repair station operating environment. Also, we are withdrawing it because of the many significant issues commenters to the NPRM raised, which the FAA needs to consider in developing a better proposal.

The current NPRM is based on recommendations developed in 2001 by ARAC. At that time, air carriers performed the majority of their maintenance work in-house. Since then, air carriers have increasingly contracted their maintenance. According to an analysis by the Office of Inspector General in 2003, the nine major air carriers were contracting 34 percent of their heavy airframe maintenance checks to repair stations. By 2007, this figure had increased to 71 percent.[8] The NPRM as written does not address this changing operational dynamic.

In their comments to the NPRM, many small repair station operators said the proposal takes a ''one-size-fits-all'' approach. This approach, they argue, does not adequately address the operational differences between large and small repair stations. As a result, the commenters said, the NPRM would place a substantial economic and administrative burden on their operations.

Many commenters, as noted in the Discussion of Comments section of this document, argued against adopting key portions of the NPRM for a variety of reasons. Several commenters asked us to withdraw the NPRM in its entirety. For the reasons we have discussed, we believe the best course of action is to withdraw the NPRM. Withdrawal will give us time to thoroughly review and properly address the substantial changes in the repair station operating environment and the many issues raised by commenters.

Conclusion

Withdrawal of the December 1, 2006, Repair Stations; Proposed Rule does not preclude the FAA from issuing another proposal on the subject. In fact, we have initiated rulemaking to update and revise the regulations for repair stations to more fully address the significant changes in the repair station business model. The new proposed rule will address concerns from the 2006 NPRM, as well as other issues related to bringing the repair station regulations up-to-date with industry practice. The public will be provided the opportunity for public comment on this rulemaking through the NPRM process.

[8] Air Carriers' Outsourcing of Aircraft Maintenance, OIG Report Number: AV–2008–090, September 30, 2008—*http://www.oig.dot.gov/item.jsp?id=2364*.

Issued in Washington, DC, on April 30, 2009.

Chester D. Dalbey,

Deputy Director, Flight Standards Service.

[FR Doc. E9–10638 Filed 5–6–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AC66

Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') proposes to amend its regulations that prescribe minimum adjusted net capital (''ANC'') requirements for futures commission merchants (''FCMs'') and introducing brokers (''IBs''). The proposed amendments would increase the required minimum dollar amount of ANC, as defined in the regulations, that an FCM must maintain from $250,000 to $1,000,000. The proposed amendments also would increase the required minimum dollar amount of ANC that IBs must maintain from $30,000 to $45,000. The Commission also is proposing to amend the computation of an FCM's margin-based minimum ANC requirement to incorporate into the calculation customer and noncustomer positions in over-the-counter derivative instruments that are submitted for clearing by the FCM to derivatives clearing organizations (''DCOs'') or other clearing organizations (''cleared OTC derivative positions''). In addition, the Commission is proposing to amend the regulations to require that FCM proprietary cleared OTC derivative positions be subject to capital deductions in a manner that is consistent with the capital deductions required by the Commission's regulations for FCM proprietary positions in exchange-traded futures contracts and options contracts. Further, the Commission proposes to amend the FCM capital computation to increase the applicable percentage of the total margin-based requirement for futures, options and cleared OTC derivative positions in customer accounts from eight percent to ten percent and in noncustomer accounts from four percent to ten percent. Lastly, the Commission solicits public comments on the advisability of increasing the ANC requirement for FCMs that are also securities brokers and dealers by the amount of net capital required by the Securities and Exchange Commission (''SEC'') Rule 15c3–1(a).

DATES: Submit comments on or before July 6, 2009.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov*. Follow the instructions for submitting comments on the Web site.
- *E-mail: secretary@cftc.gov*. Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Hand Delivery/Courier: Same as mail above.

