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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33 and 190

Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading
Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to amend its Rule 1.55 in order that futures commission merchants ("FCMs") or introducing brokers ("IBs") would no longer be required to furnish the specified written risk disclosure statement to certain categories of financially accredited customers or to obtain from these customers written acknowledgments of receipt of the risk disclosure statement before opening a commodity futures account for such customers. In addition, the Commission is proposing amendments to relieve FCMs and IBs from requirements to furnish disclosure statements to these customers pursuant to Rule 30.6(a) (risk disclosure pertaining to foreign futures or foreign options), Rule 33.7(a) (risk disclosure pertaining to domestic exchange-traded commodity options), Rule 1.65(a)(3) (risk disclosure for customers whose accounts are transferred other than at the customer's request to another FCM or IB) and Rule 190.10(c) (disclosure pertaining to treatment in bankruptcy of non-cash margin held by an FCM).

DATES: Comments must be received on or before November 10, 1997.

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

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading

Commission, 1155 21st Street, NW., Washington DC 20581. Telephone (202) 418-5450.

SUPPLEMENTARY INFORMATION:

I. Background

CFTC rules require FCMs and IBs to provide customers with Commission-approved disclosure statements describing the risks of trading in domestic (and, as applicable, foreign) commodity futures and options and to receive written acknowledgment of receipt of such statements prior to opening an account for the customer.¹ In addition, Commission Rule 190.10(c) requires an FCM to provide a customer with a disclosure statement concerning the treatment in bankruptcy of any non-cash property deposited as margin at the FCM by a customer before the FCM may accept non-cash property from the customer to margin, guarantee or secure any commodity contract.²

In 1993 and 1994, the Commission amended its rules to simplify these disclosure requirements, reduce the potential for duplicative disclosure requirements and ease administrative burdens on FCMs and IBs without sacrificing the important customer protection purposes served by these regulations. In this regard, the Commission adopted amendments to consolidate the risk disclosures required by Rules 1.55(a) and 30.6(a) into a single, generic statement set forth in CFTC Rule 1.55(b) satisfying risk disclosure obligations with respect to domestic futures transactions and foreign futures and options transactions.³ In addition, the Commission amended its rules to include the generic risk disclosure statement set forth in Appendix A to CFTC Rule 1.55, which may be used to satisfy the risk disclosure obligations under Commission Rules 1.55(a), 30.6(a) and 33.7(a) for domestic futures and commodity options transactions, foreign futures and commodity options transactions and the CFTC Rule 190.10 disclosure concerning non-cash property used to margin futures transactions, as well as to satisfy the risk

disclosure requirements of certain foreign jurisdictions.⁴

When adopting the generic risk disclosure statement set forth in Appendix A to Rule 1.55 and the related rule amendments, the Commission noted that one commenter on the proposed rule amendments had suggested that the Commission eliminate the requirement of receipt of a written acknowledgment of disclosure with respect to sophisticated investors.⁵ The Commission determined not to address the issues raised by that comment at that time. However, since adopting the Rule 1.55 Appendix A risk disclosure statement, the Commission has assessed the results of efforts in other contexts to reduce disclosure requirements and other regulatory burdens on Commission registrants without undermining consumer protection safeguards. For example, the Commission has acquired substantial experience with the simplified disclosure regime for sophisticated commodity pool investors and clients of commodity trading advisors ("CTAs") established in 1992 in Rule 4.7.⁶ Under Rule 4.7, CPOs offering pool participations to qualified participants and CTAs offering managed account programs to qualifying clients may be exempted from the requirement to deliver a disclosure document containing the disclosures specified in Rules 4.24 and 4.25 for CPOs and 4.34 and 4.35 for CTAs. However, they remain subject to statutory and regulatory antifraud prohibitions and

