

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 18, 1996.

James V. Devany,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 31

#### Financial Reports of Futures Commission Merchants, Introducing Brokers and Leverage Transaction Merchants

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed Rules.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to amend its Rule 1.10(d)(4), which requires that each Form 1-FR filed with the Commission contain an oath or affirmation attesting that, to the best knowledge and belief of the individual making such oath or affirmation, the information contained therein is true and correct. The proposed rule amendment would provide that, for the purposes of making this attestation when filing a financial report with the Commission electronically, the use of a personal identification number ("PIN") would be deemed to be the equivalent of a manual signature.<sup>1</sup> The proposal also would amend Rule 1.10(c) to account for the possibility that registrants may choose to file certain financial reports electronically using a Commission issued PIN rather than filing such reports in paper form with the regional office of the Commission nearest the principal place of business of the registrant. The proposal would add Rule 1.10(b)(2)(iii) to clarify that certified financial reports may not be filed electronically.

In addition, the Commission is proposing to amend Rules 1.10(g) and 31.13(m) to clarify that certain portions of the financial reports will be deemed

public and other portions nonpublic, and to eliminate the requirement that firms filing financial reports need to separately bind portions of such reports generally treated as nonpublic in order for such portions of the reports to be accorded nonpublic treatment.

**DATES:** Comments must be received on or before November 25, 1996.

**ADDRESSES:** Comments on the proposed amendments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5221, or by electronic mail to secretary@cftc.gov. Reference should be made to "Attestation Amendments".

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone (202) 418-5450.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Commission Rule 1.10 sets forth the financial reporting requirements for futures commission merchants ("FCMs") and independent introducing brokers ("IBs").<sup>2</sup> This rule requires generally that FCMs file with the Commission financial reports on Form 1-FR-FCM each quarter and that IBs file financial reports on Form 1-FR-IB semiannually.<sup>3</sup> Pursuant to paragraph (d)(4) of the rule, each Form 1-FR must include an attached oath or affirmation that, to the best knowledge or belief of the individual making such oath or affirmation, the information contained in the Form 1-FR is true and correct. If the applicant or registrant is a sole proprietorship, partnership or corporation, the oath or affirmation must be made by the proprietor, a general partner or by the chief executive officer or chief financial officer, respectively.

The Commission's Division of Trading and Markets ("Division") issued a no-action letter to the Chicago Board of Trade ("CBT") in February, 1996 concerning the attestation of

financial reports where an FCM is organized as a partnership.<sup>4</sup> The no-action letter provided relief to CBT member firms that are registered as FCMs and organized as partnerships with only a corporation or limited liability company as a general partner such that the FCM's chief financial officer (or the individual who has these responsibilities) could sign the attestation on Form 1-FR-FCM. However, the letter stated that in the case of an FCM organized as a partnership with another partnership as its general partner, the general partner of such other partnership must make the attestation required by Rule 1.10(d)(4). The no-action letter also provided relief to CBT to permit it to administer its financial filing rule, CBT Capital Rule 311, in a similar manner.<sup>5</sup>

CBT's request for relief stated that the request was prompted by the fact that CBT was in the process of issuing PINs to those individuals who are eligible to provide the required attestations in connection with CBT's upcoming implementation of the electronic filing of financial reports. Such filing is permitted by CBT Capital Rule 311. Subsequently, the Division issued Advisory 12-96 to inform FCMs, IBs and self-regulatory organizations ("SROs") that they would be granted similar no-action treatment if they acted in accordance with the Division's letter to CBT.<sup>6</sup>

On May 28, 1996, the Commission issued Advisory 28-96, to alert FCMs, IBs and SROs that in connection with any SRO program for electronic filing of financial reports approved by the Commission, and to the extent the SRO program does not require a manual signature for purposes of attestation, the use of a PIN would be deemed to be the equivalent of a manual signature for purposes of attestation under Commission Rule 1.10(d)(4).<sup>7</sup> The Commission noted therein that it planned to implement procedures that would permit firms filing electronically with an SRO to submit certain financial reports to the Commission via electronic

<sup>4</sup> CFTC Interpretative Letter 96-21, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,633 (Feb. 29, 1996).