FOR FURTHER INFORMATION CONTACT: Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5137; facsimile number: 202–418–5547; and electronic mail: *tdiaz@cftc.gov* or Mark Bretscher, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661. Telephone number: 312–596–0529; facsimile number: 312–596–0714; and electronic mail: *mbretscher@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Minimum Financial Requirements for FCMs and IBs

Section 4f(b) of the Commodity Exchange Act (''Act'') provides that FCMs and IBs must meet the minimum financial requirements that the Commission ''may by regulation prescribe as necessary to insure'' that FCMs and IBs meet their obligations as registrants.[1] FCMs are subject to higher capital requirements than IBs because the Act permits FCMs, but not IBs, to hold funds of customers trading on designated contract markets and to clear such positions with a DCO. In addition, Section 4d of the Act and the Commission's regulations provide

[1] The Act is codified at 7 U.S.C. 1 *et seq*. The Commission regulations cited herein may be found at 17 CFR Ch. I (2008).

further protection for customer funds by requiring that they be held as ''segregated'' funds that are separate and apart from the FCM's own proprietary funds. Part 30 of the Commission's regulations also requires FCMs to hold ''secured amount'' funds for U.S. customers trading in non-U.S. futures markets.

As specified in Commission Regulation 1.17(a), the minimum dollar amount of ANC that FCMs and IBs must maintain is $250,000 and $30,000, respectively. The minimum ANC requirements in Commission Regulation 1.17(a) also set forth other computations which, if greater, will increase the minimum capital requirement for the FCM or IB. Specifically, the relevant provisions of Regulation 1.17(a)(1)(i) require an FCM to maintain ANC equal to or in excess of the greatest of: $250,000; the FCM's margin-based or ''risk-based'' capital requirement, which is computed by adding together eight percent of the total risk margin requirement for positions in customer accounts, plus four percent of the total risk margin requirement for positions carried in noncustomer accounts; the amount of ANC required by a registered futures association of which the FCM is a member; or, if the FCM is also a securities broker and dealer registered with the U.S. Securities and Exchange Commission (''SEC''), the amount of net capital required by SEC Rule 15c3–1(a), 17 CFR 240.15c3–1(a). For an IB, Commission Regulation 1.17(a)(1)(iii) requires ANC that equals or exceeds the greatest of: $30,000; the amount of ANC required by a registered futures association of which the IB is a member; or for an IB also registered with the SEC as securities broker and dealer, the amount of net capital required by SEC Rule 15c3–1(a).

The minimum ANC requirements of $30,000 for IBs and $250,000 for FCMs were adopted by the Commission over a decade ago,[2] and are no longer consistent with the regulatory objective of requiring these registrants to maintain a minimum base of liquid capital from which to meet their current financial obligations, including obligations to customers. Adopting increased minimum ANC requirements for registrants whose customers engage in exchange-traded futures activity would recognize the striking increase over the past decade in the amount of funds that such customers have deposited with their FCMs. As of August 31, 1995, approximately $30 billion of segregated and secured amount funds were required to be held by FCMs for their customers, at a time when there were 255 FCMs. As of December 31, 2008, the total amount of such funds had escalated to approximately $200 billion, which 134 FCMs were required to hold for their customers. Thus, not only has there been a dramatic increase in the amount that FCMs must hold as segregated and secured amount funds for their customers, but those funds have become concentrated among far fewer FCMs, further supporting additional measures to ensure the sound financial strength of such firms.[3]

