such no-action letters have been revoked. Accordingly, the Commission proposes to delete § 48.6. As a conforming amendment the Commission also proposes to delete § 48.2(h) (definition of "existing no-action relief") as that definition will no longer be applicable or necessary once existing § 48.6 is removed.

REQUEST FOR COMMENT

The Commission requests comments on all aspects of the proposal to delete §§ 48.6 and 48.2(h).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such

impact.[21] The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[22] The proposed amendments to part 48 would impact FBOTs. The Commission has previously determined that FBOTs are not small entities for purposes of the RFA.[23]

The proposed amendments to part 48 would also impact eligible IBs by providing them with the potential to gain direct access to FBOTs that incorporate the new regulatory provisions allowing such IBs direct access. The Commission has previously established that IBs may in some cases be deemed "small entities" for the purposes of the RFA.[24] However, the proposed rules do not impose any new burden on eligible IBs. Instead, the proposal would remove a regulatory barrier preventing these small entities from accessing FBOTs. Accordingly, the Commission believes that the regulation will be less burdensome to small-entity eligible IBs and will not impose any additional costs on them.

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

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA),[25] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any "collection of information,"[26] as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a

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[21] 5 U.S.C. 601 *et seq.*
[22] See Policy Statement and Establishment of "Small Entities" for purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).
[23] 76 FR at 80698.
[24] 85 FR 78718, 78733 (Dec. 7, 2020).
[25] 44 U.S.C. 3501 *et seq*.
[26] *See* 44 U.S.C. 3502(3)(A).

collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB).[27] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by Federal agencies, to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the Federal Government.[28] The PRA applies to all information, "regardless of form or format," whenever the government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[29]

This notice of proposed rulemaking (NPRM) proposes amendments to regulations that contain collections of information for which the Commission has previously received a control number from OMB: 3038-0101, Registration of Foreign Boards of Trade (17 CFR part 48).[30] This collection addresses the information collection requirements associated with part 48's registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide direct access to their electronic trading and order matching systems. The NPRM would provide a process for FBOTs to request voluntary revocation of their registration, allow eligible IBs to act as direct access participants, and remove an outdated reference to "no action relief."

The Commission believes that these proposed amendments do not contain any new collections of information and would not increase the burden associated with the information collections under part 48. While the proposed amendments establish a new

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[27] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).
[28] *See* 44 U.S.C. 3501.
[29] *See* 44 U.S.C. 3502(3).
[30] The Commission's most recent burden estimates for this collection are available at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202301-3038-001*.

process for FBOTs to submit requests for revocation of their registration, the proposed regulations allow FBOTs to submit their requests electronically via email to the Commission and do not mandate any specific form or format for such requests. Accordingly, this new submission method would not constitute a collection of information under the PRA. In addition, the proposed amendments do not affect the provisions of part 48 covered in the current PRA approval (§ 48.8 (periodic data submissions to the Commission), § 48.9 (demonstration of compliance); and § 48.10 (listing additional futures and options contracts)). Accordingly, the Commission is retaining its existing estimates for the burden associated with the information collections under OMB Collection 3038-0101. The Commission requests public comment on this determination.

C. Cost-Benefit Considerations

1. Introduction

Section 15(a) of the CEA[31] requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

The Commission has endeavored to assess the expected costs and benefits of the proposed amendments in quantitative terms, including Paperwork Reduction Act (PRA)-related costs, where practicable. In situations where the Commission is unable to quantify

[31] 7 U.S.C. 19(a).

the costs and benefits, the Commission identifies and considers the costs and benefits of the applicable proposed amendments in qualitative terms.

The Commission notes that this consideration of costs and benefits is based on, inter alia, its understanding that the derivatives markets regulated by the Commission function internationally, with (1) transactions that involve entities organized in the United States occurring across different international jurisdictions, (2) some entities organized outside of the United States that are prospective Commission registrants, and (3) some entities that typically operate both within and outside the United States, and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed regulations on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.[32]

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the proposed rule amendments. The Commission, where applicable, then considers the costs and benefits of the proposed rule amendments in light of the five public interest considerations set out in § 15(a) of the CEA.

2. Proposed Regulations

The Commission is proposing to amend certain rules in part 48 of its regulations relating to FBOTs. The Commission identifies the costs and benefits of the proposed amendments relative to the baseline of the regulatory status quo. In particular, the baseline against which the Commission considers the costs and benefits of these proposed rule amendments is the statutory and regulatory requirements of the CEA and

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[32] *See, e.g.,* 7 U.S.C. 2(i).

Commission regulations now in effect, in particular CEA section 4(b) and part 48 of the Commission's regulations.

- *Proposed amendments to § 48.6*

The Commission proposes to delete § 48.6, which provides for an alternate registration procedure for FBOTs acting under the preexisting staff no-action letter process, because such no-action letter process and no-action letters are no longer in effect. Removal of § 48.6 and elimination of the alternate registration procedure will not increase costs to FBOTs because § 48.6 and the alternate registration procedure are already in effect null.

- *Proposed amendments to § 48.9*

The Commission proposes to amend § 48.9 to establish a procedure for FBOTs to request voluntary revocation of registration. This amendment would not impose a new requirement for FBOTs. The baseline is the current practice of the Commission, whereby requests for voluntary revocation are processed on an ad-hoc basis. The primary benefit will be to allow registrants to more easily ascertain the steps required to request revocation. The amendments are not expected to increase costs to registered FBOTs compared to the status quo.

