Crestview; Marianna, FL; Seminole, FL; Greenville, FL; Taylor, FL; INT Taylor 093° and Craig, FL, 287° radials; to Craig.

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V–295 [Revised]

From Virginia Key, FL; INT Virginia Key 014° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 296° and Orlando, FL, 162° radials; Orlando; Ocala, FL; Cross City, FL; to Seminole, FL. The portion outside the United States has no upper limit.

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Paragraph 7003—Other Domestic Reporting Points

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COVIA: [Revised]

Lat. 27°56′11″N., long. 84°44′10″W. (INT Sarasota, FL, 286°, Seminole, FL, 187° radials)

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Issued in Washington, DC, on February 13, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–4311 Filed 2–19–98; 8:45 am]

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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: Final rules.

SUMMARY: On September 10, 1997, the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') published for comment proposed amendments to its rules concerning the mandatory risk disclosure obligations of futures commission merchants (''FCMs'') and introducing brokers (''IBs'') to their customers (the ''Proposal'').[1] Specifically, the Commission proposed to relieve FCMs and IBs from the requirements to furnish certain defined customers with mandatory risk disclosure statements and to receive from such customers a signed acknowledgment of receipt of such statements pursuant to Rule 1.55(a) (risk disclosure pertaining to domestic futures); 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 property held by an FCM as margin for commodity interest contracts). The comment period for the Proposal was sixty days and closed on November 10, 1997.

The Commission has carefully considered the comments received on the Proposal, and based upon its review of these comments and its reconsideration of the proposed rule amendments, it is adopting the Proposal as modified herein.

EFFECTIVE DATE: April 21, 1998.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Joseph, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

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.[2] 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 this property from the customer to margin, guarantee or secure any commodity interest contract.[3] As discussed more fully in the Proposal, the Commission, based upon its previous efforts to simplify disclosure obligations of Commission registrants, believed that it was appropriate to provide FCMs and IBs with relief from certain disclosure and bankruptcy statement requirements in the context of accounts for specified customers and thus published for comment proposed amendments to the risk disclosure and bankruptcy rules.[4]

The comment period for the Proposal closed on November 10, 1997, although the Commission considered comments received after this date. The Commission received comment letters from: (1) The Chicago Board of Trade (''CBOT''); (2) the Government Finance Officers Association (''GFOA''); (3) the Chicago Mercantile Exchange (''CME''); (4) the Futures Industry Association (''FIA''); (5) the National Futures Association (''NFA''); and (6) the Association of the Bar of the City of New York, Committee on Futures Regulation (''NYCBar''). Only the GFOA opposed the Commission's effort to modify its risk disclosure rules, although the GFOA alternatively requested that the Commission delete government entities from the list of customers for whom this relief can be claimed. The remaining five commenters generally supported the Proposal but suggested certain modifications, as discussed more fully below. The following discussion focuses principally on the comments received on the Proposal and the modifications to the Proposal made in response to these comments. Additional background information on these final rules is found in the **Federal Register** release setting forth the Proposal.[5]

II. Discussion

The rule amendments adopted herein eliminate the requirement that FCMs and IBs provide specified customers, defined in Rule 1.55(f), with Commission-mandated risk disclosure statements and obtain from these customers a written acknowledgment of receipt of the risk disclosure statement, as required by Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a), before opening a commodity futures or options account for these customers. Additionally, the amendments relieve FCMs of the obligation to furnish these customers with the bankruptcy disclosure statement required by Rule 190.10(c) before accepting non-cash property from such customers to margin a commodity interest contract. FCMs or IBs will remain free to provide customers specified in proposed Rule 1.55(f) with the Commission-approved risk disclosure statement without obtaining a written acknowledgement of receipt of this statement from these qualifying customers.[6]

[1] 62 FR 47612 (September 10, 1997).

[2] *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).

[3] Commission Rule 190.10 does not require an FCM to obtain a customer's written acknowledgment of receipt of this statement.

[4] *See* 62 FR at 47612–13 (discussing previous Commission efforts to reduce and streamline disclosure obligations of registrants).

[5] 62 FR 47612 (September 10, 1997).

