

pass the test before loading new software per paragraph (c)(2) of this AD.

(2) Install new software and reidentify FMC-1 and FMC-2 as 4059050-912.

Note 2: McDonnell Douglas Service Bulletin MD11-34-085, Revision 01, dated September 20, 1999, references Honeywell Service Bulletin 4059050-34-6020, Revision 1, dated April 30, 1999, as an additional source of service information for the installation and reidentification requirements of paragraphs (c)(2) and (d)(2) of this AD.

Condition 2 (Modification "AS" Is Not Installed)

(d) If modification "AS" is NOT found installed during the inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD per McDonnell Douglas Service Bulletin MD11-34-085, Revision 01, dated September 20, 1999.

(1) Remove FMC-1 and FMC-2.

(2) Install modification "AS" and new software, and reidentify FMC-1 and FMC-2 as 4059050-912.

(3) Install modified and reidentified FMC-1 and FMC-2.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 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 April 12, 2001.

Donald L. Riggan,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01-9667 Filed 4-18-01; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 41 and 140

RIN 3038-AB81

Exemption for Certain Brokers or Dealers from Provisions of the Commodity Exchange Act and CFTC Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules and request for comment.

SUMMARY: In accordance with certain provisions of the Commodity Futures Modernization Act of 2000 ("CFMA"), the Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt a new rule establishing procedures for granting orders exempting certain brokers or dealers ("BDs") registered with the Securities and Exchange Commission ("SEC") from provisions of the Commodity Exchange Act (the "Act") and/or the Commission's regulations where the Commission determines that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. The Commission is also requesting comments regarding particular provisions of the Act and Commission rules from which BDs should be exempted by rule (in addition to the specific exemptive provisions of the CFMA).

DATES: Comments must be received by May 21, 2001.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to secretary@cftc.gov. Reference should be made to "Exemption for Certain Brokers or Dealers from Provisions of the Commodity Exchange Act and CFTC Regulations."

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, telephone number: (202) 418-5450, facsimile number: (202) 418-5536, electronic mail: lpatent@cftc.gov, or ccummings@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The CFMA, signed into law on December 21, 2000, effected, among other things, removal of the restriction in the Commodity Exchange Act (the "Act")¹ on the trading of futures contracts on individual equity securities and narrow-based indices of equity securities.² Under the revised law, security futures products³ may be traded on a designated contract market or on a registered derivatives transaction execution facility ("DTF").⁴

Section 4d of the Act provides that any person who engages in soliciting or accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any designated contract market or DTF—e.g., for a security futures product—must be registered with the Commission as: (1) a futures commission merchant ("FCM"), if it also accepts any money, securities, or property, or extends credit in lieu thereof, to margin, guarantee, or secure futures contracts; or (2) an introducing broker ("IB") if it does not accept money or other property to margin, guarantee or secure futures contracts.⁵ Section 4f(a)(1) of the Act provides that application for registration as an FCM or IB "shall be made in such form and manner as prescribed by the Commission."⁶ Pursuant to this

¹ 7 U.S.C. 1 et seq., as amended by Pub. L. No. 106-554, 114 Stat. 2763 (2000). The text of the CFMA may be accessed on the Internet at <http://agriculture.house.gov/txt5660.pdf>.

² See Section 251(a) of the CFMA. This trading previously had been prohibited by Section 2(a)(1)(B)(v) of the CEA.

³ The term "security futures product" is defined in Section 1a(32) of the CEA to mean "a security future or any put, call, straddle, option, or privilege on any security future." The term "security future" is defined in Section 1a(31) of the CEA. Because the CFMA also provides that options on security futures cannot be traded until December 21, 2003 at the earliest, security futures are the only security futures product that may be available for trading during the next 32 months.

⁴ The CFMA also specifically prescribes certain dates on which security futures trading can commence. Specifically, principal-to-principal transactions between institutions cannot commence until August 21, 2001, and retail transactions cannot commence until December 21, 2001. Both starting dates are conditioned upon the registration of a futures association (i.e., National Futures Association ("NFA")) as a limited purpose national securities association under the Securities Exchange Act of 1934 ("34 Act"). Section 202(a) of the CFMA; Section 6(g)(5) of the '34 Act.

⁵ See Sections 1a(20) and (23) of the CEA, which define the terms "futures commission merchant" and "introducing broker," respectively.