- *Proposed amendments to § 48.4 and conforming amendments to § 48.8*

The proposed amendments to § 48.4 and conforming amendments to § 48.8 would permit a registered FBOT to provide direct access to its electronic trading and order matching system to an identified member or other participant located in the U.S. and registered with the Commission as an IB for submission of customer orders to the FBOT's trading system for execution, provided that all trades effected through submission of U.S. customer orders are guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10.

There are presently 24 FBOTs registered with the Commission. Under the current rules, eligible intermediaries permitted direct access on registered FBOTs for purposes of entering trades on behalf of non-proprietary client accounts include certain FCMs, CTAs, and CPOs. The proposed amendments would add eligible IBs to the existing list of eligible intermediaries. Similar to trades submitted by CTAs and CPOs via direct access, the trades executed by eligible IBs on behalf of customers located in the U.S. would be required to be guaranteed by a registered FCM or a firm exempt from FCM registration pursuant to § 30.10. IBs specialize in soliciting and executing orders for their clients. The field of trade execution is continuously evolving with technological advances, and has helped bring down execution costs. As of January 2024, the following number of CTAs, CPOs, and IBs were registered with the Commission as shown on table 1.[33]

Table 1	
CTAs[1]	1,262
CPOs[1]	1,190
IBs	937
FCMs	60
Swap Dealers	106
[1]These categories are not mutually exclusive, *i.e.*, a CPO may also be registered as a CTA.	

Table 1 above shows that the number of IBs is more than a quarter of all CFTC-registered intermediaries. The Commission does not know how many FBOTs would provide direct access to eligible IBs and how many eligible IBs would become direct access members or participants of registered FBOTs. There could also be new IB entrants that are granted direct access to registered FBOTs. However, by permitting FBOTs to

[33] NFA website, *https://www.nfa.futures.org/registration-membership/membership-and-directories.html*.

provide direct access to eligible IBs, the proposed amendments could lead to a significant increase in the number of choices for U.S. customers with respect to execution of trades on FBOTs.

Although the Commission lacks the data and information to quantitatively estimate the costs and benefits of permitting IBs located in the U.S. to have direct access to registered FBOTs, it has endeavored to assess the expected costs and benefits of the proposal in qualitative terms. The lack of data and information to estimate costs is attributable in part to uncertainty regarding how FBOTs would choose to respond to the proposed amendments to part 48 and how IBs located in the U.S. would choose to respond to potential new opportunities to participate on registered FBOTs. The Commission specifically requests data and information from IBs located in the U.S., registered FBOTs, market participants, and other commenters to allow it to better estimate the costs and benefits of the proposal.

The baseline is the status quo in which § 48.4 permits FBOTs to provide direct access to certain FCMs, CPOs and CTAs for purposes of transmission of orders for certain client accounts. Furthermore, foreign IBs not located in the U.S. may have similar arrangements on FBOTs whereby their customer orders are transmitted to an FBOT.[34] IBs are not included in § 48.4 as intermediaries eligible to have direct access and transmit trades on behalf of customers. As such, registered FBOTs currently do not provide direct access to IBs located in the United States to enter orders on behalf of their customers.

Relative to the baseline, the primary effect of the proposed amendment to § 48.4 would be to allow registered FBOTs to provide direct access to eligible IBs in order to transmit orders of U.S. customers. This could promote competition among execution-only brokers on registered FBOTs. There may be advantages to customers from having

[34] The definition of "direct access" does not include identified members or other participants of an FBOT that are located outside of the United States. *See* 17 CFR 48.2(c).

additional choices in brokers and brokerage arrangements to trade foreign futures on registered FBOTs – for example, lower trading costs or the use of advantageous proprietary execution algorithms developed by such IBs.

From the standpoint of registered FBOTs, allowing eligible IBs to become direct access participants would open up potential new distribution channels that could lead to additional trading volume. This in turn could improve the viability of some traded instruments. Similarly, eligible IBs would be able to pursue new business models and/or expand existing business models onto new foreign markets.

FBOTs that decide to provide direct access to eligible IBs and that do not already have necessary structures in place to do so may incur certain costs relating to, for example, modification of rules, procedures and/or systems to enable direct access to eligible IBs to submit customer orders to the FBOT's trading system for execution. The Commission is interested in receiving public comments regarding these and any other costs associated with eligible IBs having direct access to registered FBOTs. In this regard, the Commission requests public comment on any potential costs of the proposal, including comments relating to questions 6 through 9 in the "request for comment" section below.

- *Section 15(a) Factors*

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of the amendments to part 48 with respect to the following factors: protection of market participants and the public; efficiency, competitiveness, and financial integrity of markets; price discovery; sound risk management practices; and other public interest considerations.

(i) Protection of Market Participants and the Public

The proposed changes to part 48 would not affect the basic protection for customers with respect to their foreign futures transactions. Under the proposed rule, U.S.

customer assets are required to be maintained by registered FCMs or similar entities exempt from FCM registration pursuant to § 30.10.