[6] FCMs will also remain free to provide all customers with the disclosure statement concerning

The categories of customers specified in Rule 1.55(f) for whom an FCM or IB may claim the relief adopted herein are based substantially upon the categories of eligible swap participants in part 35 of the Commission rules [7] and eligible participants in part 36 of the Commission rules.[8] Rule 1.55(f) provides FCMs and IBs with clear, objective criteria for identifying the customers to whom delivery of the Commission-approved disclosure statements is not required. In this regard, the Commission notes that the 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.[9] 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 maintain and review on a regular basis adequate documentation relevant to establish the qualifications of the customers for whom the relief adopted 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.[10]

The comments received on the Proposal are summarized below. The Commission has carefully considered these comments. For the reasons discussed herein, the Commission is adopting these rule amendments substantially as proposed, although the Commission is removing government entities from the list of qualifying customers set forth in Rule 1.55(f) [11] and deleting language, which commenters felt was redundant, from Rule 1.55(f) that had referred to the obligation of any FCM or IB claiming this relief to ''provide such disclosure as is material in the circumstances.''

Comment in Opposition to the Proposal

The GFOA objected to the Proposal and recommended that no change be made in the Commission's risk disclosure requirements. The GFOA stressed the difficulty of developing generalized standards to assess financial sophistication and the likelihood that the proposed rule amendments will erode customer protections. However, as the Commission emphasized in the Proposal, its previous efforts to consolidate and reduce disclosure obligations for registrants have not negatively affected the public interest. Moreover, the Commission believes that the stringent criteria set forth in Rule 1.55(f), along with the continuing disclosure obligations set forth in newly-designated Rule 1.55(g), will allow it to eliminate requirements for standardized risk disclosures and customer acknowledgments of that disclosure for certain specified customers without eroding overall customer protection. Thus, after considering GFOA's objections, the Commission continues to believe that it would not be contrary to the public interest to adopt the Proposal, as modified herein, and has decided to adopt these final rule amendments.

Categories of Customers for Whom Relief May Be Claimed

All the commenters urged the Commission to reconsider the categories of parties for whom FCMs and IBs can claim the relief adopted herein. Most generally, the NYCBar questioned ''the creation of a further group of 'sophisticated' customers'' in defining the categories of customers for whom FCMs or IBs can claim the risk disclosure relief and urged the Commission to adopt an already existing standard such as that used by the Commission for defining qualified eligible participants (''QEPs''), qualified eligible clients (''QECs'') or appropriate persons,[12] or used by the Securities and Exchange Commission (''SEC'') to define accredited investor, qualified institutional buyer or qualified purchaser.[13] The NYCBar commented that creation of a new class of customers will lead to even more paperwork as FCMs or IBs try ''to insure that they receive the appropriate representations permitting them to invoke the expected relief.'' The NYCBar also suggested that the policy reasons behind the selection of the criteria used to define the customers set forth in Rule 1.55(f) were not sufficiently explained.

As stated in the Proposal, the categories of customers for whom an FCM or IB can claim the risk disclosure relief are based substantially upon the existing definitions of eligible swap participant and eligible Part 36 participant, which themselves are based upon the definition of appropriate persons contained in the Act. The Commission explained that these definitions were ''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 * * * in connection with transactions covered by these rules.'' [14] Modifications were made to the Part 35 and 36 definitions only to assure that the Proposal did not cause some commodity pools to be given risk disclosure statements when then-current Rule 1.55 did not require any pool to receive such a statement and to prevent applying criteria from the Part 35 and 36 rules that made little sense in the context of the Proposal.[15]

Moreover, as discussed more fully below, the Commission does not believe that the criteria applicable to securities regulations or to other commodities transactions are as relevant as the Part 35 and Part 36 standards in identifying which categories of FCM or IB customers do not require the protections afforded by mandatory risk disclosure. By contrast, the criteria set forth in the Part 35 and Part 36 rules provide a reasonable basis for protecting the public interest and limiting the affected categories of commodity futures or options customers to those persons

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the treatment in bankruptcy of non-cash property held by an FCM to margin, secure or guarantee a commodity interest contract.

[7] *See* CFTC Rule 35.1(b)(2). Part 35 of the Commission's rules exempts certain swap agreements from most provisions of the Act and Commission rules.

[8] *See* CFTC Rule 36.1(c)(2). Part 36 of the Commission's 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] 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 Rule 1.55(f).

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

[11] The Commission's reasons for deleting ''government entities'' from the categories of customers for whom the relief adopted may be claimed is discussed below in the subsection entitled *Government Entities.*

[12] Commission Rule 4.7, 17 CFR 4.7, defines the terms QEP and QEC. The term ''appropriate persons'' is defined in Section 4(c) of the Act.

[13] The term ''accredited investor'' as used in SEC Regulation D is defined at 17 CFR 230.501. The term ''qualified institutional buyer'' is defined at 17 CFR 230.144A. The term ''qualified purchaser'' is defined at 15 U.S.C. 80–2(a)(51)(A) and 17 CFR 270.2a51–1. *See* 62 FR 17512 (April 9, 1997) (adopting, among other rules, 17 CFR 270.2a51–1).