<sup>5</sup> Commission Rule 1.52(a), 17 CFR 1.52(a)(1996), requires each self-regulatory organization ("SRO") to adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for member FCMs and IBs. Such requirements must be the same as, or more stringent than, those contained in Commission Rules 1.10 and 1.17, 17 CFR 1.10 and 1.17 (1996).

<sup>6</sup> This was reprinted as CFTC Advisory 96-21 in [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,640 (March 8, 1996).

<sup>7</sup> [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996).

<sup>1</sup> Commission Rule 1.10(h) permits registrants that are also registered as securities broker-dealers with the Securities and Exchange Commission to file a copy of their Financial and Operational Combined Uniform Single Report ("FOCUS") with the Commission in lieu of Form 1-FR. The amendments discussed herein are intended to apply equally to registrants who file Form 1-FR or FOCUS with the Commission.

<sup>2</sup> Approximately two-thirds of introducing brokers enter into a guarantee agreement with an FCM and thus are not required to raise their own regulatory capital or file financial reports.

<sup>3</sup> The Commission is currently proposing to amend certain of its financial reporting requirements for FCMs and IBs, including time requirements for filing Form 1-FR. See 61 FR 7080 (Feb. 26, 1996).

transmission. The Commission currently is developing these procedures and intends to implement them in the coming year.

At the outset of the Commission's program to permit firms to submit non-certified financial reports electronically, the Commission will require that those firms which choose to file financial reports electronically continue to file a paper report with their appropriate regional office of the Commission as the official filing of such report. After obtaining experience with the electronic filing system, the Commission anticipates that it will permit registrants to file non-certified financial reports solely by electronic means. Electronic filing of certified financial reports will not be permitted.

## II. Proposed Rule Amendments

### A. *Electronic Filing Issues*

The Commission is proposing to amend its Rule 1.10(d)(4) such that the use of a PIN in filing a Form 1-FR pursuant to Rule 1.10 would be deemed to be the equivalent of a manual signature under the rule. Therefore, the rule would make clear that the transmission of a financial report to the Commission or an SRO under a PIN will constitute a representation that the person whose PIN is used in such transmission attests that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete.<sup>8</sup> As many firms are already filing financial reports with their SRO via electronic transmission in accordance with SRO rules approved by the Commission and Advisory 28-96, this amendment will simply serve to restate the Commission's position set forth in that Advisory. In so doing, the amendment will make clear that a PIN may be used in place of a manual signature with respect to non-certified reports filed with the Commission and permit the Commission to enforce the rule directly. The Commission hopes that this amendment will encourage and facilitate the process of electronic filing of such reports with the Commission but notes that, while it encourages the use of the electronic filing option, the amendments would not mandate electronic filing with the Commission.

As noted above, the Commission currently is developing procedures that will allow it to accept non-certified financial reports electronically. The Commission intends to adopt procedures for issuing PINs to facilitate

electronic filing with the Commission consistent with the procedure currently in use by SROs such as CBT and the Chicago Mercantile Exchange ("CME"). Under these procedures, an FCM or IBI would be required to submit a PIN request form to the Commission's Central Regional Office on company letterhead with a manual signature. The request must be signed by the proprietor if the registrant is a sole proprietorship, by a general partner if the registrant is a partnership<sup>9</sup> and by the chief financial officer or chief executive officer if the registrant is a corporation. The individual representing the registrant must acknowledge that the use of the PIN will be considered to be a substitute for his or her manual signature attesting that, to the best knowledge and belief of that person, the information contained in the financial report is true, correct and complete. A new PIN request form would be required if the firm wished to change the individual authorized to use a PIN to file the firm's financial report.

The Commission also is proposing to amend paragraph (c) of Rule 1.10 and add a Rule 1.10(b)(2)(iii). The amendment to Rule 1.10(c) would make clear that a registrant may file non-certified financial reports via electronic transmission using a Commission issued PIN in accordance with instructions issued by the Commission. New Rule 1.10(b)(2)(iii) would make clear that registrants will continue to be required to file their certified financial reports, which must accompany the application for registration and be submitted as of each fiscal year end following registration, in paper form.