Other considerations also support the proposed increase in FCM and IB minimum dollar amount ANC requirements. As noted above, one of the factors in determining the minimum ANC requirements for FCMs and IBs is the minimum requirement imposed by a registered futures association of which the FCM or IB is a member. The National Futures Association (''NFA'') is the only registered futures association, and Commission Regulation 170.15(a) requires each registered FCM to be a member of a registered futures association. All registered IBs are also members of the NFA. On July 31, 2006, NFA's amendments to Section 1 of its Financial Requirements became effective, increasing its FCM members' minimum ANC requirement from $250,000 to $500,000, and increasing the required minimum dollar amount of ANC for member IBs from $30,000 to $45,000. Consequently, when the NFA amended the minimum dollar amount of ANC required of its member FCMs and IBs on July 31, 2006, the required dollar level of minimum ANC for all FCMs and IBs increased to $500,000 and $45,000 respectively. Therefore, the Commission's proposal to increase the minimum dollar ANC requirement of IBs to $45,000 merely harmonizes its regulations with NFA rules, which will simplify the capital calculations of IBs. Lastly, Commission staff notes that the number of FCMs that may have to add capital as a result of the proposed ANC requirement of $1,000,000 is minimal and that the proposed increased ANC requirement is appropriate for the reasons discussed above. Accordingly, the Commission is proposing to amend Regulation 1.17(a)(1)(iii)(A) to raise the minimum dollar amount of required ANC to $45,000 for IBs, and to amend Regulation 1.17(a)(1)(i)(A) to raise the minimum dollar amount of required ANC for FCMs to $1,000,000. The Commission is also proposing additional increases to ANC requirements for FCMs, as discussed below.

[2] The Commission increased the minimum ANC requirements of IBs and FCMs to $30,000 and $250,000 in May of 1996. *See* 61 FR 19177 (May 1, 1996).

[3] The Commission also notes that Congress recently recognized the importance of appropriate minimum capital requirements for registrants with obligations to customers by establishing a $20 million capital requirement for retail over-the-counter forex firms.

II. Proposed Amendment To Include Cleared OTC Positions in the Calculation of an FCM's Minimum Net Capital Requirement

The Commission's minimum financial requirements provide protection to customers and other market participants by requiring FCMs and IBs to maintain minimum levels of liquid assets in excess of their liabilities to finance their business activities. In 2004, the Commission amended Regulation 1.17(a)(1)(i)(B) to include a ''risk-based'' computation based on the margin, or performance bond, requirements for the FCM's customers and noncustomers. Specifically, Commission Regulation 1.17(a)(1)(i)(B) requires an FCM to compute its risk-based capital requirement as the sum of: (1) Eight percent of the total risk margin [4] requirement for positions carried by the FCM in ''customer accounts'', as defined in Regulation 1.17(b)(7), and (2) four percent of the total risk margin requirement for positions carried by the FCM in ''noncustomer accounts'', as defined in Regulation 1.17(b)(4). The Commission did not revise its regulations with respect to proprietary futures and granted options positions of FCMs, as such positions were already subject to capital deductions under Commission Regulation 1.17(c)(5)(x). In general, an FCM's proprietary futures and granted options positions are subject to a deduction equal to 100 percent of the maintenance margin requirement for positions that are cleared by clearing organizations of which the FCM is a clearing member, and 150 percent of the maintenance margin requirement for positions that are cleared by clearing organizations of which the FCM is not a clearing member.

In adopting risk-based capital requirements in Regulation 1.17 with respect to the futures and options positions of FCM customers and noncustomers, the Commission noted that the amendments included any customer positions, including non-futures positions, that were held in customer segregated accounts established in accordance with the provisions of Section 4d of the Act and Commission regulations. Various DCOs,

[4] The term ''risk margin'' is defined at Commission Regulation 1.17(b)(8).

as part of their increasing efforts to clear OTC derivative instruments,[5] have requested Commission orders authorizing their clearing FCMs to commingle customers' money, securities, and other property margining OTC-cleared derivative positions with the money, securities, and other property deposited by said customers to margin futures and options positions in segregated accounts established pursuant to Section 4d of the Act.[6] Therefore, the risk exposure of clearing OTC derivative instruments extends not only to the FCM, but also to the segregated funds of its OTC, futures and options customers. Where OTC customer funds are commingled with the funds of futures and options customers, the Commission deemed it necessary to include OTC customer positions in the definition of ''customer accounts'' for purposes of computing an FCM's risk-based capital requirement.