⁶ Prior to the enactment of the CFMA, this provision was found in Section 4f(a) of the CEA. The CFMA (at Section 252(b)) amended Section 4(f) by redesignating paragraph (a) as paragraph (a)(1) and by adding new paragraphs (a)(2) and (a)(3) (Section 252(b)(2) of the CFMA) and (a)(4) (Section 252(c) of the CFMA).

authority, the Commission adopted Rule 3.10, which currently requires that an applicant for registration as an FCM or IB file prescribed registration and financial report forms.⁷

However, as a result of the CFMA, new Section 4f(a)(2) of the Act⁸ now provides that, notwithstanding Section 4f(a)(1), any BD⁹ that is registered with the SEC shall be registered as an FCM or IB, as applicable, "effective contemporaneously with the submission of notice," if:

(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

Accordingly, in a separate **Federal Register** release the Commission is proposing to amend Rule 3.10 to provide for FCM and IB notice registration thereunder.¹⁰

New Section 4f(a)(3) of the Act¹¹ provides a similar exemption (without the notice filing requirement) from the requirement under Section 4e of the Act to register as a floor broker ("FB") or floor trader ("FT"). An FB or FT is exempt from registration as such if:

(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of

orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products;¹² and

(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.

Persons registered as FCMs or IBs pursuant to the notice registration procedure of new Section 4f(a)(2) and persons who are exempt from FB or FT registration pursuant to new Section 4f(a)(3) are expressly exempted by new Section 4f(a)(4)¹³ from certain enumerated provisions of the Act, as well as those of the Commission's rules that were promulgated under those provisions.¹⁴ In addition to the statutory exemption granted to such persons from the foregoing specified sections of the Act, under the CFMA the Commission is authorized, by rule, regulation or order, to exempt, conditionally or unconditionally, from any provision of the Act or the Commission's rules, any BD subject to the notice filing requirements of new Section 4f(a)(2) or

¹² Of course, an FT is restricted to executing orders for his or her own account and the Commission does not view this provision of the CFMA as expanding the scope of activities in which an FT may engage.

¹³ As set forth in Section 252(c) of the CFMA.

¹⁴ Those provisions include: Section 4c(b)—regulation of commodity options trading by the Commission; Section 4c(d)—dealer options exemption; Section 4c(e)—Commission authority to ban dealer options; Section 4c(g)—requirement for contemporaneous, written record of all orders for execution on the floor or subject to the rules of a designated contract market or DTF; Section 4d—registration requirements for FCMs and IBs and customer funds segregation requirement for FCMs; Section 4e—registration requirement for FBs and FTs; Section 4h—prohibition of misrepresentation that a person is a member of a registered entity, that a person is registered with the Commission, or that a futures contract will be or has been executed on a registered entity; Section 4f(b)—FCM and IB minimum financial requirements; Section 4f(c)—FCM risk assessment requirement; Section 4j—restrictions on dual trading in security futures products; Section 4k(1)—registration requirement for APs of FCMs and IBs; Section 4p—proficiency testing and ethics training requirements for registrants; Section 6d—State causes of action under the Act and Commission right to intervene or appeal; Section 8(d)—Commission's obligation to investigate commodity marketing conditions and to furnish reports to producers, consumers and distributors; Section 8(g)—Commission obligation to disclose information concerning registrants to State governments and political subdivisions thereof; and Section 16—Commission authority to investigate markets and to furnish reports to the public on a regular basis. APs of BDs who limit their futures-related activities to security futures products are also exempt from registration under the Act and the same provisions of the Act and rules thereunder cited in this footnote. See Section 252(d) of the CFMA, purporting to add a new Section 4k(5) of the Act. There was a pre-existing Section 4k(5) in the Act, so the new section should probably be designated as Section 4k(6).

exempt from FB or FT registration under new Section 4f(a)(3), to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.¹⁵ By this **Federal Register** release, the Commission is seeking comments regarding specific sections of the Act or provisions of the Commission's rules, beyond those already specified in the CFMA, from which such BDs should be made exempt by rule.

The CFMA also directs the Commission to determine, by rule or regulation, the procedures under which an order under new Section 4f(a)(4)(B) shall be granted.¹⁶ In response to this directive, the Commission is proposing the rule changes set forth herein.¹⁷

II. Application for an Order Granting Additional Exemptive Relief

New Section 4f(a)(4)(B)(i) of the Act provides that the Commission may issue an order to exempt, conditionally or unconditionally, any BD subject to notice registration under new Section 4f(a)(2) of the Act, or any BD exempt from floor broker or floor trader registration pursuant to new Section 4f(a)(3), from any provision of the Act or any provision of the Commission's regulations to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. New Section 4f(a)(4)(B)(ii) directs the Commission to determine the procedures by which an exemptive order under Section 4f(a)(4)(B) shall be granted, and vests the Commission with sole discretion to decline to entertain any application for such an order.¹⁸ Accordingly, the Commission is proposing, in this rulemaking, procedures for applying for an exemptive order under Section 4f(a)(4)(B) of the Act. Of course, exemption from the sections of the Act listed in Section 4f(a)(4)(A) is automatic.