As noted above, the Commission would require at the outset of its electronic filing program that firms filing non-certified financial reports electronically continue to file a paper report with the appropriate regional office of the Commission. However, the Commission contemplates that, following some experience with electronic transmission of financial data, it may be permissible for firms to submit non-certified financial reports to the Commission solely via electronic transmission.

### B. *Freedom of Information Act Issues*

Currently, the Commission makes available only a paper copy of a firm's financial report in response to a request for such report under the Freedom of Information Act ("FOIA"). Consistent with this current practice, the Commission intends to respond to an

FOIA request for a financial report that was filed with the Commission solely by electronic transmission by printing a paper copy of the responsive, public data and forwarding it to the requestor.

The data which the Commission would print and forward to the requestor would be the public portions of a Form 1-FR. As clarified by the proposed amendment to Rule 1.10(g), these are, for FCMs and IBIs, the statement of financial condition and the statement of the computation of the minimum capital requirements, and, in addition, for FCMs only, the statements concerning segregation of customer funds and the secured amount for foreign futures and option customers. Currently under Rule 1.10(g), the Commission requires that the other portions of the Form 1-FR<sup>10</sup> be separately bound from the portions of the form set forth in the preceding sentence in order to be accorded nonpublic treatment.

Through the proposed amendment to Rule 1.10(g), the Commission will reconfirm the current demarcation as to which portions of the Form 1-FR are generally treated as public and nonpublic and eliminate the need for firms to use a separate binding procedure to receive such treatment for their reports, whether reports are filed in paper form or electronically. The Commission believes that, in the context of financial reports submitted electronically, it would be unduly cumbersome to require a procedure similar to separate binding of paper reports. Further, whether or not a firm chooses to file its reports in the future electronically or in paper form, the Commission's rules concerning the treatment of certain portions of Form 1-FR as public and others as nonpublic have been extant for almost 20 years and are quite well-known in the industry.

The Commission intends to propose to clarify, in a separate release, its rules under FOIA and the Government in the Sunshine Act ("GINS") in order to: (1) reaffirm that certain portions of the Form 1-FR are generally public and the remainder are nonpublic; and (2) state that it will no longer process petitions for confidential treatment of the generally public portions of a Form 1-FR. The proposed amendments to Rule 1.10(g) (1) and (2)<sup>11</sup> are intended to

<sup>10</sup> These are the statements of income (loss), cash flows, changes in ownership equity and changes in liabilities subordinated to the claims of general creditors. Only the latter two statements are required to be filed with non-certified financial reports and thus would generally be filed as part of a Form 1-FR submitted electronically. See Rule 1.10(d)(1) (i) and (ii).

<sup>11</sup> The Commission has proposed to remove and reserve paragraph (g)(3) and to revise paragraph

<sup>8</sup> Commission Rule 1.10(c) provides that financial reports must be filed with the Commission and the firm's designated self-regulatory organization.

<sup>9</sup> Similar signatures would be permitted, as discussed above, for partnerships whose general partner is a non-natural person.

complement these contemplated amendments of the FOIA and GINSA rules and to eliminate a burden on firms to bind separately certain portions of a Form 1-FR to assure nonpublic treatment.<sup>12</sup>

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs, LTMs and IBIs. The Commission already has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.<sup>13</sup> FCMs and LTMs<sup>14</sup> have been determined not to be small entities under the RFA.

With respect to IBIs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBIs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.<sup>15</sup> The proposed amendments would not require any IBI to submit financial reports electronically but would only govern the attestation of the completeness and accuracy of such reports so filed. Presumably, an IBI would only choose to file a financial report electronically if it were cost-effective to do so. These rule amendments as proposed should impose no additional burden or requirements on an IBI and thus, if adopted, would not have a significant economic impact on a substantial number of IBIs. Accordingly, pursuant to Rule 3(a) of the RFA, 5 U.S.C. 605(b), the Chairperson, on behalf of the Commission, certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in

connection with their conducting or sponsoring any collection of information as defined by the PRA. While this proposed rule has no burden, the group of rules (3038-0024) of which this is a part has the following burden:  
*Average Burden Hours Per Response:* 128.