[14] 62 FR at 47613.

[15] *Id.*

whose wealth, line of business or other proxies of financial sophistication render them unlikely to require the protections afforded by standardized risk disclosure. Therefore, with the exception of removing government entities, the Commission has adopted in Rule 1.55(f) the categories of customers for whom FCMs and IBs may claim this relief, as proposed, based upon the reasons explained below.

Government Entities

As an alternative to its recommendation that the Commission not adopt the Proposal, the GFOA urged that government entities be removed from the list of qualifying customers. The GFOA emphasized that the proposed rule did not distinguish between small, local governmental organizations and large state treasury operations. In this respect, GFOA commented that:

> Finance officers in many of the smallest jurisdictions often have additional responsibilities as far removed from finance as handling public works projects and supervising public safety officers. These small jurisdictions often rely on public servants who may have little expertise with commodities. At a minimum, they should be able to expect full disclosure regarding the risk of commodities futures prior to deciding whether or not to open a commodities futures account and to commit taxpayer funds to such an investment.

Further, the GFOA commented that ''asset-based or, similarly portfolio-size measurement tests have proved to be ineffective as predictors of problems. Large entities and investors, both public and private, have been the victims of misrepresentations and other misconduct just as small ones have.'' [16]

The GFOA is a 13,500-member professional association of state and local government finance officials and other public finance specialists whose responsibilities include debt, cash and pension fund management and is in a unique position to comment upon the financial sophistication and disclosure needs of governmental organizations. The Commission, based upon the GFOA's comments, believes that government entities, especially those in smaller jurisdictions, would benefit from continued receipt of the mandatory risk and bankruptcy disclosure statements. Moreover, the Commission has taken note, in particular, of the GFOA's comments that taxpayers deserve the full protection of the CFTC's risk disclosure regulations. Therefore, after careful consideration of the GFOA's comments, the Commission has decided to remove government entities from the list of customers for whom FCMs or IBs may claim the relief provided herein.

Natural Persons

The CBOT, CME, FIA and NFA urged the Commission to allow FCMs and IBs to claim the proposed relief for customers who are natural persons who meet financial criteria significantly less stringent than the $10 million total asset standard proposed in the rule. The two Chicago futures exchanges recommended that FCMs and IBs be allowed to claim the relief for natural persons who are accredited investors as defined in SEC Regulation D. The FIA urged the Commission to allow FCMs and IBs to claim the relief for natural persons with a net worth of $1 million while the NFA suggested that the Commission apply the same standard used to define a natural person who is a QEP under CFTC Rule 4.7(a). These commenters generally argued that the standards applied to regulated exchange-traded futures should be less onerous than those applied in unregulated markets such as the swaps market. The CBOT, in particular, believed that it was not realistic to require an individual to have the same level of assets as a qualifying corporation or to have asset holdings twice as large as those required for a qualifying investment company.

As already mentioned, the total asset test is a proxy for financial sophistication. Trading futures even on regulated exchanges involves different risks than investments in securities. Thus, the private offering safeharbor codified in SEC Regulation D is not necessarily relevant to determining when a futures customer is not in need of standardized risk disclosure.[17] Moreover, the Commission does not believe that in the context of this relief, it is unreasonable for natural persons to be required to have asset holdings larger than entities which are directly involved in the financial industry and are otherwise regulated since such entities would be less likely than individuals to require the protections afforded by mandatory risk disclosure.

Perhaps more relevant to the issues raised by the proposal is the suggestion that FCMs and IBs be able to claim the relief with respect to natural persons who qualify as QEPs under CFTC Rule 4.7(a). Rule 4.7(a) relieves CPOs from providing eligible clients who invest in qualifying pools with a Commission required Disclosure Document (which normally would include a standardized risk disclosure statement), provided that any offering memorandum must include all disclosures necessary to make the information contained therein not misleading. However, a pool participant's potential losses are generally limited to the amount of his or her investment in the pool, while persons trading directly in the futures markets (*i.e.*, customers of an FCM or IB) are exposed potentially to losses beyond amounts deposited as initial margin and are responsible for any deficits that occur in their accounts as a result of adverse price movements. Given the potentially disparate risk exposures assumed by pool investors and customers of IBs and FCMs, the QEP criteria would not necessarily be a reasonable basis for defining customers for whom an FCM and IB can claim the relief adopted herein.[18]