⁴ See 59 FR 34376 (July 5, 1994) (amending rules so that single risk disclosure statement set forth in Appendix A of Rule 1.55 would satisfy risk disclosure obligations under Rules 1.55(a), 30.6(a) and 33.7(a) as well as disclosure required pursuant to Rule 190.10(c)). The risk disclosure statement set forth at Appendix A to Rule 1.55 also fulfills risk disclosure requirements in the United Kingdom and Ireland for certain specified instruments. The rules proposed herein would not alter an FCM's or IB's disclosure obligations under the laws or regulations of any foreign jurisdiction. Further, as the Commission has previously emphasized, compliance with the risk disclosure obligations specified in CFTC Rules 1.55, 30.6 and 33.7 does not relieve FCMs and IBs of obligations under the Commodity Exchange Act ("Act"), state and common law, or Commission rule 1.55(f) to disclose to customers all material information concerning a transaction. See, e.g., *it*, at 34378. Nor does compliance with these Commission rules fulfill individual exchange particularized risk disclosure requirements related to linkage arrangement and other special products.

⁵ *Id.* at 34378.

⁶ Rule 4.7 became effective September 8, 1992. 57 FR 34853 (August 7, 1992) (adopting release for Rule 4.7). Among other things, Rule 4.7 relieves commodity pool operators ("CPOs") and CTAs from most specified reporting and disclosure obligations, including risk disclosure obligations, with respect to certain qualified eligible participants ("QEPs") in rule 4.7 pools or qualified eligible clients ("QECs") of a CTA, as defined in the rule.

¹ See Rule 1.55(a) (risk disclosure requirement concerning trading domestic commodity futures); rule 30.6(a) (risk disclosure requirement concerning non-United States commodity futures or options contracts); and rule 33.7(a) (risk disclosure requirement concerning domestic, exchange-traded commodity options).

² Commission rule 190.10 does not require an FCM to obtain a customer's written acknowledgment of receipt of this statement.

³ See 58 FR 17495 (April 5, 1993) (amending rules to consolidate foreign futures and foreign commodity options risk disclosure statement required by Rule 30.6(a) with the domestic futures risk disclosure statement required by Rule 1.55(a)).

are thus required to disclose all material information. In addition, the Commission has been able to assess more fully its previous efforts to consolidate and simplify risk disclosure obligations for FCMs and IBs. Based upon this experience, the Commission believes that it is appropriate to provide FCMs and IBs with relief from certain risk disclosure and bankruptcy statement requirements in the context of accounts for specified sophisticated customers and is thus proposing these rule amendments.

II. Discussion

The amendments proposed herein would eliminate the requirement that FCMs and IBs provide specified, financially accredited customers with the Commission-mandated risk disclosure statements pursuant to CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a) and obtain from such customers a written acknowledgment of receipt of the risk disclosure statement before opening a commodity futures or options account for such customers. Additionally, the amendments would relieve FCMs of the obligation to furnish these financially accredited customers with the bankruptcy disclosure statement required by Rule 190.10(c) before accepting non-cash property from such customers to margin a futures contract. While the proposed amendments would relieve an FCM or IB of the specific disclosure obligations discussed above in connection with futures or options transactions by specified customers, these amendments make clear that an FCM and IB would remain obligated to provide such customers with all disclosures that are material in light of the circumstances of the transaction in question. Under the proposed amendments, FCMs or IBs would remain free to provide customers specified in proposed Rule 1.55(f) with the Commission-approved risk and bankruptcy disclosure statements without obtaining a written acknowledgment of receipt of these statements from such qualified customers.

A. Customers For Whom Relief May Be Claimed

The categories of customers specified in proposed Rule 1.55(f) for whom an FCM or IB may claim the relief proposed herein are based substantially upon the categories of eligible swap participants in Part 35 of the Commission rules⁷ and eligible

participants in Part 36 of the Commission rules.⁸ The Commission believes that the definitions of eligible swap participants and eligible part 36 participants are appropriate models for the definitions set forth in proposed Rule 1.55(f) inasmuch as the Part 35 and 36 rules exempt parties from providing mandatory risk disclosure statements (as well as compliance with other requirements) in connection with transactions covered by those rules.⁹ However, certain minor differences between the proposed categories of qualified customers in proposed Rule 1.55(f) and the lists of eligible swap participants and eligible participants in parts 35 and 36, respectively, exist.