*Number of Respondents:* 3,148.  
*Frequency of Response:* Quarterly, Monthly or On Occasion.  
Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503 (202) 395-7340. Copies of the information collection submission to OMB are available from Gerald P. Smith, CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418-5160.

#### List of Subjects

##### 17 CFR Part 1

Commodity futures, Consumer protection, Minimum financial and related reporting requirements.

##### 17 CFR Part 31

Commodity futures, Consumer protection, Leverage transactions, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Parts 1 and 31 of chapter I of title 17 of the Code of Federal Regulations as follows:

### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by adding paragraph (b)(2)(iii) and revising paragraphs (c), (d)(4), (g)(1) and (g)(2) to read as follows:

#### § 1.10 Financial reports of futures commission merchants and introducing brokers.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) A Form 1-FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant, an introducing broker or an applicant for registration in either

category, must be filed in paper form and may not be filed electronically.

\* \* \* \* \*

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office):  
*Provided, however,* That any report filed pursuant to paragraphs (b)(1) or (b)(4) of this section or § 1.12(b) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission: *And, Provided, further,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission.

(d) \* \* \*

(4) Attached to each Form 1-FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1-FR is true and correct. If the applicant or registrant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by the chief executive officer or chief financial officer. In the case of a Form 1-FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized

(g)(5) of Rule 1.10. 61 FR 7080, 7085. The proposed amendments discussed herein would not interfere with or require further amendment of those earlier proposals.

<sup>12</sup> Although there are currently no registered leverage transaction merchants ("LTMs"), the Commission is also proposing to amend Rule 31.13(m) which currently provides for a separate binding procedure similar to that set forth in Rule 1.10(g) with respect to LTMs submitting financial reports on Form 2-FR.

<sup>13</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>14</sup> See 50 FR 102, 108 n.11 (Jan. 2, 1985).

<sup>15</sup> See 48 FR 35248, 35275-78 (Aug. 3, 1983).

signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

\* \* \* \* \*

(g) *Nonpublic treatment of reports.* (1) The following portions of Forms 1–FR filed pursuant to this section will be public: the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 1–FR, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

(2) The following portions of copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA filed pursuant to paragraph (h) of this section, will be public: The statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA, trade secrets and certain other commercial or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom

of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter.

\* \* \* \* \*

### PART 31—LEVERAGE TRANSACTIONS

3. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 12a and 23.

4. Section 31.13 is amended by revising paragraph (m) to read as follows:

#### § 31.13 Financial reports of leverage transaction merchants.

\* \* \* \* \*

(m) The following portions of Form 2–FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2–FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

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Issued in Washington, DC, on October 21, 1996 by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

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BILLING CODE 6351–01–P

## DEPARTMENT OF THE TREASURY

### 27 CFR Parts 252 and 290

[Notice No. 842; Ref: Notice No. 835; 95R–046P]

RIN 1512–AA98 and 1512–AB03

### Exportation of Alcoholic Beverages, Denatured Alcohol, Tobacco Products and Cigarette Papers and Tubes

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Advance notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document reopens the comment period for Notice No. 835, an advance notice of proposed rulemaking, published in the Federal Register on August 9, 1996 concerning exportation of alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes. ATF has received two requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

**DATES:** Written comments must be received on or before December 9, 1996.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 835.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 9, 1996, ATF published an advance notice of proposed rulemaking in the Federal Register soliciting comments from the public and industry on a proposal to revise and recodify the regulations pertaining to exportation of alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes. (Notice No. 835; 61 FR 41500).

The comment period for Notice No. 835 was scheduled to close on October 8, 1996. Prior to the close of the comment period ATF received a request from a national trade association, the Presidents' Forum of the Beverage Alcohol Industry, to extend the comment period for sixty days. The Presidents' Forum stated that it needed additional time to address the numerous