

**Related Information**

(m) Civil Aviation Authority airworthiness directive No. G-2005-0028 R1, dated October 18, 2005, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 25, 2006.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E6-16047 Filed 9-28-06; 8:45 am]

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**COMMODITY FUTURES TRADING COMMISSION**
**17 CFR Part 1**

**RIN 3038-AC27**

**Limitations on Withdrawals of Equity Capital**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its regulations to provide that the Commission may, by written order, temporarily prohibit a futures commission merchant (“FCM”) from carrying out equity withdrawal transactions that would reduce excess adjusted net capital by 30 percent or more. The proposed orders would be based on the Commission’s determination that such withdrawal transactions could be detrimental to the financial integrity of FCMs or could adversely affect their ability to meet customer obligations. The proposed amendments also would provide that an FCM may file with the Commission a petition for rescission of an order temporarily prohibiting equity withdrawals from the FCM.

**DATES:** Comments must be received on or before November 28, 2006.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC27, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include “Proposed Amendment to Rule 1.17” in the subject line of the message.

- *Fax:* (202) 418-5521.

- *Mail:* Send to Eileen A. Donovan, Acting Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as Mail above.

All comments received will be posted without change to <http://www.cftc.gov>,

including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Smith, Deputy Director and Chief Accountant, at (202) 418-5430, or Thelma Diaz, Special Counsel, at (202) 418-5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: ([tsmith@cftc.gov](mailto:tsmith@cftc.gov)) or ([tdiaz@cftc.gov](mailto:tdiaz@cftc.gov)).

**SUPPLEMENTARY INFORMATION:****I. Commission Oversight of Equity Withdrawals**

Several Commission regulations place limitations on the ability of owners and other insiders of FCMs and introducing brokers (“IBs”) to withdraw equity from these regulated entities. In 1978 the Commission adopted Regulation 1.17(e), which prohibits all equity withdrawal transactions that would reduce the adjusted net capital of FCMs or IBs beyond the amounts permitted by the regulation.<sup>1</sup> In describing the transactions affected by the regulation, the Commission included any withdrawals made by the action of a stockholder or partner or redemption or repurchase of shares of stock by “consolidated entities”,<sup>2</sup> dividend payments or similar distributions, or through unsecured advances or loans made to stockholders, partners, sole proprietors, or employees. The regulation further clarifies that, when determining the effect of the proposed equity withdrawal transaction on the firm’s capital, the firm also must take into account other pending equity withdrawal transactions and scheduled liability payments that will reduce its capital within six months after the subject equity withdrawal transaction.<sup>3</sup>

<sup>1</sup> Commission regulations cited in this release may be found at 17 CFR Ch. I (2006). Generally speaking, Regulation 1.17(e) prohibits equity withdrawal transactions if such withdrawals would reduce the firm’s adjusted net capital to less than 120 percent of its minimum adjusted net capital requirement under Regulation 1.17(a)(1). Such transactions also are prohibited if they would result in less than the minimum amount of equity required under Regulation 1.17(d), which provides that FCMs and IBs must maintain a debt-equity ratio of at least 30 percent equity.

<sup>2</sup> Commission Regulation 1.17(f) requires, and in other circumstances permits, FCMs and IBs to consolidate the assets and liabilities of their subsidiaries and/or affiliates in a single computation of adjusted net capital for the FCM or IB and its consolidated entities.

<sup>3</sup> Regulation 1.17(e) specifically requires the firm to combine the amount of the subject equity withdrawal transaction with any of the following that are scheduled to occur within six months after the subject withdrawal: Any other proposed equity withdrawal; any payments under satisfactory subordination agreements under Regulation 1.17(h); and any payments of the liabilities identified in Regulation 1.17(c)(4)(vi).

The proposed equity withdrawal transaction is prohibited if, when added together with such other planned capital reductions, it would result in capital levels that are less than required by Regulation 1.17(e).<sup>4</sup>

The purpose of these equity withdrawal restrictions is to help preserve and enhance the required compliance by FCMs and IBs with the minimum financial requirements set forth in the Commission’s regulations.<sup>5</sup> As the Commission has explained elsewhere, the Commission’s minimum financial requirements protect 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.<sup>6</sup> Moreover, pursuant to Section 4d of the Act,<sup>7</sup> FCMs are required to segregate from their own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to customers from their open futures and option positions. Part 30 of the Commission’s regulations also call for FCMs to set aside funds, called the “foreign futures and foreign options secured amount”, to help protect the funds of U.S. customers trading on non-U.S. futures markets.<sup>8</sup> In the event of a shortfall in the Section 4d segregated funds or the Part 30 secured funds that an FCM must hold, the Commission’s minimum net capital requirements provide protection to customers by requiring each FCM to maintain a minimum level of assets that are readily available to be contributed in the event of a shortfall in the customer funds. The minimum capital requirements also protect customers and market participants by ensuring that an FCM remains solvent while waiting for margin calls to be met.