First, proposed Rule 1.55(f) does not require a pool to have a minimum asset level in order to qualify for the proposed relief. Such a minimum asset test for pools is unnecessary in light of current Rule 1.55,¹⁰ which already relieves an FCM or IB from the obligation to provide a Rule 1.55 risk disclosure statement to a commodity pool operated by a CPO registered under the Act or exempt from such registration.¹¹ The

from most provisions of the Act and Commission rules.

⁸ See CFTC Rule 36.1(c)(2). Part 36 of the Commission rules exempts certain contract market transactions from specified provisions of the Act and Commission regulations thereunder. Parts 35 and 36 of the Commission rules were adopted pursuant to authority set forth in Section 4(c) of the Act, 7 U.S.C. 6(c). See 58 FR 5587 (January 22, 1993) (adopting part 35) and 60 FR 51323 (October 2, 1995) (adopting part 36). Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), requires that, among other conditions, any agreement, contract or transaction exempted from any provision of the Act pursuant to Section 4(c) of the Act must "be entered into solely between appropriate persons," who are defined in Section 4(c)(3) (A) through (J) of the Act, 7 U.S.C. 6(c)(3) (A)–(J). Thus, the lists of eligible swap participants and eligible participants were, in turn modeled closely on the list of appropriate persons provided in Section 4(c) of the Act.

⁹ Part 35 exempts any eligible swap transaction from all provisions of the Act, except Sections 2(a)(1)(B), 4b, and 4c of the Act, 7 U.S.C. 2a, 6b, and 6c, Rule 32.9 and Sections 6(c) and 9(a)(2) of the Act, 7 U.S.C. 9 and 13(a)(2), to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market. Rule 36.7 relieves an FCM or IB from the requirement to provide an eligible participant with a risk disclosure statement pursuant to Commission Rules 1.55, 1.65, 33.7 or 190.10 in connection with Section 4(c) contract market transactions as defined in Rule 36.1(c)(1).

¹⁰ See CFTC Rule 1.55(a)(1)(iii).

¹¹ Commission Rule 4.13 exempts a party from registration as a CPO where: (1) the pool operator receives no compensation for operating the pool, other than reimbursement of administrative expenses, operates only one pool, is not otherwise required to register under the Act and is not affiliated with any person required to register under the Act, and no person involved with the pool advertises in connection with the pool; or (2) the total gross capital contributions for all pools a person operates or intends to operate do not exceed \$200,000, and none of the pools operated by such

Commission believes that it is appropriate to extend this relief to the comparable risk disclosure obligations set forth in CFTC Rules 1.65(a)(3), 30.6(a), 33.7(a) and 190.10(c). In addition, proposed new Rule 1.55(f) (unlike Parts 35 and 36) would not restrict relief to entities not formed for the specific purpose of eligibility for the relief, since it is highly unlikely that any entity would be formed specifically for the purpose of avoiding receipt of a risk disclosure statement.

As under Parts 35 and 36, an investment company for which the proposed relief may be claimed is defined as one "subject to regulation under the Investment Company Act." This provision will permit FCMs and IBs to apply the proposed relief to hedge funds which, although subject to the Investment Company Act, generally are not regulated under it.¹² Similarly, proposed Rule 1.55(f)(10) would allow an FCM or IB to claim relief with respect to a customer who is a "futures commission merchant * * * subject to regulation under the Act." Thus, FCMs exempt from registration pursuant to Commission Rule 3.10(c) would nonetheless be qualifying customers within the meaning of proposed Rule 1.55(f)(10) since such FCMs remain subject to regulation under the Act.¹³

The categories of customers for whom an FCM or IB would be able to claim the proposed disclosure relief include: (1) Regulated financial intermediaries, such as banks, trust companies, savings associations, credit unions, and insurance companies; (2) registered securities and futures entities, such as broker-dealers regulated under the Securities Exchange Act of 1934, investment companies with assets exceeding \$5,000,000 and subject to regulation under the Investment Company Act, pools formed and operated by a CPO registered under the Act or exempt from such registration, and FCMs, floor brokers or floor traders regulated under the Act; (3) other financially sophisticated persons, such as employee benefit plans with assets in

person has more than 15 participants at any time. Persons who wish to claim registration relief under Rule 4.13 must file a statement of intent with the Commission before accepting funds or soliciting customers for any pool operated by it and fulfill other requirements specified in the rule.