The Commission now proposes further amendments to Regulation 1.17, in order to require FCMs to account for all cleared OTC derivative positions the FCM carries for customers, whether or not included in a Section 4d segregated customer account, in the FCM's risk-based capital calculations. The proposed amendments would apply to OTC derivative instruments cleared in either the U.S. or abroad by any organization that is permitted to clear such products under the laws of the relevant jurisdiction.[7] As drafted, the proposed capital requirements would also apply to credit default swaps, if these OTC derivative instruments are submitted for clearing on any U.S. DCO or foreign clearing organization and carried in accounts on the books of the FCM.

The Commission is proposing these amendments because FCMs and DCOs have become significant clearers of OTC derivative instruments. This has increased the risk exposure of FCMs in a manner that is not currently reflected in Regulation 1.17. Therefore, the Commission proposes to amend Regulation 1.17 in order to expand the definitions of ''customer account'' in Regulation 1.17(b)(7), ''noncustomer account'' in Regulation 1.17(b)(4), and ''proprietary account'' in Regulation 1.17(b)(3) to include cleared OTC derivative positions. Cleared OTC derivative positions would be defined in proposed Regulation 1.17(b)(9) as over the counter derivative instrument positions of any person[8] in accounts carried on the books of the FCM and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction. Additionally, Commission Regulation 1.17(b)(2) is proposed to be amended to include references to ''cleared OTC customers'', which would be defined in a proposed new paragraph (b)(10) to mean any person that is not a proprietary person as defined in Commission Regulation § 1.3(y) and for whom the FCM carries on its books one or more accounts for such person's OTC-cleared derivative positions. Finally, the Commission is also proposing to amend Regulation 1.17(c)(5)(x) to require FCMs to take proprietary capital deductions for their cleared OTC derivative positions similar to the capital deductions required for their proprietary futures and options positions. The Commission notes that pursuant to the proposed rulemaking, capital deductions to be applied to cleared OTC derivative positions in proprietary accounts do not apply to ''covered'' positions, as that term is defined in Commission Regulation 1.17(j). Therefore, the Commission is soliciting comments on the advisability of revising Commission Regulation 1.17(j) to reflect that cleared OTC positions in proprietary accounts may be covered by positions which would qualify as cover for proprietary futures and options positions.

The proposed amendments continue the Commission's efforts to enhance and update the Commission's ANC regulation to reflect the increasing diversity of positions that are submitted for clearing by clearing FCMs for their customers and noncustomers. In contemplation of this proposed rule making, the Commission notes that the clearinghouses that clear these OTC derivative instruments typically already require margin for both exchange-traded and OTC positions, regardless of whether the positions are held in customer segregated accounts. Furthermore, the margin requirements for cleared OTC derivative positions are often calculated in the same manner as that for exchange-traded products. As such, it is quite appropriate to include cleared OTC derivative positions in the calculation of an FCM's minimum ANC. However, to ensure adequate capital requirements where the clearinghouse imposes margin or performance bond requirements only for clearing level accounts but does not prescribe minimum margin requirements for customer or noncustomer accounts at the FCM level, the Commission also proposes to amend the definition of ''risk margin'' in Commission Regulation 1.17(b)(8) to mean ''the level of maintenance margin or performance bond required for the customer or noncustomer positions by the applicable exchanges or clearing organizations, and, where margin or performance bond is required only for accounts at the clearing organization, for purposes of the FCM's risk-based capital calculations applying the same margin or performance bond requirements to customer and noncustomer positions in accounts carried by the FCM.''

III. Proposed Amendment To Increase Applicable Percentage for Customer and Noncustomer Positions

As noted above, currently, an FCM's risk-based capital calculations includes a lower required percentage of risk maintenance margin for noncustomer

[5] OTC derivative instrument is defined by Section 408(2) of the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C.A. 4421. As defined there, the term ''over-the-counter derivative instrument'' includes ''(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option; (B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value; (C) any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act; and (D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.''

[6] Examples of Commission orders under Section 4d of the Act related to OTC clearing by DCOs include an Order dated May 30, 2002 regarding Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by the New York Mercantile Exchange, and also Orders dated March 3, 2006 and September 26, 2008 regarding Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by Chicago Mercantile Exchange, Inc.