Because FCM capital requirements contribute to the security of customer

<sup>4</sup> Pursuant to a proviso included in the regulation, required tax payments and the payment to partners of reasonable compensation are not precluded. Also, Regulation 1.17(e) provides that, upon application, the Commission may grant relief if it deems it to be in the public interest or for the protection of nonproprietary accounts.

<sup>5</sup> Section 4f(b) of the Commodity Exchange Act (“Act”) authorizes the Commission, by regulation, to impose minimum financial and related reporting requirements on FCMs and IBs. The Act is codified at 7 U.S.C. 1 *et seq.* (2000), and Section 4f(b) of the Act is codified at 7 U.S.C. § 6f(b).

<sup>6</sup> 68 FR 40835, 40836 (July 9, 2003) (Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers).

<sup>7</sup> Section 4d of the Act is codified at 7 U.S.C. § 6d (2000).

<sup>8</sup> The term “foreign futures and foreign options secured amount” is defined in Regulation 1.3(rr).

funds and the overall financial integrity of the futures markets, the Commission also adopted provisions in Commission Regulation 1.12(g)(2) that require notice of certain equity withdrawal transactions by FCMs.<sup>9</sup> The provisions in Regulation 1.12(g)(2) originally were included among several proposals made by the Commission in 1994 in response to the financial difficulties experienced by certain FCMs operating within holding company structures.<sup>10</sup> These proposals were intended to provide the Commission with access to information concerning the activities of FCM affiliates whose activities were reasonably likely to have a material impact on the financial or operational condition of the FCM. The Commission subsequently determined, in response to the recommendations of several commenters, that the notice requirements in Regulation 1.12(g) should be applied broadly to all FCMs, and not just to those subject to reporting requirements with respect to their material affiliates.<sup>11</sup>

In particular, Regulation 1.12(g)(2) requires that an FCM provide notice at least two business days prior to an action to withdraw equity from an FCM, or a subsidiary or affiliate consolidated pursuant to Regulation 1.17(f), if the equity withdrawal transaction would cause, on a net basis, a reduction in the FCM's excess adjusted net capital of 30 percent or more. In response to the receipt of such a notice, Regulation 1.12(g)(3) provides that the Director of the Commission's Division of Clearing and Intermediary Oversight, or the Director's designee, may require that the FCM provide, within three business days from the date of the request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the FCM, or other available information.<sup>12</sup>

<sup>9</sup> The notification requirements in Regulation 1.12(g) were made applicable to all FCMs effective May 31, 1996. 61 FR 19177 (May 1, 1996). Regulation 1.12(g) does not apply to IBs.

<sup>10</sup> 59 FR 9689, 9690-9691 (March 1, 1994) (Risk Assessment for Holding Company Systems). The preamble for this proposed rulemaking identifies three FCMs within holding company structures that had experienced financial difficulties.

<sup>11</sup> 61 FR at 19179.

<sup>12</sup> Regulation 1.12(g)(2) also provides that the Commission may require the FCM to cause a Material Affiliated Person, as that term is defined in Commission Regulation 1.14(a)(2), to respond to requests for information from the Division Director.

## II. Equity Withdrawal Transactions That Could Be Temporarily Delayed Under the Proposed Rule

When first proposing the notification provision eventually adopted as Regulation 1.12(g)(2), the Commission noted that it could serve as "early warning" of impending financial difficulties at an FCM or at its holding company.<sup>13</sup> The only consequence that the regulation expressly contemplates as a result of the warning is that the Commission may require additional information from the FCM, with the response to be provided in a period of three days or less, as directed by the Commission. At the time that Regulation 1.2(g)(2) was adopted, the Commission determined that it was not necessary to adopt additional limitations within the Commission's regulations on equity withdrawal transactions.<sup>14</sup>

However, the recent precipitous decline of a large FCM holding company has confirmed that expedited action may be necessary to protect FCM capital in the face of increasing financial pressures experienced by its parent and/or affiliated entities. In this recent example, the FCM registrant was part of a complex organizational group consisting of several layers of holding companies and their subsidiaries. In October of 2005, the parent company for the group announced that its chief executive officer had been placed on leave, and that its financial statements for the years 2002 through 2005 should not be relied upon. The next day, Federal authorities charged the chief executive officer with securities fraud, and on the following day the holding company declared that certain liquidity difficulties were causing it to impose a 15-day moratorium for the activities of a nonregulated subsidiary. According to prior financial filings of the holding company, this nonregulated subsidiary had been responsible for a material portion of the holding company's business.