¹² Cf. 60 FR at 51329–51330 (discussing "subject to regulation" criteria as applied to investment companies in definition of eligible participants in Part 36 and eligible swap participants in Part 35).

¹³ Rule 3.10(c) exempts from registration an FCM which is "trading solely for proprietary accounts, as defined in [Commission Rule] 1.3(y) * * *." Rule 3.10(c) states that such FCMs, although exempt from registration, remain "subject to all other provisions of the Act, and of the rules, regulations and orders thereunder."

⁷ See CFTC Rule 35.1(b)(2). Part 35 of the Commission rules exempts certain swap agreements

excess of \$5,000,000 and subject to the Employee Retirement Income Security Act of 1974, corporations, partnerships, proprietorships and other entities with total assets exceeding \$10,000,000 or a net worth of at least \$1,000,000, and natural persons with assets in excess of \$10,000,000; and (4) any governmental entity, including the United States, any state or foreign government, or any political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency or department of any of the foregoing.

Like the definitions of Part 35 eligible swap participant and Part 36 eligible participant, the categories of customers specified in proposed Rule 1.55(f) would include certain regulated foreign entities that perform roles or functions similar to those performed by one of the enumerated, regulated United States entities. These foreign entities must satisfy the same minimum asset or net worth criteria as their United States counterparts and, although not required to be subject to regulation under specified United States laws, they must be subject to regulation in their home jurisdiction.¹⁴ Thus, an FCM or IB would be able to claim the proposed relief in connection with opening a futures or commodity option account for a foreign employee benefit plan subject to applicable foreign regulations, a commodity pool operated by a foreign person performing a function similar to that of a CPO and subject to foreign regulation as such, or a foreign-regulated entity performing a function similar to that of a United States investment company, broker-dealer, FCM, floor broker or floor trader, if such customers satisfy applicable minimum asset or net worth criteria.

As proposed, these amendments require that a customer satisfy the criteria set forth in proposed Rule 1.55(f) only at the time an account is opened. An FCM or IB would be under no obligation to monitor a customer's status to assure that the customer continues to satisfy the Rule 1.55(f) criteria throughout the time an account remains open. Moreover, the proposed amendment to Rule 1.65(a)(3), which addresses accounts transferred other than at a customer's request, allows the FCM or IB to whom such an account is transferred to claim the proposed

disclosure relief with respect to a customer who either: (1) as clearly evidenced by information available to the transferee firm, satisfied the proposed 1.55(f) criteria at the time the account was first opened with the transferring FCM or IB; or (2) satisfies such criteria at the time the account is transferred.

Proposed Rule 1.55(f) will provide FCMs and IBs with clear, objective criteria for identifying the customers to whom delivery of the Commission-approved disclosure statements pursuant to CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), 33.7(a) and 190.10(c) is not required. These criteria should serve to minimize any administrative burdens associated with implementing the proposed relief. In this regard, the Commission notes that the proposed rule contains no specific requirement that FCMs and IBs maintain with their books and records any information in addition to that already required by other Commission rules in order to identify a particular customer's eligibility for the relief provided by the proposed amendments.¹⁵ However, FCMs and IBs are required to assure that mandated disclosure statements are provided to customers other than those to whom this relief applies. In order to substantiate compliance with such disclosure requirements and exercise meaningful supervision over customer accounts, FCMs and IBs should assure that adequate records are maintained and reviewed on a regular basis.¹⁶ Thus, FCMs and IBs should maintain documentation relevant to the qualifications of the customers for whom the relief proposed herein will be claimed and to confirm the identities of customers to whom specified risk disclosures have been made and from whom acknowledgments have been obtained.

B. Relief

The proposed amendments will relieve FCMs and IBs from the requirements to deliver disclosure statements pursuant to Commission Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a) to customers who, at the time of account opening, are within the categories specified in proposed Rule 1.55(f).¹⁷ FCMs and IBs also would no longer be required to obtain and retain

a signed statement from such customers acknowledging that the customer received and understood the required risk disclosure statement.

