

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 21

Special Calls

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend Part 21 of its regulations relating to special calls for information. The proposed amendments would: add to the types of information specified in § 21.02, which must be furnished upon special call, information regarding exchanges of futures for physical commodities or for derivatives positions, and information regarding delivery notices issued and stopped; and delegate to the Director of the Division of Market Oversight and the Director's delegates, the ability to issue special calls pursuant to sections 21.01 and 21.02.

DATES: Comments must be received by July 23, 2007.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202-418-5521, or by e-mail to secretary@cftc.gov. Reference should be made to "Proposed Rules for Special Calls."

FOR FURTHER INFORMATION CONTACT: Don Heitman, Senior Special Counsel (telephone 202-418-5041, e-mail dheitman@cftc.gov), Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Exchange Act ("Act"), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Pub. L. No. 106-554, is intended, among other things, to "deter and prevent price manipulation or any other disruptions to market integrity."¹ To that end, the Commission, through its Division of Market Oversight ("Division"), conducts a comprehensive program of market surveillance. A centerpiece of this program is its large-trader reporting system, under which all large futures and option positions are reported to the Commission. Each day, for every active futures or option

market, Division surveillance staff monitors the activities of large traders, key price relationships, and all relevant supply and demand factors in a continuous review for potential market problems. An essential element of the Commission's market surveillance program is the ability to make special calls for information from Commission registrants and other market participants.

II. Information To Be Furnished Upon Special Call

Part 17 of the Commission's regulations sets forth the routine reports that futures commission merchants, members of contract markets and foreign brokers (collectively, "reporting firms") are required to submit to the Commission.² These reports provide the information for the Commission's large trader reporting system that it uses in its market surveillance program to detect and prevent market manipulation or other disruptions to market integrity in markets subject to Commission oversight.

By contrast, the purpose of the Commission's special call authority in Part 21 of the Commission's regulations is to provide the Commission with relevant information that is not routinely supplied to the Commission, pursuant to other parts of the Commission's regulations such as Part 17. For example, the Commission may need to know about futures positions that are below the routine reporting levels specified in Part 15 of the Commission's regulations. Among possible reasons for such special needs for information may be a particular market situation that warrants unusually close Commission market surveillance, or when Commission staff is conducting an audit of reporting firms to ensure complete and accurate reporting.

The proposed amendments to Part 21 would require reporting firms to retain and make available to the Commission, upon a special call, information similar to that which they are required to report to the Commission pursuant to Part 17 of the Commission's regulations. Specifically, the proposed amendments would add two additional categories of information to the types of information specified in § 21.02, which must be

furnished upon special call. The first additional category of information that would be subject to special call under this proposal includes information regarding futures contracts exchanged for physical commodities ("EFPs"), as well as futures contracts exchanged for other derivatives contracts, including exchanges of futures for options ("EFOs") and exchanges of futures for swaps ("EFSs"). The second additional category of information includes the amount of futures contracts where actual delivery of the underlying commodity has been initiated (i.e., delivery notices have been issued or received).

Section 21.02 applies to futures commission merchants ("FCMs"), introducing brokers ("IBs"), members of contract markets and foreign brokers. However, the first three of the foregoing categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations, which, among other things, requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these proposed rules. Therefore, as a practical matter, the proposed rules will impose new requirements only on foreign brokers (who are not subject to § 1.35).

Foreign brokers and other persons receiving a special call pursuant to § 21.02 are required by that regulation to furnish the information requested. Since such persons cannot comply with the legal requirement to furnish information pursuant to a special call without maintaining records from which to generate the information requested, it follows that persons subject to special calls under § 21.02 are required, by the Commission's regulations, to maintain such records. Therefore, such records—including both those already listed in § 21.02, and those that would be added by this proposed rule amendment—are subject to the five-year record retention requirements of § 1.31(a)(1) of the regulations, which provides in relevant part that:

All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first two years of the five-year period.

III. Delegation of Authority

For reasons of administrative efficiency, the Commission is also proposing to delegate to the Director of the Division of Market Oversight, and the Director's delegates, the power to issue special calls pursuant to sections 21.01 and 21.02. Consistent with other delegations of authority to Commission

¹ Commodity Exchange Act § 3(b), 7 U.S.C. § 5(b).

² The Commission has recently proposed amendments to its definition of the term, "foreign broker." The amended definition would also be relocated, from its current location at § 15.00(g) to § 1.3(xx). See 72 FR 15637 (April 2, 2007). If such amendments were to be adopted, there would be no change in a foreign broker's obligations to comply with the Commission's large trader or special call regulations set forth in 17 CFR parts 15-21.

senior staff, the proposed delegation of the Part 21 special call authority allows the Director to submit to the Commission for its consideration any matter that has been delegated pursuant to the new section. The proposed amendment also preserves the Commission's ultimate authority over the special calls by providing that, "nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated * * * to the Director."

Ordinarily, the delegation of authority to make special calls would not be published for comment because the Administrative Procedure Act provides that "a matter relating to agency management"³ is not required to be published for comment. However, because the proposed delegation is being published as part of a larger notice that includes other proposed amendments on which the Commission is seeking comment, the Commission will also accept public comments regarding the proposed delegation of authority to issue special calls from the Commission to the Director of the Division of Market Oversight.

IV. Cost Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, § 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, § 15(a) simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public concern: (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. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is 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 are intended to supplement the Commission's rules regarding its market surveillance program. That program supports one of the Commission's most critical statutory responsibilities, deterring and preventing price manipulation or any other disruptions to market integrity. Effective surveillance activities are crucial not only to protecting market participants and the public from price manipulation, but also to: promoting market efficiency, competitiveness and financial integrity; protecting the futures markets' price discovery function; and promoting sound risk management practices.

