PART 736—[AMENDED]

■ 4. The authority citation for Part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 5. Section 736.2 is amended by revising paragraph (b)(3)(i), to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(i) *Country scope of prohibition.* You may not, without a license or license exception, reexport any item subject to the scope of this General Prohibition Three to a destination in Country Group D:1 or E:1 (See Supplement No. 1 to part 740 of the EAR).

* * * * *

PART 740—[AMENDED]

■ 6. The authority citation for Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 740.6 [Amended]

■ 7. Section 740.6 is amended by removing the reference to "E:2" and adding in its place "E:1" in paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2)(i) and (a)(2)(ii).

PART 748—[AMENDED]

■ 8. The authority citation for Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 9. Supplement No. 2 to Part 748 is amended by removing the reference to "E:2" and adding in its place "E:1" in paragraph (i)(2)(x) and twice in paragraph (o)(3)(i).

Dated: July 23, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–18733 Filed 7–29–10; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AC90

Operation, in the Ordinary Course, of a Commodity Broker in Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (the "Commission") is amending its regulations regarding the operation of a commodity broker in bankruptcy, in order to permit the trustee in such bankruptcy to operate, with the written permission of the Commission, the business of such commodity broker in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker, under appropriate circumstances, as determined by the Commission.

DATES: *Effective Date:* The final rules are effective as of August 30, 2010.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202–418–5092, *rwasserman@cftc.gov;* or Alicia L. Lewis, Attorney-Advisor, Division of Clearing and Intermediary Oversight, 202–418–5862, *alewis@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 2009, the Commission published a Notice of Proposed Rulemaking, which proposed to amend Regulation 190.04(d) to permit a trustee, under appropriate circumstances, to operate the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker (the "Notice").[1] The proposed rule stated that the appropriateness of a particular set of circumstances would be determined by the Commission in its discretion, and such operation would require the written permission of the Commission.

The public comment period on the Notice ended on January 15, 2010. The Commission received two comments[2] during the comment period: (i) One from the trustee of a futures commission merchant ("FCM") that was sold as a going concern in bankruptcy[3] and (ii) one from a futures industry trade association.[4]

Collectively, the comments raise the following five (5) concerns with the Notice:

- The Commission's proposed rule is premature.
- The Commission staff should not be responsible for operating the FCM-related business of an insolvent FCM/broker-dealer.
- The Commission's proposed rule is overly broad as it does not specify all circumstances the Commission will consider in authorizing a trustee to operate the business of an FCM and provide the public with an opportunity to comment on these circumstances.
- The Commission should work with the Securities and Exchange Commission and the Securities Investor Protection Corporation to develop uniform procedures to guide a trustee of an insolvent FCM/broker-dealer in the absence of legislative changes.
- The Commission should grant immunity to a bankruptcy trustee, who is to operate the business of a commodity broker, in the limited operation of the business.

The Commission will address below each of the five concerns.

II. Concern That the Commission's Proposed Rule Is Premature

FIA stated that further action on the proposed rule is premature as the House of Representatives has passed a financial services reform bill which instructs the Commission, in coordination with the Securities and Exchange Commission ("SEC") and several bank regulatory authorities, to recommend, within 180 days of the bill's enactment, legislative changes to the federal insolvency laws to, among

[1] 74 FR 66598 (Dec. 16, 2009).

[2] For purposes of this release, a comment letter is referenced by: (i) Its author, (ii) its file number (as shown in the comment file associated with the Notice on the Commission's Web site), and (iii) the page (if applicable). The comment file associated with the Notice is available at *http://www.cftc.gov/LawRegulation/FederalRegister/CommentFiles/09-034.html.*

[3] Albert Togut of Togut, Segal & Segal LLP (Trustee for Refco, LLC) ("Refco Trustee") (CL01).

[4] The Futures Industry Association (representing the commodity futures and options industry) ("FIA") (CL02).

others, clarify and harmonize the insolvency law applicable to entities that are both FCMs and broker-dealers.[5] Moreover, FIA urged the Commission and the other regulatory authorities to perform a comprehensive review of the relevant provisions of the Bankruptcy Code ("Code") and the Commission's bankruptcy rules even if the bill does not become law. FIA believes that it would be inappropriate to adopt amendments to the Commission's bankruptcy rules when such a review and recommendations for comprehensive reform are imminent.