Further, the Commission believes that it is appropriate to relieve FCMs of the obligation to provide disclosure statements to these specified customers pursuant to Rule 190.10(c). However, the Commission requests comment concerning the proposed relief with respect to Rule 190.10(c), which requires that the disclosure statement specified therein be given only when customers deposit non-cash property as margin.¹⁸ The Commission also notes that the proposed rule amendments do not provide FCMs with relief with respect to the subordination agreement required by Financial and Segregation Interpretation No. 12 to be executed by a customer whose funds are held by an FCM in foreign depositories, which may be incorporated in the Rule 190.10(c) bankruptcy statement.¹⁹

C. Continuing Disclosure Obligations

The proposed amendments make clear that despite relief from the specific disclosure obligations of CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), 33.7(a) or 190.10(c), FCMs and IBs remain obligated under other statutory and regulatory provisions, including Section 4b of the Act²⁰ and current CFTC Rule 1.55(f),²¹ to provide customers with all material information relating to a transaction, including information relating to the risks involved in entering a particular transaction. As the Commission stated when it adopted current Rule 1.55(f), these minimum disclosure obligations arise under the Act, under state law and under common law.²² However, the required

¹⁸ The commodity broker provisions of the Bankruptcy Code, which mandate *pro rata* distribution of cash and non-cash customer property, including property specifically identifiable to a customer, have been in effect for approximately nineteen years, and the Commission's bankruptcy rules for fourteen years.

¹⁹ 53 FR 46911 (November 21, 1988) (stating conditions under which an FCM may hold funds of its United States domiciled customers in a foreign depository). The Commission has stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated in the Rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46914.

²⁰ 7 U.S.C. 6b.

²¹ Current Commission Rule 1.55(f), which would be redesignated as Rule 1.55(g) under the proposed amendments, states that compliance with Rule 1.55 does not relieve an FCM or IB of any other disclosure obligations it may have under applicable law. See 50 FR 5380 (February 8, 1985) (adopting Rule 1.55(d), since redesignated as Rule 1.55(f), and explaining FCMs' and IBs' disclosure obligations under the Act).

²² *Id.* at 5381. Further, as the Commission noted when it adopted Rule 1.55(d) "the prescribed

¹⁴ In this regard, the Commission intends that the foreign entity be subject to regulation based upon activities or functions similar to those performed by a United States entity specified in proposed Rule 1.55(f). For example, to be within the meaning of proposed Rule 1.55(f)(10), the activities of a foreign FCM should be governed by regulations dealing with its business as an FCM and not by an unrelated regulatory regime.

¹⁵ For example, FCMs and IBs would be required to obtain and maintain the information required by CFTC Rule 1.37 concerning all customers, including customers listed in proposed Rule 1.55(f).

¹⁶ Rule 166.3 requires FCMs and IBs to supervise diligently the handling of commodity interest accounts.

¹⁷ The Commission also proposes to redesignate current Rule 1.55(f) as 1.55(g).

disclosures may differ in particular cases, depending upon the nature of the relationship between the FCM or IB and its customer and such factors as whether the FCM or IB has discretionary authority over an account or is merely executing trades according to a customer's instructions.²³

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs and IBs. The Commission has already 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. FCMs have been determined not to be small entities under the RFA.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time. The proposed rule amendments would not require any IB to alter its current method of doing business. Instead the proposed amendments would provide IBs with relief from certain disclosure and recordkeeping requirements with respect to certain identified customers. Presumably, an IB would only choose to make use of such relief if it were cost-effective to do so. Further, these rule amendments as proposed should impose no additional burden or requirements on IBs and,

disclosure statement [of Rule 1.55] was not meant to be an exhaustive explanation of the mechanics and risks of futures trading or of particular transactions, but rather was designed to highlight some of the inherent risks of futures trading for new customers." *Id.* at 5382.