In response to these foregoing events, the Securities and Exchange Commission ("SEC") issued an order to temporarily restrict withdrawals of capital from two other subsidiaries of the holding company, which were registered as securities broker-dealers.<sup>15</sup> In issuing the order, the SEC cited to its regulation, 17 CFR § 240.15c3-1(e)(3)(i), which provides that the SEC may by order restrict, for a period up to twenty

<sup>13</sup> 59 FR at 9698-99.

<sup>14</sup> 61 FR at 19180.

<sup>15</sup> A copy of the SEC order, dated October 13, 2005, may be accessed electronically at <http://www.sec.gov/rules/other/34-52606.pdf>.

business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate, if (1) such withdrawal, advance or loan when aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period, exceeds 30 percent of the broker or dealer's excess net capital; and (2) the SEC, based on the facts and information available, concludes that the withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities that may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act.<sup>16</sup> As described by the SEC, § 240.15c3-1(e)(3)(i) enables the SEC and its staff to examine further the financial condition of the broker-dealer, so as to determine whether, and under what circumstances, to permit the withdrawal, entirely or partially, or to prohibit the withdrawal for additional periods by issuing subsequent orders, with terms that are no longer than twenty business days.<sup>17</sup>

The Commission is proposing rule amendments in this release that share many aspects in common with the SEC's regulation for temporary delays of equity withdrawals. The proposed amendments to its regulations would provide the Commission with the ability to impose further restrictions on the flow of capital from an FCM to its holding company and other affiliated entities, as appropriate, in the face of fast-developing events that pose potential threats to the capital of FCMs. The Commission would impose such restrictions by way of an order that would be effective for a twenty-day time period, and the Commission could continue to make the restrictions effective against the FCM by issuing subsequent orders, each with a term of no more than twenty business days. During the periods when such orders would be effective, Commission staff could evaluate the effect of the proposed withdrawals on the continuing

<sup>16</sup> This SEC regulation also provides that an order temporarily prohibiting the withdrawal of capital shall be rescinded if, sometime after a hearing that is to be held within two business days from the date of the request in writing by the broker or dealer, the SEC determines that the restriction on capital withdrawal should not remain in effect. 17 CFR 240.15c3-1(e)(3)(ii).

<sup>17</sup> 55 FR 34027, 34030 (August 15, 1990) (proposing amendments to SEC Regulation 15c3-1 regarding withdrawals of equity capital).

adequacy of customer safeguards at the firm, including the continuing adequacy of the firm's liquid assets, in light of the most current information available from the FCM concerning its operations and those of its holding company and affiliates. As such, the proposed regulation would serve to further enhance the security of customer funds and the overall financial integrity of the futures markets.<sup>18</sup> It is imperative that the Commission have the option to consider requiring such temporary delays of equity withdrawals whenever urgent circumstances so require.

The Commission also has been advised by staff that Commission Regulations 1.12 and 1.17, which include references to FCMs and IBs that are organized as corporations, partnerships, or sole proprietorships, currently lack a specific reference to firms organized as "limited liability companies."<sup>19</sup> The Commission therefore is proposing other amendments in this release that would modernize the provisions of Regulations 1.12 and 1.17, by including references to limited liability companies.

### III. Proposed Amendments to Regulations 1.12 and 1.17

In view of the foregoing considerations, the Commission is proposing to add a new paragraph (g)(1) to Regulation 1.17, which would provide that the Commission may by order restrict, for a period up to twenty business days, any withdrawal by the FCM of equity capital or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the FCM, or from a subsidiary or affiliate of the FCM consolidated pursuant to § 1.17(f), would cause a net reduction in the

FCM's excess adjusted net capital of 30 percent or more; and

(ii) The Commission has concluded, in light of available facts and circumstances, that such withdrawal, advance or loan may be detrimental to the financial integrity of the FCM, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.<sup>20</sup>

Under a proposed paragraph (g)(2) for Regulation 1.17, the FCM would be permitted to file with the Secretary of the Commission a written petition to request that the Commission rescind the order issued under paragraph (g)(1). The Commission would notify the FCM in writing that its petition for rescission had been denied, or, if the Commission determined that the order issued under paragraph (g)(1) should not remain in effect, the order would be rescinded. The petition filed by the FCM must specify the facts and circumstances supporting its request for rescission.

