§ 32.2 Commodity option transactions; general authorization.

Subject to §§ 32.1, 32.4, and 32.5, which shall in any event apply to all commodity option transactions, it shall be unlawful for any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless:

(a) Such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, or

(b) Such transaction is conducted pursuant to § 32.3.

§ 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, provided that:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;
(2) The offeree must be a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeree is offered or entering into the commodity option transaction solely for purposes related to its business as such; and

(3) The commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty shall comply with the swap data recordkeeping requirements of part 45 of this chapter, as otherwise applicable to any swap transaction, and shall:

(1) Comply with the swap data reporting requirements of part 45 of this chapter to the extent that the commodity option involves at least one counterparty (whether as offeror or offeree) that has—

(i) Become obligated to comply with the reporting requirements of part 45,

(ii) As a reporting party,

(iii) During the twelve month period preceding the date on which the trade option is entered into,

(iv) In connection with any non-trade option swap trading activity; or

(2) For any counterparty that enters into one or more commodity options pursuant to §32.3(a) in a calendar year that do not involve a counterparty described in paragraph (b)(1) of this section, file with the Commission by March 1 of the following year an “Annual Notice Filing for Counterparties to Unreported Trade Options” on Form TO, as set forth in appendix A to this part, to be completed and submitted in accordance with the instructions therefor and as further directed by the Commission.

(c) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, the following provisions shall apply to every trade option counterparty to the same extent that such provisions would apply to such person in connection with any other swap:

(1) Part 20 (Swaps Large Trader Reporting) of this chapter;

(2) Part 151 (Position Limits) of this chapter;

(3) Subpart J of part 23 (Duties of Swap Dealers and Major Swap Participants) of this chapter;

(4) Sections 23.200, 23.201, 23.203, and 23.204 of subpart F of part 23 (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants) of this chapter; and

(5) Section 4s(e) of the Act (Capital and Margin Requirements for Swap Dealers and Major Swap Participants).

(d) In addition, any person or group of persons offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to a commodity option transaction in interstate commerce pursuant to paragraph (a) of this section shall remain subject to part 180 (Prohibition Against Manipulation), §23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13.

(e) The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, and the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, other than §32.4, part 180 (Prohibition Against Manipulation), and §23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter, and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, 13, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.