While the FIA comment was relevant when filed, the Commission notes that the provision referred to is no longer pending. Moreover, the amendments to Regulation 190.04(d) are narrowly designed to address the manner in which customer accounts are handled, under appropriate circumstances, in a commodity broker bankruptcy, which may occur at any time. Accordingly, the Commission will not defer the adoption of the final rule based on this concern.

The Commission notes, that currently, even if a qualified transferee for an insolvent commodity broker is identified prior to a bankruptcy filing by a commodity broker, a number of steps are required, as a practical matter, after the filing of the bankruptcy petition and prior to the transfer. The completion of these steps requires a measurable period of time, and may occur while the financial markets are open and active.[6]

The adoption of the rule would benefit customers of a commodity broker in bankruptcy, under appropriate circumstances, by permitting those customers to manage their accounts during this time. In addition to the flexibility given to customers, the adoption of the rule would also provide the Commission with the latitude to handle unanticipated events.

United States futures customers in the *Refco*[7] and *Lehman*[8] bankruptcies were well protected: Due to the timing of the filing (late in the day on Friday), and, in *Lehman,* action by the District Court, transfers of all customer accounts took place without a time period during which the markets were open but customers were unable to manage their accounts. These circumstances will not necessarily be replicated in a future bankruptcy. As a result, the Commission believes that the adoption of the rule would provide it with the flexibility and discretion necessary to protect customers by responding promptly to exigent circumstances in future bankruptcies.[9]

III. Concern That Commission Staff Would Be Responsible for Operating the FCM-Related Business of an Insolvent FCM/Broker-Dealer

FIA noted the trustee selected by the Securities Investor Protection Corporation ("SIPC") to oversee an insolvent FCM/broker-dealer may not have sufficient knowledge or experience to operate the FCM-related business of a FCM/broker-dealer.[10] FIA further noted that if the rule is adopted, the Commission's Division of Clearing and Intermediary Oversight ("DCIO") would be responsible for operating the FCM-related portion of the FCM/broker-dealer business by default. FIA questioned the appropriateness of DCIO undertaking this responsibility and whether DCIO staff had the requisite expertise to do so.

In the Commission's experience, trustees appointed by SIPC and the U.S. Trustees, and their legal counsel, have financial services industry experience and have engaged in formal and informal discussions with Commission staff regarding FCMs business as such. The Commission expects that such communications will occur in future bankruptcies.

The Commission also notes that, pursuant to the rule under consideration, before a trustee can operate the business of a commodity broker in bankruptcy in the ordinary course (including entering into new contracts on behalf of customers), the trustee must obtain the written permission of the Commission. Moreover, the Commission would have the opportunity to determine if the circumstances were appropriate to allow such permission. The proposed rule does not mandate the Commission to grant this permission. Therefore, the Commission will consider the circumstances in deciding whether to permit the trustee to operate the commodity broker's business in the ordinary course.

IV. Concern That the Commission's Proposed Rule Is Overly Broad as It Does Not Specify All Circumstances the Commission Will Consider in Authorizing a Trustee To Operate the Business of an FCM and Provide the Public With an Opportunity To Comment on These Circumstances

In the Notice, the Commission stated that it may consider the following factors in authorizing a trustee to operate the business of an FCM: "(1) Whether the commodity broker has entered into an agreement providing for the imminent transfer of its customer accounts to an entity that is ready, willing and able to accept such transfer promptly; (2) whether the commodity broker has sufficient capital, at the time it becomes subject to bankruptcy proceedings, to continue operating its business in the ordinary course pending the transfer; and (3) whether a commodity broker will have sufficient capital, after the sale of its assets (including its FCM business), to continue operating its business in the ordinary course until all of its customer accounts have been transferred."[11] FIA stated that the first and second factors "should be viewed as necessary conditions precedent to the exercise of such authority."[12] FIA further stated that "[i]f the Commission believes there are other circumstances in which it may be appropriate to authorize a trustee to operate the business of the FCM, the public should have an opportunity to comment on those circumstances."[13]

As each bankruptcy is unique, the Commission notes that future bankruptcies of commodity brokers may present new factors for consideration. Therefore, it would be impracticable for the Commission to present a comprehensive list of factors for public comment. The proposed rule seeks to address the distinctiveness of each bankruptcy by providing the Commission and trustees with a degree of flexibility in dealing with unanticipated events with rapidly-changing circumstances.