Finally, the Commission also is proposing to add a reference to "limited liability company members" in Regulation 1.12(g), to reflect the ownership of FCMs that are organized as limited liability companies. The Commission also is proposing to add references to limited liability company members in Regulation 1.17(d)(1)<sup>21</sup> and Regulation 1.17(e).<sup>22</sup> Furthermore, the Commission proposes to add a new subparagraph (D) to Rule 1.17(d)(1)(ii), in order to include as equity, in the case of a limited liability company, the sum of the "capital accounts of limited liability company members, and unrealized profit and loss."

The Commission requests comment on each of the proposed amendments to Regulations 1.12 and 1.17 that have been described in this release.

### IV. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules,

<sup>20</sup> Paragraph (g) of Regulation 1.17 currently is reserved.

<sup>21</sup> Funds received under "satisfactory subordination agreements", as defined in Regulation 1.17(h), may be treated by the FCM as equity if the agreement meets certain additional criteria set forth in Regulation 1.17(d)(1), including that the lender under the agreement be a partner or stockholder. As proposed, Regulation 1.17(d)(1) would provide that the lender also may be a "limited liability company member."

<sup>22</sup> The proposed amendment to Regulation 1.17(e) would include unsecured advances or loans to limited liability company members as equity withdrawal transactions that are prohibited if they would exceed the amounts permitted by the regulation.

consider the impact of those rules on small businesses. The Commission previously has 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.<sup>23</sup> The Commission has not determined previously that FCMs are not small entities for the purpose of the RFA.<sup>24</sup> With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered "small entities" for purposes of the RFA and, if so, to analyze at that time the economic impact on IBs of any such rule.<sup>25</sup>

The proposed amendments to Regulation 1.17(g) would apply to FCMs only and therefore would have no economic impact on IBs. The proposed amendments to Regulation 1.17(d) and (e) and Regulation 1.12(g) solely provide clarifying language to reflect new business organizations structures that were not prevalent when these rules were first adopted. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>26</sup> 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 amendments being proposed would not, if approved, require a new collection of information on the part of the entities that would be subject to the proposed regulations.

#### C. Cost-Benefit Analysis

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

Section 15(a) of the Act further specifies that costs and benefits shall be

<sup>23</sup> 47 FR 18618 (April 30, 1982).

<sup>24</sup> 47 FR at 18619.

<sup>25</sup> 47 FR at 18618, 18620.

<sup>26</sup> 44 U.S.C. 3507(d).

<sup>18</sup> In the years since the Commission last adopted rule amendments addressing equity withdrawal transactions, the amount of funds that FCMs are required to hold as segregated funds has more than doubled. As of August 31, 1995, FCMs were required to hold approximately \$25 billion as segregated funds, and \$6 billion as secured funds. As of December 31, 2005, the amount that FCMs were required to hold as segregated funds had increased to over \$95 billion, and the amount required to be held as secured funds had grown to almost \$25 billion.

<sup>19</sup> The Commission recently has revised other regulations to reflect the development of limited liability companies ("LLCs"). See, e.g. 69 FR 49784, 49793-4 (August 12, 2004). The amendments adopted in 2004 related to the management of LLCs, in order to determine persons with appropriate signature authority to file financial reports for the FCM or IB.

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. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was 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 to Regulation 1.17(g) would permit the Commission to issue orders temporarily restricting certain equity withdrawal transactions in circumstances that pose significant concerns for the financial condition of FCMs. The Commission is considering the costs and benefits of these proposed amendments in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* Under the proposed Regulation 1.17(g), the Commission would be able, in exceptional circumstances, to temporarily delay certain withdrawals of FCM equity by their owners and other insiders, which would contribute to the benefit of ensuring that eligible FCMs can meet their financial obligations to customers and other market participants.

2. *Efficiency and competition.* The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the efficiency and competition of the futures markets.

