

Regulation 30.10 petition must represent in writing to the CFTC⁸ 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 Japan; such firm is engaged in business with customers in Japan as well as in the U.S.; and such firm and its principals and employees 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 that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers resident in the U.S. will be made on or subject to the regulations of TFX and the Commission will receive prompt notice of all material changes to the relevant laws in Japan, any regulations promulgated thereunder and TFX regulations;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Japanese customers under all relevant provisions of Japanese law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 Regulations, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions and, where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Regulation 30.5;

(c) Agrees to provide 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 Japan upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal or employee who solicits or accepts orders from customers

located in the U.S. who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12a(2), from doing business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Japanese laws and TFX regulations that form the basis upon which this exemption from certain provisions of the Act and Regulations thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.⁹ Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that TFX members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.¹⁰ The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated TFX firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraphs (2)(a)–(f). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain

⁹ 62 FR 47792, 47793 (September 11, 1997). Among other duties, the Commission authorized NFA to receive requests for confirmation of Regulation 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Regulation 30.10 Order and to grant exemptive relief from registration to qualifying firms.

¹⁰ See 57 FR 49644 (November 3, 1992) (permitted limited marketing of foreign futures and foreign option products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994) (expanding the relief set forth in the 1992 release to conduct directed towards "accredited investors", as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

in effect pending further notice by the Commission, or the Commission's designee, to the firm and TFX.

This Order is issued pursuant to Regulation 30.10 based on the 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 Regulation 30.10 and, in particular, Appendix A, have been met. 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.

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 regulations and will make necessary adjustments if appropriate.

Dated: October 8, 2008.

By the Commission.

David Stawick,

Secretary of the Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 801

[TD 9426]

RIN 1545–BE45

Balanced System for Measuring Organizational and Employee Performance Within the Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

⁸ As described below, these representations are to be filed with NFA.

SUMMARY: This document contains final regulations relating to the modification of regulations governing the IRS Balanced System for Measuring Organizational and Employee Performance. These regulations affect internal operations of the IRS and the systems that the agency employs to evaluate the performance of organizations within the IRS and individuals employed by the IRS.

DATES: *Effective date.* These regulations are effective on October 14, 2008. *Applicability date.* For dates of applicability, see § 801.8.

FOR FURTHER INFORMATION CONTACT: Neil Worden, (202) 927-0900.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 2005, the IRS published in the **Federal Register** proposed regulations (REG-114444-05) at 70 FR 60256 and final and temporary regulations (TD 9227) at 70 FR 60214 amending 26 CFR part 801. One written comment was received. No public hearing was requested. This document adopts, without modification, the proposed regulations as final regulations.

Summary of Comments

The commentator suggested that modification of the regulation was not needed. The commentator further suggested that the Quantity measure “number of cases closed” should never be used to evaluate IRS employees or suggest goals. The amendment of Part 801 retains the absolute prohibition on the use of quantity data to evaluate non-supervisory employees who exercise judgment with respect to tax enforcement results. The amendment allows communicating the quantity goals of an organizational unit with employees, including quantity expectations, such as the average number of case closures needed to meet the unit’s goal. These communications must recognize that the facts and circumstances of each case will affect an employee’s actual closures, and that the employee is not being given a quota which must be met. Accordingly, the commentator’s suggestion was not adopted.

In addition, the inclusion of some outcome-neutral production data as examples of quantity measures (for example, cycle time and number or percentage of overage cases) (§ 801.6(c)) does not preclude an organizational unit’s use of this or other outcome-neutral production data as quality measures.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that the section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Karen F. Keller, Office of Associate Chief Counsel (General Legal Services). However, other personnel from the IRS participated in their development.

List of Subjects in 26 CFR part 801

Organization and functions (Government agencies), Federal employees.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 801 is amended as follows:

■ **Paragraph 1.** The authority citation for Part 801 continues to read in part as follows:

Authority: 5 U.S.C. 9501 * * *

PART 801—BALANCED SYSTEM FOR MEASURING ORGANIZATIONAL AND EMPLOYEE PERFORMANCE WITHIN THE INTERNAL REVENUE SERVICE

§§ 801.1 through 801.7 [Removed]

■ **Par. 2.** The center heading and §§ 801.1, 801.2, 801.3, 801.4, 801.5, 801.6, and 801.7 are removed.

§§ 801.1T through 801.8T [Redesignated as §§ 801.1 through 801.8]

■ **Par. 3.** The center heading preceding § 801.1T is removed.

■ **Par. 4.** Sections 801.1T, 801.2T, 801.3T, 801.4T, 801.5T, 801.6T, 801.7T, and 801.8T are redesignated as §§ 801.1, 801.2, 801.3, 801.4, 801.5, 801.6, 801.7, and 801.8 and the language “T” following the section number and “(temporary)” is removed from each section heading, respectively.

§ 801.1 [Amended]

■ **Par. 5.** Newly designated § 801.1(a) is amended by removing the language “(Pub. L. 105–106, 112 Stat. 685, 715–716, 722)” and adding the language “(Pub. L. 105–106, 112 Stat. 685, 715–716, 722)” in its place.

§ 801.2 [Amended]

■ **Par. 6.** Newly designated § 801.2 is amended by removing the language “Pub. L. 104–106, 110 Stat. 186, 679); the Government Performance and Results Act of 1993 (Pub. L. 103–62, 107 Stat. 285); and the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 108 Stat. 2838)” and adding the language “(Pub. L. 104–106, 110 Stat. 186, 679); the Government Performance and Results Act of 1993 (Pub. L. 103–62, 107 Stat. 285); and the Chief Financial Officers Act of 1990 (Pub. L. 101–576, 108 Stat. 2838)” in its place.

§ 801.3 [Amended]

■ **Par. 7.** Newly designated § 801.3(e)(1) and (e)(3) is amended by removing the language “§ 801.6T” in each location and adding the language “801.6” in its place.

§ 801.7 [Amended]

■ **Par. 8.** Newly designated § 801.7(a) introductory text is amended by removing the language “§ 801.3T” and adding the language “§ 801.3” in its place.

■ **Par. 9.** New designated § 801.8 is revised to read as follows:

§ 801.8 Effective/applicability dates.

The provisions of §§ 801.1 through 801.7 apply on or after October 17, 2005.

Approved: October 7, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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