[7] Some examples of OTC-clearing by foreign clearing organizations include ICE, which clears through IceClear Europe, and Bclear, an exchange service launched by Euronext/Liffe, which brings derivatives transactions to LCH.Clearnet for clearing. The proposed rule would also include OTC-clearing by multilateral clearing organizations authorized under Section 409 of the Federal Deposit Insurance Corporation Improvement Act and any securities clearing organization.

[8] The term ''person'' is defined in CFTC Regulation. 1.3(u).

positions (four percent) than the required percentage for the same positions in customer accounts (eight percent). The Commission believes that rigorous standards for FCM financial strength support the increase of the required percentages. As such, the Commission is proposing to amend Regulation 1.17 so that an FCM's risk-based capital requirement is ten percent of the total risk margin requirement for positions carried by the FCM in both ''customer accounts'', as defined in Regulation 1.17(b)(7), and ''noncustomer accounts'', as defined in Regulation 1.17(b)(4).

With respect to noncustomer accounts, the Commission notes that in general non-customers are persons affiliated with the FCM including certain employees and officers of the FCM. In adopting this lower percentage for noncustomer positions, the Commission noted that these percentages were the same as those contained in the self-regulatory organization rules upon which the Commission's regulation was modeled, and that it was the belief of these self-regulatory organizations that noncustomers' accounts reflected less credit risk to FCMs and the clearing system. In more recent times, the Commission has observed that the risk associated with noncustomer accounts may not necessarily be less than the risk associated with customer accounts under conditions of financial stress for the FCM. Therefore, to increase the financial integrity of the futures markets, the Commission is proposing to amend Regulation 1.17 to apply the same percentage requirement for both customer and noncustomer accounts. As part of its assessment of the proposed amendments, the Commission has been advised by staff that, based on the information included in financial reports filed by FCMs with the Commission, it appears that some FCMs whose minimum capital requirements are determined under the risk-based computations do not currently hold sufficient levels of capital to satisfy the proposed amended requirements, but that the overwhelming majority do hold levels of capital that are sufficient to satisfy the proposed new requirements.

IV. Proposed Effective Date

Because some FCMs may need time to raise additional capital, the Commission is contemplating making the effective date for any final rule amendments to Regulation 1.17 that it adopts effective 60 days from the date of publication of the final regulations in the **Federal Register**.

V. Solicitation of Comments

The Commission requests comments on each of the proposed amendments to Regulation 1.17 that are described in this release, and also as to the proposed effective date. The Commission is further soliciting comments on the advisability of expanding ANC requirements for FCMs that are also securities brokers and dealers (''FCM/BDs''), by increasing their ANC by the amount of net capital required by SEC Rule 15c3–1(a). Currently, Commission Regulation 1.17 and SEC Regulation 15c3–1 require FCM/BDs to compare the amounts of capital required under the SEC's and Commission's regulations, and to maintain capital in excess of whichever amount is greater.

The Commission notes that in event of liquidation, the adjusted net capital of an FCM that is also a securities broker and dealer is available to satisfy any unsecured claims of creditors, including any unsecured claims of both its futures and securities customers. The equity available to satisfy such unsecured claims of customers, would be increased if the FCM/BD's capital requirement was not based only on the higher of the CFTC's or SEC's requirements, but rather the combined requirements of the two regulations. This would help ensure that the FCM/BD's capital requirements reflected more fully the scope of customer activity by both its securities and futures customers. Therefore, the Commission is soliciting comments on the advisability of increasing ANC requirements of FCMs that are also securities brokers and dealers by the amount of net capital required by SEC Rule 15c3–1(a).