(ii) Efficiency, Competitiveness, and Financial Integrity of Markets

The current part 48 treats eligible IBs differently from certain FCMs, CTAs and CPOs located in the U.S. in regard to their ability to be granted direct access to registered FBOTs for the purpose of executing third-party client trades. Similarly, intermediaries located outside of the United States may, under the status quo, offer execution services to U.S. and non-U.S. customers on registered FBOTs. The proposed change would permit eligible IBs to offer competing execution services on registered FBOTs. Alternatively, to the extent that clientele for these IBs is distinct from other kinds of intermediaries, the rule change may enable them to access new foreign futures markets. Greater competition among introducing brokers and additional and new types of customers participating in affected markets may lead to increased market efficiencies and greater financial integrity. Furthermore, that trades of U.S. customers must be guaranteed by registered FCMs or comparable foreign firms promotes the financial integrity of affected markets by ensuring that intermediaries handling U.S. customer funds are subject to certain regulatory safeguards.

(iii) Price Discovery

There is a potential for the proposed changes to part 48 to positively affect price discovery in futures markets. Participation of eligible IBs as direct access members may lead to increased participation and volume on registered FBOTs, in particular during hours when U.S. brokers are more active than foreign brokers.

(iv) Risk Management Practices

As noted above, the proposed changes will not affect how customer assets are treated. However, registered FCMs and firms exempt from FCM registration pursuant to § 30.10 may need to expand their risk mitigation processes to ensure that they have

robust processes for managing the risk associated with eligible IBs executing trades on registered FBOTs via direct access.

(v) Other Public Interest Considerations

As noted above, the proposed changes may enable new and distinct kinds of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation in affected markets.

Request For Comment

The Commission invites public comment on all aspects of its cost benefit considerations, including the discussion of the section 15(a) factors and the identification and assessment of any costs or benefits not discussed herein. Commenters may also suggest alternatives to the proposed approach where the commenters believe that the alternatives would be appropriate under the CEA and would provide a more appropriate cost-benefit profile. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rules are reasonably quantifiable, the Commission requests that they provide data and any other information or statistics to assist the Commission in quantification. In particular, the Commission requests comment on the following questions:

(6) What is the experience of FCMs, CTAs and CPOs regarding the magnitude of benefits to their customers from their direct access participation on FBOTs?

(7) Have there been instances of harm to customers/clients from FCMs, CTAs and/or CPOs participating as direct access members of registered FBOTs?

(8) Would direct access trading by eligible IBs on registered FBOTs pose substantive challenges and/or costs to FCMs or firms exempt from FCM registration under § 30.10 who carry or would carry the accounts of trades executed by such IBs?

(9) Are there additional costs or benefits from the proposed rule change that have not been discussed?

List of Subjects in 17 CFR Part 48

Registration of foreign boards of trade.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 48 as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

1. The authority citation for part 48 continues to read as follows:

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.2 [Amended]

2. In § 48.2 remove paragraph (h) and redesignate paragraphs (i) through (l), as paragraphs (h) through (k), respectively.

3. In § 48.4 revise paragraph (b) to read as follows:

§ 48.4 Registration eligibility and scope.

* * * * *

(b) A foreign board of trade may apply for registration under this part in order to permit the members and other participants of the foreign board of trade that are located in the United States to enter trades directly into the trading and order matching system of the foreign board of trade, to the extent that such members or other participants are:

(1) Entering orders for the member's or other participant's proprietary accounts;

(2) Registered with the Commission as futures commission merchants and are submitting customer orders to the trading system for execution;

(3) Registered with the Commission as a commodity pool operator or commodity trading advisor, or are exempt from such registration pursuant to § 4.13 or § 4.14 of this chapter, and are submitting orders for execution on behalf of a United States pool that the member or other participant operates or an account of a United States customer for which

the member or other participant has discretionary authority, respectively, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system; or

(4) Registered with the Commission as introducing brokers and are submitting customer orders to the trading system for execution, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as a clearing firm and guarantees, without limitation, all trades of the introducing broker effected through submission of orders for United States customers to the trading system.

* * * * *

§ 48.6 [Removed and Reserved]

4. Remove and reserve § 48.6.

5. In § 48.8 revise paragraphs (a)(4)(ii) and (a)(5)(i) and (iii) to read as follows:

§ 48.8 Conditions of registration.

* * * * *

(a) * * *

(4) * * *

(ii) All orders that are transmitted to the foreign board of trade's trading system by a foreign board of trade's identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as an introducing broker, commodity pool

operator or commodity trading advisor, or is exempt from registration as a commodity pool operator or commodity trading advisor pursuant to § 4.13 or § 4.14 of this chapter, provided that a futures commission merchant registered with the Commission as such or a firm exempt from such registration pursuant to § 30.10 of this chapter acts as clearing firm and guarantees, without limitation, all trades of the introducing broker, commodity pool operator or commodity trading advisor effected through submission of orders for United States pools or customers to the trading system.

(5) * * *

(i) Prior to operating pursuant to registration under this part and on a continuing basis thereafter, a registered foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor or a commodity pool operator, file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant is authorized to enter orders directly into the trade matching system of the foreign board of trade, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

* * * * *

(iii) The foreign board of trade, clearing organization, and each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system and that is not registered with the Commission as a futures commission merchant, an introducing broker, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them,

stating that as long as the foreign board of trade is registered under this regulation, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

6. In § 48.9, add paragraph (b)(5) to read as follows:

§ 48.9 Revocation of registration.