¹⁵ New Section 4f(a)(4)(B)(i) of the Act, as set forth in Section 252(c) of the CFMA. The CFMA does not grant corresponding authority to the SEC with respect to FCMs who notice-register as BDs to engage in security futures transactions.

¹⁶ New Section 4f(a)(4)(B)(ii) of the Act, as set forth in Section 252(c) of the CFMA.

¹⁷ The final subparagraph of new Section 4f(a)(4) provides that: (1) a person that is notice-registered as an FCM pursuant to new Section 4f(a)(2) or an AP thereof, or that is an FB or FT exempt from registration under new Section 4f(a)(3), need not become a member of a registered futures association (i.e., the National Futures Association); and (2) a registered futures association may not prevent its members from transacting business with a person that is exempt under new Sections 4f(a)(2) or (a)(3).

¹⁸ The CFMA places no corresponding obligation upon the SEC.

⁷ Commission regulations referred to herein are found at 17 CFR Ch. I (2000).

⁸ As set forth in Section 252(b) of the CFMA.

⁹ Because the CFMA speaks in terms of a "broker or dealer," the term "BD" as used in this release applies equally to a broker, a dealer or a person registered as both a broker and a dealer.

¹⁰ Section 4k(1) of the Act currently requires each person who is an associated person ("AP") of an FCM or IB to register as such. The CFMA exempts from registration the APs of FCMs and IBs who would be subject to notice registration.

¹¹ As set forth in Section 252(b) of the CFMA.

Accordingly, it is unnecessary for persons to request such orders.

Proposed Rule 41.41 calls for applicants to supply either a written application or an electronic mail submission containing the applicant's name, main business address and phone number, information about the applicant's registration status with the SEC (and assurance that the registration is not subject to a suspension), the specific section(s) of the Act or provision(s) of Commission rules from which exemption is sought, any applicable analogous provisions of the securities laws and regulations, an explanation of the facts and circumstances under which the applicant believes that the requested exemptive relief is necessary or appropriate in the public interest; and an explanation of the extent to which the requested exemptive relief is consistent with the protection of investors. The last two items constitute the basis upon which the CFMA requires the Commission to base the grant of a request for an order. The proposed rule also states that the grant or denial of a request is within the Commission's sole discretion (as specifically provided in the CFMA).

III. Delegation of Authority

The Commission is proposing to delegate to the Director of the Division of Trading and Markets authority to grant or deny applications for exemptive orders under proposed Rule 41.41. With respect to the granting and denying of applications for exemptive orders the delegation is intended to expedite the procedure and to place it with the staff members most directly involved in exemptive matters. The Commission believes that this delegation will maximize regulatory efficiency with respect to these proposed rule changes.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect persons registered under notice-registration procedures as FCMs or as IBs, and persons who are exempt from FB or FT registration pursuant to new Section 4f(a)(3). The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in

accordance with the RFA.¹⁹ The Commission previously determined that registered FCMs are not small entities for the purpose of the RFA.²⁰ With respect to IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected IBs would be considered to be small entities and, if so, the economic impact on them of any rule.²¹

The amendments proposed herein do not impose any new burdens upon persons registered as FCMs or IBs pursuant to the notice registration procedure of new Section 4f(a)(2) and persons who are exempt from FB or FT registration pursuant to new Section 4f(a)(3). Rather, these amendments establish procedures for requesting additional exemptive relief from provisions of the Act and/or the Commission's regulations for such persons. Consequently, the Commission believes that the adoption of these rule amendments will in many cases reduce the burden of compliance by persons notice-registered as FCMs or IBs and persons who are exempt from FB or FT registration pursuant to new Section 4f(a)(3). Accordingly, the Acting Chairman of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nonetheless the Commission specifically requests comment on the impact this proposed rule may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")²² 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 Commission has submitted a copy of this part to the Office of Management and Budget ("OMB") for its review.

Collection of Information

Requests for no-action, exemptive and interpretative letters. OMB Control Number 3038-0049.

The effect of the proposed rule will be to increase the burden previously approved by OMB by 1,000 hours because of the application for exemptive orders. The burden associated with the proposed addition of Rule 41.41 is estimated to be 1,000 hours, which will

result from the application for exemptive orders by persons currently registered as BDs with the SEC who either choose to register as FCMs or IBs pursuant to the notice registration procedure of new Section 4f(a)(2) of the Act, or are exempt from FB or FT registration pursuant to new Section 4f(a)(3).