[5] *See* H.R. 4173, 111th Cong. § 3006 (2009); FIA CL02 at 3.

[6] The Commission notes that many markets are open for trading five (5) days a week, twenty-three (23) hours a day. Therefore, an FCM with world-wide operations may be open and trading continuously between Sunday afternoon and Friday evening in the United States.

[7] *See In re: Refco, LLC,* No. 05–60134–rdd, Docket No. 5 (Bankr. S.D.N.Y. Nov. 25, 2005); *see also* 74 FR 66598, 66599 (Dec. 16, 2009).

[8] *See S.I.P.C.* v. *Lehman Brothers, Inc.,* No. 08–8119, Docket No. 3 (S.D.N.Y. Sept. 19, 2008); *see also* 74 FR 66598, 66600 (Dec. 16, 2009).

[9] The Commission notes that the permission granted to the trustee to operate the business in bankruptcy does not compel a clearinghouse or clearing broker to accept and clear the commodity broker's trades.

[10] FIA CL02 at 4. FIA noted that 43 of the 50 largest FCMs are also registered broker-dealers. Therefore, SIPC would appoint the trustee for an insolvent FCM/broker-dealer.

[11] 74 FR 66598, 66600 (Dec. 16, 2009).

[12] FIA CL02 at 5.

[13] *Id.*

V. Recommendation That the Commission Work With the Securities and Exchange Commission and the Securities Investor Protection Corporation To Develop Uniform Procedures To Guide a Trustee of an Insolvent FCM/Broker-Dealer in the Absence of Legislative Changes

FIA recommends that the Commission, SIPC and the SEC work together to develop uniform written guidance for a trustee of an FCM/broker-dealer. While the Commission has engaged in discussions with the SEC and SIPC concerning FCM/broker-dealer bankruptcies and contingency planning, and Part 190 of the Commission's regulations contains extensive guidance for the conduct of an FCM bankruptcy (which is also applicable to a SIPC trustee in a SIPA proceeding[14]), the Commission believes that the development of specific uniform procedures may be impracticable due to the differences between the regimes and to the fact that each bankruptcy has its own unique set of facts and circumstances.

VI. Recommendation That the Commission Grant Immunity to a Bankruptcy Trustee Limited to Its Operation of a Commodity Broker's Business in Bankruptcy

The Refco Trustee recommends that Commission expand the proposed rule to provide the bankruptcy trustee with relief from personal liability and immunity from any suit for personal liability for actions or inactions taken by the trustee in good faith in the operation of the commodity broker's business. Specifically, the Refco Trustee notes that an unintended consequence of the proposed rule is that, "currently, a trustee in bankruptcy may be sued by third parties for acts or omissions in connection with the operation of a debtor's business."[15] The Refco Trustee expressed concern that the potential for such liability to a trustee would deter qualified individuals from being willing to serve in that capacity.

The Commission does not have the authority to grant such immunity. However, as the Refco Trustee noted, a trustee in bankruptcy could seek a court order which includes such immunity.[16]

[14] *See* Securities Investor Protection Act of 1970 § 7(b), 15 U.S.C. 78fff–1(b).

[15] Refco Trustee CL01 at 4 (discussing 28 U.S.C. 959(a)).

[16] *Id.*

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[17] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The final rule provides a limited exception to Regulation 190.04(d)(2), by permitting a trustee to operate, with the written permission of the Commission, the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker. The final rule does not impose a regulatory burden on either a commodity broker pre-bankruptcy or a trustee post-bankruptcy. Moreover, the final rule will affect only FCMs (including certain foreign futures commission merchants).[18] The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[19] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[20] Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman certifies, on behalf of the Commission, that the final rule promulgated herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[21] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The final rule promulgated in the release does not require the new collection of information on the part of any entities that would be subject to the final rule. Accordingly, for purposes of the PRA, the Commission certifies that the final rule promulgated in this release would not impose any new reporting or recordkeeping requirements.