Requirement That FCMs and IBs Claiming Relief Disclose Material Information

FIA and NFA urged the Commission to eliminate from proposed Rule 1.55(f) the statement that FCMs and IBs claiming relief ''provide such disclosure as is material in the circumstances.'' FIA and NFA commented that the requirement could be viewed as imposing a higher disclosure standard on FCMs and IBs claiming relief under the amendments than on other FCMs and IBs and, in any event, it was

[16] In its comment letter, the GFOA noted that it had supported the inclusion of local governments among the entities deemed ''eligible swap participants'' by the Part 35 rules because it believed that to exclude such entities would have been an unwarranted federal intrusion into what is properly a state function—that is, the regulation of allowable investment activity by a state and its political subdivisions. The GFOA further noted that, in its comments on the Part 35 rules, it recommended that the Commission require improved disclosure regarding the types of contracts being entered into and the risks involved in such transactions. The GFOA also stated that it had opposed the Commission's Part 36 professional trading market exemption.

[17] This point is also applicable to FIA's suggestion concerning the net worth criteria for natural persons inasmuch as the SEC's Regulation D defines an ''accredited investor'' to include a natural person with a net worth of $1 million.

[18] The Commission notes that natural persons, along with other specified persons, may qualify as a QEC of a CTA under Rule 4.7(b). QECs are potentially exposed to unlimited liability in connection with the trading of their commodity futures accounts. Some but not all QECs will be among the categories of customers listed in Rule 1.55(f). Under CFTC rules in effect prior to the rule amendments adopted herein, all QECs received a standardized risk disclosure statement from an FCM or IB before opening a commodity trading account although AECs would not receive a Disclosure Document from a CTA who correctly claimed the 4.7(b) relief. Given that QECs have received the full protections of the CFTC risk disclosure rules governing FCMs and IBs, the Commission does not believe that the QEC criteria are appropriate for determining which persons are no longer in need of the protections afforded by the standardized FCM/IB risk disclosure statements.

duplicative of disclosure obligations recognized in then-current Rule 1.55(f) (redesignated Rule 1.55(g) by this final rule).[19]

As the Commission stated in the Proposal, FCMs and IBs currently have obligations independent of the duty to deliver the standardized risk disclosure statement to disclose to customers information that would be material in the circumstances. These rule amendments are not intended to enlarge the scope of an FCM's or IB's existing duties. Given that the proposed wording may create confusion concerning the disclosure obligations for FCMs and IBs which claim this relief, the Commission has decided to delete the above-cited language from Rule 1.55(f). As the commenters noted, however, FCMs and IBs continue to have disclosure obligations to customers for whom this relief has been claimed as recognized in newly-designated Rule 1.55(g).[20] Moreover, as the Commission stated when it first adopted Rule 1.55(g), ''the essential purpose of the rule [is] to confirm the existing obligations of an FCM or IB under the law to disclose material information to its customers.'' [21]

Obligation That FCM or IB Assure That Customers for Whom Relief Is Claimed Qualify for Such Relief

FIA argued that FCMs or IBs should be able to claim the proposed relief and be relieved of any disclosure obligation if a customer's investment adviser or CTA represents that the client qualifies for relief and that the adviser or the CTA has made all necessary disclosure to such client. FIA contended that an institutional client's primary market relationship is with its investment adviser or CTA and not the FCM or IB and, thus, a CTA or adviser should have primary responsibility for disclosure. FIA also urged the Commission to consider whether CTAs and investment advisers, and not the carrying FCMs, should be responsible for providing their clients with the necessary risk and related disclosures in all circumstances, without regard to the financial status of those clients.

FCMs and IBs have obligations under Commission Rules 166.3, 1.37 and, as designated herein, 1.55(g) to supervise customer accounts diligently, to maintain accounts in the name of the ultimate customer, and to provide customers with adequate disclosure. In addition, the Commission has stated, and current law has already recognized, that an FCM's or IB's disclosure obligations vary with the functions and responsibilities that an FCM or IB undertakes on behalf of a customer.[22] This current rulemaking is not intended to shift an FCM's or IB's existing obligations to other parties, such as a CTA or investment adviser, and therefore, the Commission has not made any change in the Proposal in response to this comment.