²² See, e.g., *Yameen v. Madda Trading Company*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,125 (CFTC 1980) (FCM and its associated person ("AP") breached duty to customer by not disclosing limitations of stop loss orders after having discussed favorable features of these orders); *Ruddy v. First Commodity Corp. of Boston*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,435 (CFTC 1981) (FCM and AP breached duty to customer for whom they had discretionary authority by failing either to contact him promptly or to remove the hedges entered for him once the strategy under which the hedges had been recommended and placed and failed), *aff'd sub nom. First Commodity Corp. of Boston v. CFTC*, 676 F.2d 1 (1st Cir. 1982); *In the Matter of JCC, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,080 (CFTC 1994) (omission and misrepresentation of material information about a trading program, including information concerning applicable fees and potential risks, violated antifraud provisions of Act), *aff'd sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995).

thus, if adopted would not have a significant economic impact on a substantial number of IBs.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995²⁴ imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

There is no burden associated with the proposed rule amendments to Rule 1.55 or Rule 1.65. While these proposed rule amendments have no burden, the group of rules (3038-0024) of which these rules are a part has the following burden:

Average burden hours per response 128
Number of Respondents 3,148
Frequency of response 36

Three OMB approved collections would be affected by the adoption of these proposed rule amendments. In compliance with the Paperwork Reduction Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. Three OMB approved collections would be affected by the adoption of this rule. These are:

3038-0007—Regulation of Domestic Exchange-Traded Commodity Options. The burden associated with collection 3038-0007, including this proposed rule, is as follows:

Average burden hours per response 50.57
Number of Respondents 190,422
Frequency of response 1,111

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.08
Number of Respondents 175

Frequency of response 115

3038-0021—Regulations Governing Bankruptcies of Commodity Brokers. The burden associated with collection 3038-0021, including this proposed rule, is as follows:

Average burden hours per response 0.35
Number of Respondents 472
Frequency of response 34

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.05
Number of Respondents 235
Frequency of response 8

3038-0035—Rules Relating to the Offer and Sale of Foreign Futures and Options. The burden associated with collection 3038-0035, including this proposed rule, is as follows:

Average burden hours per response 15.70
Number of Respondents 2,832
Frequency of response 48

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.60
Number of Respondents 360
Frequency of response 4

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418-5160.

List of Subjects

17 CFR Part 1

Customer protection, Risk disclosure statements, Commodity futures.

17 CFR Part 30

Foreign futures and options transactions, Customer protection, Risk disclosure statements.

17 CFR Part 33

Domestic exchange-traded commodity options transactions.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4b, 4c, 4d, 4f, 4g and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6c, 6d, 6f, 6g and 12a, the Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

²⁴ Pub. L. 104-13 (May 13, 1995).

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, 24.

2. Section 1.55 is amended by revising paragraph (a)(1), by removing paragraph (a)(1)(iii), by redesignating paragraph (f) as paragraph (g), and by adding new paragraph (f) to read as follows:

§ 1.55 Distribution of "Risk Disclosure Statement" by futures commission merchants and introducing brokers.

(a)(1) Except as provided in § 1.65, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer, other than for a customer specified in paragraph (f) of this section, unless the futures commission merchant or introducing broker first:

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for a customer without furnishing such customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, § 1.65(a)(3), and § 30.6(a), § 33.7(a), and § 190.10(c) of this chapter, provided that the futures commission merchant or, in the case of an introduced account the introducing broker, provides such customer with such disclosure as is material in the circumstances and the customer is, at the time at which the account is opened:

- (1) A bank or trust company;
- (2) A savings association or credit union;
- (3) An insurance company;
- (4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, *et seq.*) or a foreign entity performing a similar role or function subject as such to foreign regulation, provided that such investment company has total assets exceeding \$5,000,000;

(5) A pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt from such registration or by a foreign person performing a similar function to that of a commodity pool operator and subject as such to foreign regulation;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity: (A) which has total assets

exceeding \$10,000,000; or (B) which has a net worth of \$1,000,000;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function and subject as such to foreign regulation, with total assets exceeding \$5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, *et seq.*), or a commodity trading advisor subject to regulation under the Commodity Exchange Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf: *provided, however*, that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of paragraphs (f)(6) or (f)(11) of this section;

(10) A futures commission merchant, floor broker, or floor trader subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation; or

(11) Any natural person with total assets exceeding \$10,000,000.