[17] 5 U.S.C. 601 *et seq.*

[18] The proposed rule may apply, in the future, to other commodity brokers that execute trades and carry accounts for clearing on behalf of customers—namely, commodity options dealers and leverage transaction merchants. Currently, no such commodity brokers exist. Therefore, even if such commodity brokers would constitute "small entities" for purposes of the RFA, the proposed rule can have no current impact on such commodity brokers.

[19] 47 FR 18618 (Apr. 30, 1982).

[20] *Id.* at 18619.

[21] 44 U.S.C. 3501 *et seq.*

C. Cost-Benefit Analysis

Section 15(a) of the Act[22] requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) of the Act 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) of the Act 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 evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations 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 Commission has evaluated the costs and benefits of the final rule promulgated in this release, in light of (i) the comments that it has received on the Notice and (ii) the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of Market Participants and the Public

In the event of the bankruptcy of a commodity broker, the final rule promulgated in this release would benefit the customers of such commodity broker, by providing them with the opportunity, under appropriate circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

2. Efficiency and Competition

The final rule promulgated in this release is not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

The final rule promulgated in this release will promote financial integrity of the futures markets by providing customers of a commodity broker in bankruptcy with the opportunity, under appropriate circumstances, to manage

[22] 7 U.S.C. 19.

their accounts prior to the transfer of such accounts to a new commodity broker.

4. Sound Risk Management Practices

The final rule promulgated in this release is not expected to have a direct effect on the risk management practices of commodity brokers.

5. Other Public Considerations

Recent events, such as the Refco and Lehman proceedings, have demonstrated that the final rule is necessary and prudent.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to promulgated the final rules as set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity Futures.

■ For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

PART 190—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. The authority citation for Part 190 continues to read as follows:

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.

■ 2. Add new paragraph (d)(3) to Section 190.04 to read as follows:

§ 190.04 Operation of the debtor's estate—general.

* * * * *

(d) * * *

(3) *Exception to Liquidation Only.* Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

* * * * *

Issued in Washington, DC on July 23, 2010 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–18790 Filed 7–29–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM08–2–002 and RM08–2–000; Order No. 720–B]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission clarifies its regulations requiring major non-interstate pipelines to post daily scheduled volume information and other data for certain points, as well as its regulations requiring interstate pipelines to post information regarding the provision of no-notice service. These modifications include establishing the compliance deadline for major non-interstate pipelines after the effective date of this rule and clarifying the requirement for interstate pipelines to update posted no-notice service volumes.

DATES: *Effective Date:* This rule will become effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Christopher Ellsworth, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8228. *Christopher.Ellsworth@ferc.gov.*

Anna Fernandez, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6682. *Anna.Fernandez@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

	Paragraph Numbers
I. Introduction	1
II. Background	3
III. Discussion	12
A. Definition of Major Non-Interstate Pipeline	12
B. Posting Requirements for Major Non-Interstate Pipelines	19
1. Point Design Capacity	20
2. Timing of Posting Where Design Capacity is Known	27
3. Timing of Posting Where Design Capacity is Unknown or Does Not Exist	30
C. Compliance Deadline for Future Major Non-Interstate Pipelines	33
D. Confidentiality of Data to be Posted by Major Non-Interstate Pipelines	37
E. Interstate Pipeline Posting of No-Notice Service	48
IV. Information Collection Statement	55
V. Document Availability	57
VI. Effective Date and Compliance Deadlines	60

United States of America Federal Energy Regulatory Commission

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Docket Nos. RM08–2–002, Order No. 720–B, Order On Rehearing and Clarification

Issued July 21, 2010.

I. Introduction

1. On November 20, 2008, the Federal Energy Regulatory Commission (Commission) issued Order No. 720 requiring interstate and certain major non-interstate natural gas pipelines to post limited information on publicly accessible Internet Web sites regarding their operations.[1] On January 21, 2010, the Commission issued Order No. 720–A in response to requests for rehearing and clarification of Order No. 720.[2]

[1] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, 73 FR 73,494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283 (2008) (Order No. 720).

[2] *Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720–A, 75 FR 5178 (Jan. 21, 2010), FERC Stats. & Regs. ¶ 31,302 (2010) (Order No. 720–A).