* * * * *

(b) * * *

(5) The Commission may revoke a foreign board of trade's registration in response to a voluntary request by the foreign board of trade to vacate its registration. A foreign board of trade may file a request to vacate its registration with the Secretary of the Commission at *FBOTapplications@cftc.gov*.

* * * * *

Issued in Washington, DC on February 23, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Foreign Boards of Trade—Commission Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Support of Chairman Rostin Behnam

I support the proposed amendments to CFTC rules for foreign boards of trade (FBOTs) that would permit a registered FBOT to provide direct access to its electronic trading and order matching system to a registered introducing broker (IB) located in the United States for submission of customer orders to the FBOT's trading system for execution. Based upon more than ten years of Commission experience with the existing rules for FBOTs, the Commission is also proposing certain enhancements and modernization of the existing ruleset.

The existing FBOT rules were promulgated in 2011. Today's proposed amendments are emblematic of the Commission's ongoing consideration of its existing rules and my commitment to ensuring that our rules continue to address the reality of today's markets and their structure. The proposed changes may enable new types of market participants to access registered FBOTs, which could help improve liquidity and reduce fragmentation, thereby promoting healthier markets.

I look forward to hearing the public's comments on the proposed amendments to the regulations for FBOTs. I thank staff in the Division of Market Oversight, Office of the General Counsel, and the Office of the Chief Economist for all of their work on the proposal.

Appendix 3—Statement of Commissioner Kristin N. Johnson

Introduction

The Commodity Futures Trading Commission's (Commission or CFTC) governing statute, the Commodity Exchange Act (CEA), enumerates several key aims. Protecting customers from the misuse of customer assets is one of the central goals of

derivatives market regulations. Protecting customers begins with carefully evaluating, reviewing, monitoring, and enforcing the regulations that govern intermediaries in our markets.

The Commission has established a comprehensive customer protection framework that applies to futures commission merchants (FCM). This framework requires certain entities that hold customer assets to register with the Commission as an FCM. Under our rules, FCMs must comply with strict segregation and risk disclosure requirements and establish know-your-customer (KYC) and anti-money laundering (AML) programs.

Consequently, any Commission rule or regulation that permits entities exempt from registration as an FCM to hold customer assets must be based on a careful evaluation and consideration of the protections afforded to such customers. Our consideration is particularly critical, if not heightened, in the absence of FCM registration.

Additionally, the Commission must ensure that U.S. customers are not afforded less protection when trading outside the United States. Trading in foreign markets exposes U.S. customers—institutional or retail—to a number of important risks because clearing intermediaries may hold U.S. customers' cash and securities outside the United States.

The mechanics of trading in foreign markets involve posting customer cash and securities to a clearing firm or exchange organized pursuant to the laws of, and physically located in, a foreign jurisdiction. A bankruptcy or insolvency proceeding related to the foreign clearing firm will be subject to applicable foreign laws. These laws will govern the application of any customer protections and the repatriation of customer assets to U.S. residents. As a result, U.S. customers may not receive the specific protections they would be afforded as customers of a Commission-registered FCM under the U.S. bankruptcy code and part 190 of the Commission's regulations.

Part 48 of the Commission's regulations sets forth the conditions under which a foreign board of trade (FBOT) may provide persons located in the United States with direct access to the FBOT's trading system to trade foreign futures and options. CFTC Regulation 48.4 establishes the registration eligibility for FBOTs and identifies the entities to which an FBOT may permit direct access once it is registered.

The Commission seeks to amend part 48 to permit an FBOT registered with the Commission to provide direct access to introducing brokers (IBs) located in the United States and registered with the Commission to submit orders to trade foreign futures and options on behalf of customers located in the United States (Proposed Rule).[1] Under the Proposed Rule, the foreign futures and options must be cleared by a registered FCM or a foreign clearing firm that is exempt from FCM registration (exempt clearing firm) and located in a foreign jurisdiction that the Commission has determined to have a comparable regulatory framework to the CFTC's regulatory scheme pursuant to CFTC Regulation 30.10.

While our regulations permit exempt clearing firms, the Commission must maintain a robust process for evaluating exemption requests. These criteria, pursuant to CFTC Regulation 30.10, ensure that only countries with comparable regulatory requirements—including with respect to segregation, risk disclosures, and KYC and AML programs—are granted an exemption from Commission regulations. The need for strong customer protection safeguards is heightened when firms organized and located outside the United States. solicit U.S. customers to engage in derivatives activities outside the United States.

The Proposed Rule must therefore include critical customer protection and market integrity guardrails. The Commission must ensure that U.S. customers allowed to have

[1] The Commission is also proposing to establish a procedure for an FBOT to request the revocation of its registration, and to remove certain outdated references to "existing no-action relief."

direct access to FBOTs through CFTC-registered IBs receive customer protections equivalent to the protections available when engaging with U.S-registered FCMs.

Wherever the Commission permits firms to follow foreign regulatory requirements instead of Commission requirements, the Commission must undertake a thorough process to ensure that those foreign requirements are, among other things, no less protective for customers than Commission requirements.

Over the course of my tenure as a Commissioner, I have consistently supported the Commission's efforts to advance the protection of customer funds. I support the Proposed Rule, which includes important protections for U.S. customers, and look forward to comments confirming or offering guidance on how the Commission may ensure that the Proposed Rule advances equivalent protections for U.S. customers clearing through an exempt clearing firms, including with respect to segregation requirements, risk disclosures, and KYC and AML programs.