3. *Financial integrity of futures markets and price discovery.* The proposed regulation contributes to the financial integrity of futures markets by helping to confirm and preserve the capital of FCM registrants. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* In order to avoid application of the proposed regulation, FCMs may enhance existing risk management practices relating to the risks that practices of FCM affiliates may pose to the ability of FCMs to meet their obligations to customers and other participants in the futures markets.

5. *Other public interest considerations.* The proposed amendments to Regulations 1.12(g), 1.17(d)(1) and 1.17(e), which would add references to limited liability company

members and their capital contributions, help modernize the Commission's regulations by taking into consideration new forms of business organizations used by FCMs and IBs.

After considering these factors, the Commission has determined to propose the amendments 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 proposal with their comment letters.

**List of Subjects in 17 CFR Part 1**

Brokers, Commodity futures, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Chapter I is proposed to be amended 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 1.12 is proposed to be amended by revising paragraph (g)(2) to read as follows:

**§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.**

\* \* \* \* \*

(g) \* \* \*

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or 17 CFR § 240.15c3-1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be

provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction:

Provided, however, That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

\* \* \* \* \*

3. Section 1.17 is proposed to be amended by revising paragraph (d)(1) introductory text; adding paragraph (d)(1)(ii)(D); revising paragraph (e) introductory text; and adding paragraph (g), to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(1) Equity capital means a satisfactory subordination agreement entered into by a partner or stockholder or limited liability company member which has an initial term of at least 3 years and has a remaining term of not less than 12 months if:

\* \* \* \* \*

(ii) \* \* \*

(D) in the case of a limited liability company, the sum of its capital accounts of limited liability company members, and unrealized profit and loss.

\* \* \* \* \*

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured

advance or loan be made to a stockholder, partner, sole proprietor, limited liability company member, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan:

\* \* \* \* \*

(g)(1) The Commission may by order restrict, for a period up to twenty business days, any withdrawal by a futures commission merchant of equity capital, or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan would cause, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or § 17 CFR 240.15c3-1e), a net reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, and

(ii) The Commission, based on the facts and information available, concludes that any such withdrawal, advance or loan may be detrimental to the financial integrity of the futures commission merchant, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.

(2) The futures commission merchant may file with the Secretary of the Commission a written petition to request rescission of the order issued under paragraph (g)(1) of this section. The petition filed by the futures commission merchant must specify the reasons supporting its request for rescission. The Commission shall respond in writing to deny the futures commission merchant's petition for rescission, or, if the Commission determines that the order issued under paragraph (g)(1) of this section should not remain in effect, the order shall be rescinded.

\* \* \* \* \*

Issued in Washington, DC, on September 25, 2006 by the Commission.

**Eileen Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. E6-16035 Filed 9-28-06; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Parts 502, 546, and 547

#### Class II Definitions and Gaming Standards and Technical Standards

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** This notice extends the period for comments on proposed Class II definitions and game classification standards published in the **Federal Register** on May 25, 2006 (71 FR 30232, 71 FR 30238). Additionally, this notice extends the period for comments on proposed Class II technical standards published in the **Federal Register** on August 11, 2006 (71 FR 46336).

**DATES:** The comment period for the proposed classification, definition, and technical regulations is extended from September 30, 2006, to November 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Penny Coleman or John Hay at 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. On May 25, 2006, proposed Class II definitions and game classification standards were published in the **Federal Register** (71 FR 30232, 71 FR 30238). On August 11, 2006, proposed Class II technical standards were published in the **Federal Register** (71 FR 46336).

Dated: September 25, 2006.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

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**BILLING CODE 7565-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 6, 7, 9, 13, 20, 22, 24, 27, 68, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 06-169, WT Docket No. 96-86; DA 06-1880]

#### Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Hearing Aid-Compatible Telephones; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On August 10, 2006, the Federal Communications Commission released a document in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309, respectively, seeking comment on the possibility of revising a variety of licensing and service rules affecting both auctioned and unauctioned spectrum in the 698-746, 747-762, and 777-792 MHz bands. In this action, the Federal Communications Commission denies in part requests to extend the deadline for filing comments and reply comments in this rulemaking proceeding. Nevertheless, the Federal Communications Commission finds that a limited extension of time is warranted and grants the requests in part by adopting a nine-day extension of time for filing comments in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309.

**DATES:** Comments are due in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 (71 FR 48506, August 21, 2006) on or before September 29, 2006. Reply comments are due in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 on or before October 20, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Michael Rowan, Special Counsel,