In addition, the records that would be subject to special call under these proposed amendments are the type of basic transaction records that any foreign broker would create as a matter of sound business practices. Because these records would be created in any event, independently of any regulatory requirements, the proposed rules would impose no additional costs on foreign brokers in that area. There would be minimal costs associated with providing the records in answer to a special call, but such costs would be far outweighed by the benefits of protecting the markets and the public. Finally, with respect to the five-year record retention requirement that would apply to these records, the cost of retaining the records would be minimal because Commission rules allow such records to be maintained electronically. Those minimal costs would, again, be far outweighed by the benefits of protecting the marketplace and the public.

The Commission has considered the costs and benefits of the proposed amendments to Part 21 regarding special calls in light of the above-noted specific areas of concern identified in section 15. The Commission believes that the amended rules would impose the minimum requirements necessary to enable it to perform its oversight functions and to carry out its mandate to protect the public interest in markets that are free of fraud, abuse and manipulation.

After considering these factors, the Commission has determined to propose the rule amendments set forth below.

The Commission specifically invites public comment on its application of the criteria contained in the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rules with their comment letter.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The proposed amendment to § 21.02 would apply to FCMs, IBs, members of contract markets and foreign brokers. However, as noted above, the first three of these categories are already subject to substantial reporting and recordkeeping requirements under § 1.35 of the Commission's regulations. Among other things, that section requires FCMs, IBs and contract market members to maintain, and produce on request, the records that are also the subject of these proposed rules. Therefore, as a practical matter, the proposed rules will impose new requirements only on foreign brokers (who are not subject to § 1.35).

With respect to such foreign brokers, the Commission recently published proposed rules to exempt from registration certain foreign persons (including foreign brokers).⁴ In reviewing the applicability of the RFA to such foreign persons, the Commission noted that it has previously established certain definitions of "small entities" to be used in evaluating the impact of its regulations on such entities in accordance with the RFA.⁵ The Commission has previously determined that FCMs are not small entities for purposes of the RFA because each FCM has an underlying fiduciary relationship with its customers, regardless of the size of the FCM.⁶ The Commission notes that the foreign brokers affected by these proposed changes to the Commission's regulations would be required to be registered as FCMs if not for certain exemptions provided in Commission regulations. As such, they would maintain a fiduciary relationship with customers similar to the relationship maintained by each registered FCM. Therefore, in this context foreign brokers, like FCMs, are not appropriately categorized as small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act (PRA)⁷

⁴ 72 FR 15673 (April 2, 2007).

⁵ 47 FR 18618 at 18621 (April 30, 1982).

⁶ *Id.* at 18619.

⁷ Pub. L. 104-13 (May 13, 1995).

³ 5 U.S.C. 553(a)(2).

imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The Commission has submitted the proposed rules and their associated information collection requirements to the Office of Management and Budget (OMB). The proposed rules are part of an approved collection of information (OMB Control No. 3038-0009). The estimated burden associated with information to be provided pursuant to special calls is as follows:

Average burden of response: One hour.

Number of respondents: 10 per year.

Frequency of response: One response per respondent per year.

Annual reporting burden: 10 hours.

Persons wishing to comment on the information that would be required by these proposed 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, NW., Washington, DC 20581, (202) 418-5160. Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395-7340.

List of Subjects in 17 CFR Part 21

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, the

Commission hereby proposes to amend Part 21 of Title 17 of the Code of Federal Regulations as follows:

PART 21—SPECIAL CALLS

1. The authority citation for part 21 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 21.02 is proposed to be amended by:

- a. Removing the word “and” at the end of paragraph (f);
- b. Redesignating paragraph (g) as paragraph (i); and
- c. Adding new paragraphs (g) and (h).
The additions read as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

* * * * *

(g) The total number of futures contracts exchanged for commodities or for derivatives positions;

(h) The total number of futures contracts against which delivery notices have been issued or received; and

* * * * *

3. Section 21.04 is added to read as follows:

§ 21.04 Delegation of authority to the Director of the Division of Market Oversight.

The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Market Oversight, or to the Director's delegates, the authority set forth in section 21.01 of this Part to make special calls for information on controlled accounts from futures commission merchants and from introducing brokers and the authority set forth in section 21.02 of this Part to make special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers. The Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Director.

Issued in Washington, DC, on June 15, 2007 by the Commission.

Eileen Donovan,

Acting Secretary of the Commission.

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DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 5837]

RIN 1400-AC38

Exchange Visitor Program—Fees and Charges for Exchange Visitor Program Services

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department is proposing to revise its regulations regarding Fees and Charges for Exchange Visitor Program services. A new section will contain all of the fees and charges for Exchange Visitor Program services. The long-range goal of these changes is to recoup the full cost for providing such services.

DATES: The Department will accept comments from the public by August 21, 2007.

ADDRESSES: You may submit comments, identified by any of the following methods:

- Persons with access to the Internet may view this notice and provide comments by going to the *regulations.gov* Web site at: <http://www.regulations.gov/index.cfm>.

- Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Exchange Coordination and Designation, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547.

- E-mail: jexchanges@state.gov. You must include the RIN (1400-AC38) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT:

Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547; 202-203-5096 or e-mail at jexchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), 22 U.S.C. 2451 *et seq.*; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105-277; as well as other statutory enactments, Reorganization Plans and Executive Orders. Under those authorities, designated program sponsors facilitate the entry of more