Part 48 History

Since as early as 1996, FBOTs relied on staff no-action letters to provide trading direct access to persons located in the United States. Section 738 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends section 4(b) of the CEA, empowering the Commission to "adopt rules and regulations requiring registration with the Commission for [an FBOT] that provides the members of the [FBOT] or other participants located in the United States with direct access to the electronic trading and order matching system."[2] To have direct access, a U.S.-registered IB must be given "an explicit grant of authority" by the FBOT "to enter trades directly into the [FBOT's] trade matching system."[3]

[2] 7 U.S.C. 6(b).
[3] *Id.*

In 2011, the Commission adopted part 48 pursuant to this statutory mandate, requiring an FBOT to register with the Commission in order to provide its members or other participants located in the United States with direct access for electronic trading and execution.[4]

Under part 48, registered FBOTs may permit direct access by specified participants located in the United States for the purpose of executing customer orders, but the Commission imposed very important conditions on certain specific trading intermediaries—Commission-registered CPOs and CTAs submitting orders on behalf of a United States pool or customer. Those CPOs and CTAs are also required to submit such orders for clearing to a Commission-registered FCM or a clearing broker exempt from FCM registration under CFTC regulation 30.10 that "guarantees, without limitation, all such trades."[5] As an intermediary between the U.S.-located customer and the foreign exchange, the FCM or foreign clearing broker is liable for all trades executed on the FBOT.

Proposed Rule

The Proposed Rule would be the first change to part 48 since 2011, amending CFTC Regulation 48.4(b) to add IBs located in the United States and registered with the Commission to the list of trading intermediaries to whom FBOTs may grant direct access for the execution of U.S. customer orders. The customer base of IBs is diverse and includes both institutional customers, retail customers, and end-users. IBs engage in soliciting U.S. customers to purchase a wide range of derivatives, including futures contracts, but do not collect margin against those orders (or extend credit in lieu of margin).[6]

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[4] Registration of Foreign Boards of Trade, 76 FR 80674 (Dec. 23, 2011).
[5] 17 CFR 48.4(b)(3).
[6] 7 U.S.C. 1a(31).

Currently, FBOTs may provide direct access to IBs located outside the United States but not to IBs located in the United States. Under the Proposed Rule, FBOTs would be able to provide registered IBs located in the United States with direct access to execute customer trades, provided that, like CTAs and CPOs, they submit such orders for clearing to a Commission-registered FCM or a firm exempt from FCM registration under CFTC Regulation 30.10 that guarantees all trades.

Commission Customer Protections

The condition requiring that IBs submit their foreign futures and options to a Commission-registered FCM or exempt clearing firm is meant to safeguard customer margin; but the Commission must be deeply thoughtful in its assessment of whether a foreign jurisdiction offers comparable customer protection guardrails. Protecting the assets of customers is one of the Commission's core missions.

Adopted in 1987, part 30 of the CFTC's regulations are intended to "add to the Commission's existing customer protection regulatory scheme coverage of foreign futures and options transactions undertaken by U.S. domiciliaries."[7]

Pursuant to CFTC Regulation 30.4, an intermediary that accepts the funds of U.S. residents must register as an FCM, provide risk disclosures and comply with the customer protection framework for U.S. customers established in CFTC Regulation 30.7.[8] Notably, a Commission-registered FCM is required to maintain in a separate account sufficient customer funds (referred to as secured amounts) to cover its liabilities to foreign futures and options customers, among other requirements.[9] Separately, the Bank Secrecy Act and related regulations require FCMs and IBs to "establish [AML] programs, report

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[7] Foreign Futures and Foreign Options Transactions, 52 FR 28980, 28980 (Aug. 5, 1987).
[8] At the request of my office, division staff included a reminder in the Preamble to the Proposed Rule that these foreign futures and options transactions would also be subject to required risk disclosures pursuant to CFTC Regulation 30.6, which requires IBs and FCMs to provide a statement to customers disclosing the risks of trading foreign futures and options offshore.
[9] 17 CFR 30.7.

suspicious activity, verify the identity of customers and apply enhanced due diligence to certain types of accounts involving foreign persons."[10]

By contrast, pursuant to CFTC Regulation 30.10, an exempt clearing firm may hold the funds of U.S. customers outside the United States without registering as an FCM, if it is located in a jurisdiction that the Commission has determined has a comparable regulatory framework to the U.S. scheme. The Commission may grant, and has granted, exemptions from part 30 pursuant to the exemptive procedures set forth in CFTC Regulation 30.10, a framework that has been in place at least since the 1980s. Customers of exempt clearing firms should benefit from the customer protection, risk disclosure, KYC, and AML requirements available to customers of Commission-registered FCMs.

In making its comparability determination, the Commission considers certain threshold elements of a comparability framework, including minimum financial requirements for entities that accept customer funds; protection of customer funds from misapplication; and sales practice standards, which includes disclosure of the risks of futures and options transactions, particularly the risk of foreign transactions traded outside the jurisdiction of U.S. law.[11] In evaluating the treatment of customer funds, the Commission will also "consider protections accorded customer funds in a bankruptcy under applicable law, as well as protection from fraud."[12] The Commission may also take into account other factors. This analysis is essential to ensuring the integrity of our markets, the protection of our customers, and the mitigation of systemic risk.