The estimated burden of the proposed new rule was calculated as follows:

Estimated number of respondents:
5,000.

Reports annually by each respondent:
.4.

Total annual Responses: 2,000.

Estimated average Number of Hours Per Response: .5.

Estimated Total Number of Hours of Annual Burden in Fiscal Year: 1,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
 - Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhancing the quality, usefulness, and clarity of the information to be collected; and
 - Minimizing the burden of collection of 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.
- OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from

¹⁹ 47 FR 18618-21 (April 30, 1982).

²⁰ 47 FR at 18619-20.

²¹ 47 FR at 18618, 18620.

²² 44 U.S.C. 3501 et seq.

the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

C. Cost-Benefit Analysis

Section 119 of the CFMA amended Section 15 of the Act to require that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of the Commission's action in light of five criteria.²³ The main considerations relevant to this proposal are the first two considerations set forth in the Act, "protection of market participants and the public" and "efficiency, competitiveness and financial integrity of the futures markets." The Commission notes that the CFMA specifically mandates that procedures be established by which notice-registered FCMs and IBs and persons exempt from registering as FBs or FTs may seek orders granting additional exemptive relief beyond that specifically granted by the CFMA to such persons. The CFMA further authorizes the Commission to provide such exemptive relief, conditionally or unconditionally, by means of rulemaking. Accordingly, this proposal to adopt Rule 41.41 and the accompanying request for comments on provisions as to which further exemptive rulemaking may be appropriate are published in compliance with requirements that Congress has determined to be in the public interest.

Lists of Subjects

17 CFR Part 41

Security futures products.

17 CFR Part 140

Authority delegations.

For the reasons stated in the preamble, the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Pub. L. 106-554, 114 Stat. 2763, section 252.

2. Section 41.41 is added to read as follows:

²³ These considerations include: (A) protection of market participants and the public; (B) efficiency, competitiveness, and financial integrity of futures markets; (C) price discovery; (D) sound risk management practices; and (E) other public interest considerations.

§ 41.1–41.40 [Reserved]

§ 41.41 Application for an exemptive order pursuant to section 4f(a)(4)(B) of the Act.

(a) Any futures commission merchant or introducing broker registered in accordance with the notice registration provisions of § 3.10 of this chapter, or any broker or dealer exempt from floor broker or floor trader registration pursuant to section 4f(a)(3) of the Act, may apply to the Commission for an order pursuant to section 4f(a)(4)(B) of the Act granting exemption to such person from any provision of the Act or the Commission's regulations other than sections 4c(b), 4c(d), 4c(e), 4c(g), 4d, 4e, 4h, 4f(b), 4f(c), 4j, 4k(1), 4p, 6d, 8(d), 8(g), and 16 of the Act and the rules thereunder.

(b) An application pursuant to this section must set forth in writing or in an electronic mail message the following information:

(1) The name, main business address and main business telephone number of the person applying for an order;

(2) The capacity in which the person is registered with the Securities and Exchange Commission and the person's CRD number (if a member of the National Association of Securities Dealers, Inc.) or equivalent self-regulatory organization identification, together with a certification, if true, that the person's registration is not suspended pursuant to an order of the Securities and Exchange Commission;

(3) The particular section(s) of the Act and/or provision(s) of the Commission's regulations with respect to which the person seeks exemption;

(4) Any provision(s) of the securities laws or rules, or of the rules of a securities self-regulatory organization analogous to the provision(s);

(5) A clear explanation of the facts and circumstances under which the person believes that the requested exemptive relief is necessary or appropriate in the public interest; and

(6) A clear explanation of the extent to which the requested exemptive relief is consistent with the protection of investors.

(c) An application for an order must be submitted to the Director of the Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, if in paper form, or to tm@cftc.gov if submitted via electronic mail.

(d) The Commission may, in its sole discretion, grant the application, deny the application, or grant the application subject to one or more conditions.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

3. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

4. Section 140.91 is amended by adding and reserving paragraph (a)(7) and adding new paragraph (a)(8) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) [Reserved.]

(8) All functions reserved to the Commission in § 41.41 of this chapter.

* * * * *

Issued in Washington, D.C. on April 12, 2001, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01-9586 Filed 4-18-01; 8:45 am]

BILLING CODE 6351-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241-0274b; FRL-6955-1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District and Imperial County Air Pollution Control District portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Aeration of Contaminated Soil and Removal of Underground Storage Tanks and Cutback Asphalt and Emulsified Paving Materials. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 21, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.