* * * * *

3. Section 1.65 is amended by redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and adding new paragraph (a)(3)(ii) to read as follows:

§ 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) * * *

(3) * * *

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the transferring futures commission merchant or introducing broker, or is at the time the account is being transferred, a customer listed in section 1.55(f) of this chapter; or

* * * * *

PART 30—FOREIGN FUTURES OR FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for Part 30 continues to read:

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

5. Section 30.6 is amended by revising paragraph (a) to read as follows:

§ 30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.* Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures or option account for a foreign futures or option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter or as otherwise approved under § 1.55(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with § 1.55 of this chapter; *Provided, however*, that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

* * * * *

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

6. The authority citation for Part 33 continues to read:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21, unless otherwise noted.

7. Section 33.7 is amended by revising paragraph (a)(1) to read as follows:

§ 33.7 Disclosure.

(a)(1) Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open or cause the opening of a commodity option account for an option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first:

* * * * *

PART 190—BANKRUPTCY

8. The authority citation for Part 190 continues to read:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761-766, unless otherwise noted.

9. Section 190.10 is amended by revising paragraph (c)(1) to read as follows:

§ 190.10 General.

* * * * *

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in § 1.65, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in § 1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

* * * * *

Issued in Washington, DC on September 3, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-23882 Filed 9-9-97; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

RIN 1029-AB80

Notification and Permit Processing

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule; withdrawal.

SUMMARY: After reviewing comments received during the public comment period, the Office of Surface Mining Reclamation and Enforcement (OSM) is withdrawing the proposed Notification and Permit Processing rule published in the **Federal Register** on October 26, 1994 (59 FR 53884).

DATES: This withdrawal is effective September 10, 1997.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, 1951 Constitution Avenue, N.W., Washington, DC 20240; Telephone: (202) 208-2986 commercial or FTS. E-mail: sboyce@osmre.gov.

SUPPLEMENTARY INFORMATION: In a letter dated September 29, 1992, Mr. Jim B. Wyant of Vincennes, Indiana, presented a petition for rulemaking to OSM. The "Notice of availability of a petition to initiate rulemaking and request for comment" was published in the **Federal Register** on November 12, 1992 (57 FR 53670). On August 24, 1993 (58 FR 44630), the Director of OSM published his "Notice of decision on petition for rulemaking" and stated that OSM would initiate Federal rulemaking. The proposed rule was published in the **Federal Register** on October 26, 1994 (59 FR 53884), and would have revised the permit notification provisions of 30 CFR 773.15 and the permit processing provisions of 30 CFR 773.15(c) and 773.17. On December 23, 1994 (59 FR 66287), OSM extended the comment period for the proposed rule until February 27, 1995. In order to accommodate requests for a public hearing the comment period was reopened on March 10, 1995, and extended until March 23, 1995. A public hearing was held on March 16, 1995, in Vincennes, Indiana.

Comments on the proposed rulemaking reveal that there are no widespread problems with the existing rules that warrant a national rulemaking. Accordingly, the proposed rule published on October 26, 1994 (59 FR 53884), is withdrawn.

Dated: September 4, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 97-23957 Filed 9-9-97; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029-AB93

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is proposing to remove its regulation at 30 CFR 870.17. The regulation governs the scope of audits conducted in connection with OSM's abandoned mine land reclamation program.

DATES: *Written comments:* OSM will accept written comments on the

proposed rule until 5 p.m., Eastern time, on November 10, 1997.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** prior to the hearings. OSM will accept requests for public hearings until 5 p.m., Eastern time, on October 1, 1997. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 117, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Electronic Mail: You may send comments through the Internet to OSM's Administrative Record at: osmrules@osmre.gov. Copies of any messages received electronically will be filed with the Administrative Record.

Public hearings: You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. The address, date and time for any public hearing held will be announced prior to the hearings. Any individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jim Krawchuk, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220. Telephone 412-921-2676. E-mail: jkrawchuk@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of Proposed Rule and Guidelines
- IV. Procedural Matters

I. Public Comment Procedures

Written Comments: Written or electronic comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not