Protecting U.S. Customers in Foreign Jurisdictions

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[10] CFTC, Anti-Money Laundering, *https://www.cftc.gov/IndustryOversight/AntiMoneyLaundering/index.htm#:~:text=The%20BSA%20and%20related%20regulations,of%20accounts%20involving%20foreign%20persons*.

[11] *See* Appendix A to part 30, title 17, *https://www.ecfr.gov/current/title-17/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030*.

[12] *Id*.

In adopting the Proposed Rule's requirement that foreign futures and options transactions be cleared through either an FCM or a clearing firm exempt from FCM registration, the Commission's goal is to ensure that U.S. customers are not afforded less protection when trading offshore and clearing through an exempt clearing firm. This is accomplished through the application of robust comparability standards when the Commission provides exemptions pursuant to CFTC Regulation 30.10.

The Commission has been guided by "Congress' intent that foreign futures and options products sold in the U.S. be subject to regulatory safeguards comparable to those applicable to domestic transactions."[13] The legal and regulatory framework of the foreign jurisdiction must be found to be comparable to the U.S. framework, but the foreign jurisdiction's segregation, risk disclosure, KYC, and AML requirements merit particular attention.

As I noted in a recent statement regarding a proposed comparability determination for the UK's capital adequacy and financial reporting requirements, "mutual understanding and respect for partner regulators in other countries advances the Commission's goal of setting a global standard for sound derivatives regulation, enhances market stability, and is also deeply rigorous, reflecting the Commission's commitment to safe swaps markets."[14]

The Commission included several important questions as requests for comments to assist in evaluating whether certain elements of the foreign jurisdiction's laws adequately protect our markets and customers. I want to highlight a few questions below.

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[13] *Id*.

[14] Kristin N. Johnson, Commissioner, CFTC, Combatting Systemic Risk and Fostering Integrity of the Global Financial System Through Rigorous Standards and International Comity (Jan. 24, 2024), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement012424#_ftnref5*.

(1) Are there other issues the Commission should address in order to ensure that FBOTs providing direct access to IBs under proposed § 48.4(b)(4) does not harm U.S. markets or increase risk to the U.S. economy?

(2) Are there relevant considerations relating to the clearing and guarantee of IB trades that differ from that of CPO and CTA trades?

(3) Should the Commission instead require all U.S. customer trades entered by an IB via direct access on a registered FBOT to be guaranteed by a registered FCM (but not extend the condition to firms exempt from FCM registration under § 30.10 to carry such trades)? Would permitting firms exempt from FCM registration under § 30.10 to carry U.S. customer trades entered by an IB via direct access on a registered FBOT raise any issues with anti-money laundering (AML) requirements under the Bank Secrecy Act and Commission regulations?

I invite comments regarding comparable protections for U.S. customers clearing through an exempt clearing firms pursuant to CFTC Regulation 30.10, including with respect to segregation requirements, risk disclosures, and KYC and AML programs. These comments may inform the development of the Proposed Rule.

The Commission is required to engage in a rigorous comparability assessment of the foreign jurisdiction's legal and regulatory scheme. Among other concerns, the analysis must ensure that permitting U.S. customers to access foreign markets through IBs does not engender systemic risks that may undermine the integrity of U.S. or global derivatives markets or otherwise amplify risks to the U.S. or global economy. Exempt clearing firms must protect the positions and collateral of U.S. customers under the relevant laws of their jurisdiction in a manner parallel to the protections afforded customer positions and collateral under U.S. regulations governing the protection of assets of U.S. customers using on a Commission-registered FCM as a clearing intermediary.

Risk disclosure requirements reduce information asymmetries, improve transparency, and enable U.S. customers to make informed decisions about the appropriateness of entering into a foreign futures and options transaction. Commission-registered FCMs that clear foreign futures and options transactions for U.S. IB customers are required to provide disclosures to alert U.S. customers to the risks of trading in foreign markets and the application of foreign laws. It is imperative that U.S. customers that clear through an exempt clearing firm are similarly apprised.

The Preamble to the Proposed Rule notes that an exempt clearing firm should be subject to a comparable regulatory program that includes, among other elements, minimum sales practice standards, including "disclosure of the risks of futures and options transactions and, in particular, the risk of transactions undertaken outside the jurisdiction of domestic law."[15] The Commission must be certain.

Protecting our markets from fraud, illicit trading, and money laundering or terrorism financing promotes market integrity within our financial system. Commission-registered FCMs that clear foreign futures and options transactions for U.S. IB customers are subject to KYC and AML requirements under the Bank Secrecy Act and Commission regulations. The Commission must be confident that allowing foreign clearing firms exempt from FCM registration under CFTC Regulation 30.10 are allowed to carry U.S. customer trades entered by an IB via direct access on a registered FBOT would not raise any issues with KYC and AML requirements. Careful consideration must be given to the existence of similar requirements in the country in which the exempt clearing firm is located.

I look forward to the comments to the Proposed Rule. I am particularly interested in commenters' perspective on whether the Proposed Rule will engender risks or

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[15] *See* Appendix A to part 30, title 17, *https://www.ecfr.gov/current/title-17/chapter-I/part-30/appendix-Appendix%20A%20to%20Part%2030*.

consequences that the Proposed Rule fails to examine or consider. Among other risks, it is imperative that the Commission understand the diverse risks to U.S. retail customers.