Financial and Segregation Interpretation No. 12

The CBOT, CME, FIA and NFA suggested that the Commission eliminate the requirement under Financial and Segregation Interpretation No. 12 that FCMs receive a signed, Commission-mandated subordination agreement from customers before the customer may have segregated funds held in foreign depositories. The Commission notes that on December 30, 1997, it published a concept release soliciting public comment on how to address risks related to holding segregated funds offshore or in foreign currencies.[23] Since the subordination agreement has been one means by which the Commission has addressed these risks,[24] comments concerning the need for or effectiveness of the subordination agreement requirement would best be considered by the Commission in connection with the December 30, 1997 concept release and not as part of this rulemaking exercise.[25]

Electronic Distribution of Risk Disclosure Statement

FIA and NFA also urged the Commission to allow FCMs/IBs to establish customer acknowledgment of receipt of electronically-distributed risk disclosure statements through means of a unique customer identifier. Such a change would bring FCM and IB disclosure rules into line with similar, recently-amended rules for CPOs and CTAs [26] and permit FCMs and IBs to deliver the required risk disclosure statements electronically to all categories of customers.

The Commission did not address the question of a customer's ''electronic'' acknowledgment of risk disclosure statements in the Proposal. Any change in current procedures would clearly affect the rights of commodity futures customers beyond those persons identified in Rule 1.55(f), and such customers should be allowed adequate notice and opportunity to comment on any possible changes to current rules. However, although the Commission believes that this suggested change is outside the scope of the current rulemaking, the Commission recognizes the importance of the issues raised by FIA and NFA and will consider undertaking a future rulemaking or other action to address these issues.[27]

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in promulgating final 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 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. These rule amendments would not require any IB to alter its current method of doing business. Instead the rule amendments 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 this relief if it were cost-

[19] Newly-designated Rule 1.55(g) provides: ''This section [Rule 1.55] does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.''

[20] The NYCBar also urged the Commission to define ''the scope and duty of such remaining [risk] disclosure obligations.'' As the Commission stated in the Proposal, these minimum disclosure obligations arise under the Act, under state law and under common law, and may differ in particular circumstances. *See* 62 FR at 47614–15. Thus, the scope of an FCM's or IB's disclosure obligations will be affected by the particular facts surrounding a transaction and by the Act, by state law and by common law, as interpreted by the courts or in administrative proceedings. *See id.* at 47615 n.22.

[21] 50 FR 5380, 5381 (February 8, 1985).

[22] *See* 50 FR at 5381–82 (''the extent of the required risk disclosure [by an FCM or IB] will vary with the precise nature of the customer relationship and with the degree of customer reliance on an FCM's or IB's advice'').

[23] 62 FR 67841 (December 30, 1997).

[24] *See* 53 FR 46911, 46913 (November 21, 1988) (release adopting Financial and Segregation Interpretation No. 12).

[25] Comments concerning the issues addressed in the concept release, including those related to the subordination agreement requirement, should be received by the Commission on or before March 2, 1998. *See* 62 FR 67841.

[26] *See* 62 FR 39104 (July 22, 1997) (amending Rules 4.21 and 4.31).

[27] CFTC staff is reviewing issues related to the electronic distribution and acknowledgment of documents and will provide the Commission with recommendations on how best to address these issues.

effective to do so. Further, these rule amendments impose no additional burden or requirements on IBs and, thus, should not have a significant economic impact on a substantial number of IBs.

B. Paperwork Reduction Act

When publishing final rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1995)) 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 rule amendments to Rule 1.55 or Rule 1.65. While these 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 are affected by the adoption of these rule amendments. In compliance with the Act, this final rule informs the public of:

(1) The reasons the information is planned to be and/or has been collected; (2) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency; (3) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden); (4) whether responses to the collection of information are voluntary, required to obtain or retain a benefit or mandatory; (5) the nature and extent of confidentiality to be provided, if any; and (6) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission previously submitted these rule amendments in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the associated information collection on January 6, 1998.

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

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

The burden associated with Rule 33.7 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 these final rule amendments, is as follows:

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

The burden associated with Rule 190.10(c) 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 these final rule amendments, is as follows:

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

The burden associated with Rule 30.6 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 these amended rules 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, N.W., 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, 6f, 6g and 12a, the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 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)(13), and § 30.6(a), § 33.7(a), and § 190.10(c) of this chapter, provided that 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 regulations, 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 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:

(i) which has total assets exceeding $10,000,000; or

(ii) 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) 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)(10) of this section;

(9) A futures commission merchant, floor brokers, or floor traders 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

(10) 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 § 1.55(f); 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) *Future 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 § 155(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) introductory text, 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 of this chapter, 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 February 13, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–4258 Filed 2–19–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 96F–0477]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide/polyether block copolymers prepared by reacting a copolymer of *omega*-laurolactam and adipic acid with poly(tetramethylene ether glycol) for use in the manufacture of rubber articles intended for repeated use in contact with food. This action responds to a petition filed by Elf Atochem North America, Inc.

DATES: The regulation is effective February 20, 1998. Submit written objections and request for a hearing by March 23, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–