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and non-guaranteed IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[9]

With respect to IBs, the Commission 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.[10] The proposed amendment to the minimum ANC requirement for an IB would conform the Commission's requirement to that of the NFA and, therefore, should have no impact on an IB's financial operations. Thus, if adopted, the proposal would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (''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. The proposed inclusion of OTC-cleared products in the risk-based net capital calculation requires no change in line item 22A of the Statement of the Computation of Minimum Capital Requirements on Form 1–FR–FCM. There is a change to Line 22.B as a result of increasing the minimum dollar requirement to $1,000,000, however, this is a minor change and would not alter the reporting burden. The proposed increase in the percentage requirements applicable to risk margin requirements for customer and noncustomer positions included in risk-based capital calculation constitutes a minor change to line item 22 of the Form 1–FR–FCM, as does the minor change to Line 16 to include OTC-cleared products, but neither change would alter the related reporting burden. Therefore, the amendments proposed herein have minimal burden.

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Mark Bretscher, Division of Clearing and Intermediary Oversight, 525 W. Monroe St., Chicago, IL 60661, (312) 596–0529.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the Commodity Futures Modernization Act,[11] requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the

[9] See 47 FR 18618, 18619 (Apr. 30, 1982).

[10] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

[11] 7 U.S.C. 19(a).

benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. The Commission, in its discretion, can choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed amendments will result in additional protection of market participants and the public, enhancements to sound risk management practices, enhanced financial integrity of futures markets and other public interest considerations and should have no effect on the following areas: efficiency, competitiveness or price discovery. Specifically, if adopted, the proposed amendments will increase the minimum required dollar amount of ANC for FCMs from $250,000 to $1,000,000; increase the minimum required dollar amount of ANC for IBs from $30,000 to $45,000; require an FCM's risk based capital computation to include risk margin for OTC-cleared positions; and increase from 4 percent and 8 percent to 10 percent the applicable percentage of risk margin for all noncustomer and customer positions held by the FCM respectively.

After considering these factors, the Commission has determined to propose the amendments to Regulation 1.17 discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed amendments with their comment letters.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Minimum financial requirements, 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 17 CFR part 1 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, 5, 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, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 1.17 is amended by:

a. Revising paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(iii)(A);

b. Revising paragraphs (b)(2), (b)(3), introductory text of (b)(4), introductory text of (b)(7) and introductory text of (b)(8),

c. Adding new paragraphs (b)(9) and (b)(10), and

d. Revising paragraph (c)(5)(x) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a)(1)(i) * * *

(A) $1,000,000;

(B) The futures commission merchant's risk-based capital requirement, computed as ten percent of the total risk margin requirement for positions carried by the futures commission merchant in customer accounts and noncustomer accounts.

* * * * *

(iii) * * *

(A) $45,000;

* * * * *

(b) * * *

(2) *Customer* means customer (as defined in § 1.3(k)), option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter), cleared over the counter customer (as defined in § 1.17(b)(10)), and includes a foreign futures, foreign options customer (as defined in § 30.1(c) of this chapter).

(3) *Proprietary account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant for the applicant or registrant itself, or for general partners in the applicant or registrant.

(4) *Noncustomer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

* * * * *

(7) *Customer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

* * * * *

(8) *Risk Margin* for an account means the level of maintenance margin or performance bond required for the customer or noncustomer positions by the applicable exchanges or clearing organizations, and, where margin or performance bond is required only for accounts at the clearing organization, for purposes of the FCM's risk-based capital calculations applying the same margin or performance bond requirements to customer and noncustomer positions in accounts carried by the FCM, subject to the following.

* * * * *

(9) *Cleared over the counter derivative positions* means ''over the counter derivative instrument'' (as defined in 12 U.S.C. 4421) positions of any person in accounts carried on the books of the futures commission merchant and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction.

(10) *Cleared over the counter customer* means any person that is not a proprietary person as defined in § 1.3(y) and for whom the futures commission merchant carries on its books one or more accounts for the over the counter-cleared derivative positions of such person.

(c) * * *

(5) * * *

(x) In the case of open futures contracts or cleared OTC derivative positions and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a ''changer trade'' made in accordance with the rules of a contract market:

* * * * *

Issued in Washington, DC, on April 30, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–10459 Filed 5–6–09; 8:45 am]

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