Conclusion

I support the issuance of the Proposed Rule, which seeks to advance the CEA's goals of protecting U.S. markets, market participants, and both institutional and retail customers.

I commend the careful work of the staff of the Division of Market Oversight, including Alexandros Stamoulis, Roger Smith, Maura Dundon, and David Reiffen, on the Proposed Rule.

Appendix 4—Statement of Commissioner Christy Goldsmith Romero

The CFTC is proposing to change a post-Dodd Frank Act reform to issue a rule that permits CFTC-registered foreign boards of trade to have direct access to U.S. customers through introducing brokers.[1] The Dodd-Frank Act defines direct access to mean an explicit grant of authority by a foreign board of trade to identified members or other participants located in the United States to enter trades directly into the trade matching engine of the foreign board of trade. As described in the open Commission meeting on the final rule, "By adopting uniform application procedures and registration requirements and conditions, the process by which foreign boards of trade are permitted to provide direct access to their trading systems will become more standardized, more transparent to both registration applicants and the general public, and will promote fair and consistent treatment of all applicants."[2]

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[1] The Dodd Frank Act provided that the CFTC may adopt rules and regulations requiring registration for FBOTs that seek direct access to U.S. customers. Post-Dodd Frank Act regulations in part 48 providing that registration framework has conditions limiting the scope of intermediaries eligible for direct access for submission of customer orders, not allowing for introducing brokers.

[2] *See* CFTC, *Transcript of December 5, 2011 Commission Meeting*, *https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/dfsubmission/dfsubmission12_120511-trans.pdf*.

The Commission in 2011 limited direct access to certain intermediaries that did not include IBs, explaining,

> *Part 48 identifies the types of entities to which a registered FBOT could grant direct access. That would include identified members and other participants that trade for their proprietary accounts, FCMs that can submit orders on behalf of U.S. customers, and CPOs or CTAs or entities exempt from such registration that submit orders on behalf of U.S. pools or for accounts of U.S. customers for which they have discretionary authority. Again, this list of eligible participants is consistent with the participants under the existing no-action relief.*[3]

FBOT's have operated under this rule ever since. For the first time, this proposal would change that rule and expand direct access to an additional 937 intermediaries who are registered introducing brokers. It is not addressed in the rule or preamble why this rule change is necessary. I am aware of an early 2020 request from one of the 24 registered foreign boards of trade for no-action relief related to direct access for IBs. The CFTC did not act on that request over the last four years. I am not aware that the request has been made by any other FBOT. The CFTC is going farther than what was requested by one FBOT, and is instead changing the rule for all foreign boards of trade.

As regulators, we have an important responsibility to make an independent assessment of what is needed to carry out the CFTC's mission to promote market resilience, integrity, and vibrancy through sound regulation. If the Commission is going to engage in rulemaking to change post-Dodd Frank Act reforms, it is important that the CFTC analyze the current market need for the change, and the consequences of changing

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[3] *See Id.*

the rule, including any potential increase in benefits as well as risks (and conditions necessary to manage those risks).

It can be difficult to make decisions on proposed rules based on a general statement that the Commission is proposing the rule "based on the Commission's experience engaging with registered FBOTs and applying part 48 over the ensuing years." I would have liked to have seen a discussion of that experience, the current state of the market, and the need for expanded access for more than one FBOT. FBOTs are all over the world, reflecting unique nations, continents, markets, and issues. I look forward to public comment on whether there are important differences in FBOTs that should be reflected in any potential final rule. I appreciate a November 2023 letter by the Futures Industry Association, which explains:

> *With IBs currently not allowed FBOT direct access under 48.4(b), U.S. participants are left without this access route after EU-based IBs close, usually around 1 p.m. Eastern time. Updating the rules to expand direct access to U.S.-registered IBs would allow U.S. market participants continued access to the relevant foreign markets after the closure of those broker firms in Europe that provide access earlier in the day. This is especially important for U.S. participants' ability to conduct their risk management during periods of high market volatility, such as those experienced with the collapse of Silicon Valley Bank and Russian invasion of Ukraine.*

Given the public interests behind the 2011 rule of standardization, transparency, and a need for fair and consistent treatment, as well as FIA's description of a current risk management need, I am willing to support releasing the proposed rule to gain public comment. However, I caution not to read into this supportive vote that I will vote in favor of any future action on this or other rulemaking or action without sufficient independent CFTC analysis to accompany an industry request.

Finally, given the Commission's mission to promote market integrity, I question the proposed allowance of a guarantee by an entity exempt from FCM registration under Regulation 30.10 that is not required to follow the anti-money laundering and other requirements of the Bank Secrecy Act, rather than limit the guarantee to registered

FCMs. While an entity exempt from FCM registration under Regulation 30.10 may be subject to another country's anti-money laundering regime, the CFTC does not have the same level of insight or enforceability with that entity as with a registered FCM that is subject to the BSA.

As the former head of a Federal law enforcement office (the Special Inspector General for the Troubled Asset Relief Program), I have significant experience in using Currency Transaction Reports and Suspicious Activity Reports required by the BSA to investigate and prosecute money laundering, organized crime, drug trafficking and other criminal enterprises. I have experienced the benefit of financial institutions serving as a first line of defense given their BSA requirements.

The Commission's mission includes requiring safeguards to combat money laundering, illicit finance, and terrorist financing that can threaten national security and financial stability, and undermine confidence in the U.S. financial system. Illicit finance threats, vulnerabilities, and risks facing the United States continue to grow.[4] The Bank Secrecy Act plays a critical role in addressing these threats and risks.

I appreciate the staff for their work on this proposed rule change and look forward to public comment.

Appendix 5—Statement of Support of Commissioner Caroline D. Pham

I support the Notice of Proposed Rulemaking on Foreign Boards of Trade (FBOT) (Proposed FBOT Amendments or Proposal) because it promotes access to markets for U.S. participants, competition, and liquidity. I would like to thank Maura Dundon, Roger Smith, and Alexandros Stamoulis in the CFTC's Division of Market Oversight for their work on the Proposal. I especially appreciate their efforts to work with me and include my revisions.

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[4] *See* Treasury's *The 2024 National Money Laundering Risk Assessment, The 2024 National Terrorist Financing Risk Assessment, and The 2024 National Proliferation Financing Risk Assessment*, *https://home.treasury.gov/news/press-releases/jy2080*.

As a CFTC Commissioner, I have made it clear that I believe in good policy that enables growth, progress, and access to markets.[1] Accordingly, I am pleased to support Commission efforts that take a pragmatic approach to issues that hinder market access and cross-border activity.[2] Today's Proposal exemplifies policy that ensures a level playing field, and I applaud this step in the right direction for market structure.

FBOTs have been a critical piece of the CFTC's markets for decades and provide access for U.S. market participants to non-U.S. markets in realization of the global economy and international business.[3] The main substantive amendment in today's Proposed FBOT Amendments is to Regulation 48.4, which currently permits futures commission merchants (FCMs), commodity pool operators (CPOs), and commodity trading advisors (CTAs) to enter orders on behalf of customers or commodity pools via direct access on a registered FBOT.[4]

As explained in the Proposal, the Commission is proposing to permit introducing brokers (IBs)[5] to submit customer orders via direct access to FBOTs by adding IBs to the list of permissible intermediaries in Regulation 48.4. Doing so would permit IBs to act as executing brokers for U.S. customers that in turn use another intermediary, like an FCM,[6]

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[1] *See, e.g.*, Keynote Address by Commissioner Caroline D. Pham, 98th Annual Convention of the American Cotton Shippers Association (June 22, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham2*; Statement of Commissioner Caroline D. Pham on Staff Letter Regarding ADM Investor Services, Inc. (June 16, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement061623*.

[2] *Id.*

[3] While FBOTs initially had operated pursuant to no-action relief, in 2011, following the Dodd-Frank Wall Street and Consumer Protection Act of 2010, the Commission began registering FBOTs. *See* Registration of Foreign Boards of Trade, Final Rule, 76 FR 80674 (Dec. 23, 2011), *https://www.federalregister.gov/documents/2011/12/23/2011-31637/registration-of-foreign-boards-of-trade*.

[4] *See* 17 CFR 48.4.

[5] The Commission generally defines an IB as an individual or organization that solicits or accepts orders to buy or sell futures contracts, commodity options, retail off-exchange forex or commodity contracts, or swaps, but does not accept money or other assets from customers to support these orders. *See* CEA section 1a(31); 17 CFR 1.3(mm). The Commission registers IBs under CEA section 4d(g) and Regulation 3.4(a). *See* 7 U.S.C. 6d(g) and 17 CFR 3.4(a).

[6] U.S. customers could also use a firm exempted by the Commission pursuant to Regulation 30.10. The CFTC's part 30 regulations govern the offer and sale of foreign futures and options contracts to U.S. customers. Regulation 30.4 requires that in order to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure transactions conducted by U.S. persons on an FBOT, a

for clearing and carrying the customer accounts, similar to the way IBs currently perform this service on CFTC-registered designated contract markets (DCMs). Among other benefits, U.S. market participants interested in trading foreign futures could have more choices in brokers and broker arrangements. The Proposed FBOT Amendments will also ensure that customer protections are in place, similar to the current FBOT requirements for FCMs, CPOs, and CTAs.

As sponsor of the CFTC's Global Markets Advisory Committee (GMAC),[7] I have devoted a significant part of my Commissionership to supporting solutions that will enhance the resiliency and efficiency of global markets.[8] The Proposal is policy that mitigates market fragmentation and the associated impact on liquidity, and promotes the overall competitiveness of our derivatives markets. I am pleased to support the Proposed FBOT Amendments, and I look forward to the public comments.

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person must be registered as an FCM. See 17 CFR 30.4(a). The Commission may grant and has granted exemptions to this requirement to register as an FCM based on petitions filed pursuant to 17 CFR 30.10. A Regulation 30.10 exemptive order permits firms subject to regulation by a foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on FBOTs without registering as FCMs, based upon the firm's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA.

[7] Commissioner Pham Announces New Members and Leadership of the CFTC's Global Markets Advisory Committee and Subcommittees (June 30, 2023), *https://www.cftc.gov/PressRoom/PressReleases/8740-23*.

[8] Opening Statement of Commissioner Caroline D. Pham before the Global Markets Advisory Committee (Feb. 13, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement021323*. Most recently, the GMAC made eight recommendations to the CFTC that promote access to markets and competition while safeguarding financial stability. CFTC Global Markets Advisory Committee Advances Key Recommendations (Feb. 8, 2024), *https://www.cftc.gov/PressRoom/PressReleases/8860-24*.