Long. 112°37′54″ W; to point of beginning.

§ 93.177 Operations in the Special Air Traffic Rule Area.

(a) Unless otherwise authorized by Air Traffic Control (ATC), no person may operate an aircraft in flight within the Luke Terminal Area designated in § 93.176 unless—

(1) Before operating within the Luke Terminal area, that person establishes radio contact with the Luke RAPCON; and

(2) That person maintains two-way radio communication with the Luke RAPCON or an appropriate ATC facility while within the designated area.

(b) Requests for deviation from the provisions of this section apply only to aircraft not equipped with an operational radio. The request must be submitted at least 24 hours before the proposed operation to Luke RAPCON.

Issued in Washington, DC, on December 18, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–30938 Filed 12–30–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AC66

Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its regulations that prescribe minimum adjusted net capital requirements for futures commission merchants (''FCMs'') and introducing brokers (''IBs''). The amendments: increase the required minimum dollar amount of adjusted net capital that an IB must maintain from $30,000 to $45,000; increase the required minimum dollar amount of adjusted net capital that an FCM must maintain from $250,000 to $1,000,000; amend the computation of an FCM's margin-based minimum adjusted net capital requirement to incorporate into the calculation customer and noncustomer positions in over-the-counter derivative instruments that are submitted for clearing by the FCM to derivatives clearing organizations (''DCOs'') or other clearing organizations (''cleared OTC derivative positions''); specify capital deductions for FCM proprietary cleared OTC derivative positions based on the deductions required by the Commission's regulations for FCM proprietary positions in exchange-traded futures contracts and options contracts; and amend the FCM capital computation to increase the applicable percentage of the total margin-based requirement for futures, options and cleared OTC derivative positions in noncustomer accounts to eight percent.

DATES: Effective March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5137; facsimile number: 202–418–5547; and electronic mail: *tdiaz@cftc.gov* or Mark Bretscher, Attorney-Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661. Telephone number: 312–596–0529; facsimile number: 312–596–0714; and electronic mail: *mbretscher@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 2009, the Commission published in the **Federal Register** for public comment proposed amendments to the minimum financial requirements applicable to FCMs and IBs (''Proposing Release).[1] As noted in the Proposing Release, Section 4f(b) of the Commodity Exchange Act (''Act'') provides that FCMs and IBs must meet such minimum financial requirements as the Commission may prescribe to insure that FCMs and IBs meet their obligations as registrants.[2] FCMs are subject to greater capital requirements than IBs because the Act permits FCMs, but not IBs, to hold funds of customers trading on designated contract markets and to clear such customer positions with a DCO. CFTC Regulation 1.17 currently requires IBs and FCMs to maintain adjusted net capital of $30,000 and $250,000 respectively, or to maintain some greater amount as determined under other calculations required by the regulation.[3]

Specifically, Commission Regulation 1.17(a)(1)(iii) requires that IBs maintain adjusted net capital in an amount that equals or exceeds the greatest of: $30,000; the amount of adjusted net capital required by a registered futures association of which the IB is a member; or, if the FCM is also a securities broker and dealer registered with the U.S. Securities and Exchange Commission (''SEC''), the amount of net capital required by SEC Rule 15c3–1(a), 17 CFR § 240.15c3–1(a). Regulation 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of: $250,000; the FCM's margin-based or ''risk-based'' capital requirement, which is determined by adding together eight percent of the total risk margin requirement for positions in customer accounts, plus four percent of the total risk margin requirement for positions carried in noncustomer accounts; the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or, for an FCM also registered with the SEC as securities broker and dealer, the amount of net capital required by SEC Rule 15c3–1(a).

As described in the Proposing Release, the Commission proposed several amendments to Regulation 1.17(a) that generally would increase the adjusted net capital requirements of FCMs and IBs. The comment period closed 60 days after publication in the **Federal Register** of the Proposing Release, during which nine comment letters were received. Responses were submitted by Mindy Yost (''Yost''), an individual non-registrant; Newedge USA, LLC (''Newedge''), an FCM/broker-dealer; MF Global, Inc. (''MF Global''), an FCM; R.J. O'Brien & Associates, LLC (''RJO''), an FCM; FCStone, LLC (''FC Stone''), an FCM; the Securities Industry and Financial Markets Association (''SIFMA''); CME Group, Inc. (''CME''); the Futures Industry Association (''FIA''); and the National Futures Association (''NFA''). The concerns and suggestions of each of the commenters are addressed below, in connection with the description of the amendments being adopted by the Commission.[4]

[1] 74 FR 21290 (May 7, 2009). Copies of the Proposing Release and the comment letters received by the Commission are also available on the Commission's Web site at *http://www.cftc.gov*.

[2] The Act is codified at 7 U.S.C. 1 *et seq.*

[3] The Commission regulations cited herein may be found at 17 CFR Ch. I (2009).

[4] The Proposing Release also included a query soliciting comment on a topic for which no amendments to Commission regulations have yet been proposed. Specifically, the Commission asked for comment on the advisability of expanding ANC requirements for FCMs that are also securities brokers and dealers, by increasing their ANC by the amount of net capital required by SEC Rule 15c3–1(a). No commenter supported this potential revision of FCM/BD capital requirements.

II. Required Minimum Dollar Amount of Adjusted Net Capital for IBs and FCMs

As noted above, Regulation 1.17(a) includes the capital requirements established by registered futures associations when determining the level of adjusted net capital that FCM and IBs must maintain. On July 31, 2006, the NFA, the sole registered futures association, adopted minimum dollar amount requirements of $45,000 for IBs and $500,000 for FCMs. These same amounts therefore were effectively applied in 2006 as adjusted net capital requirements for IBs and FCMs under CFTC Regulation 1.17(a).

The Proposing Release proposed amending Regulation 1.17(a)(1) to revise the specified dollar amounts in CFTC Regulation 1.17(a)(1) from $30,000 to $45,000 for IBs and from $250,000 to $1 million for FCMs. In light of existing NFA requirements, only the proposal to increase the minimum dollar amount requirement for FCMs would result in an actual change in adjusted net capital requirements. The effect of such a change also would be minimized because, as of September 30, 2009, all but two FCMs holding customer funds already maintain adjusted net capital of $1 million or more.

As noted in the Proposing Release, the adjusted net capital requirements adopted in 1996 of $30,000 for IBs and $250,000 for FCMs do not reflect inflation and generally are no longer consistent with the regulatory objective of requiring registrants to maintain a minimum base of liquid capital from which to meet their financial obligations, including their obligations to customers. Comparing certain aspects of the industry then and now, the Commission noted that as of August 31, 1995, there were 255 FCMs, which in total were required to hold approximately $30 billion of segregated and secured amount funds for their customers. By June 30, 2009, the total amount of such funds had escalated to approximately $175 billion, which 132 FCMs were required to hold for their customers. Thus, not only has there been a dramatic increase in the amounts that FCMs must hold for their customers, but those funds have become concentrated among far fewer FCMs. As an additional measure to ensure the sound financial strength of FCMs and IBs, the Commission therefore proposed revising the minimum dollar amount requirements for FCMs and IBs in CFTC Regulation 1.17(a).

The comments received by the Commission generally supported the revised minimum dollar amounts or offered no comment regarding such amounts.[5] RJO, CME and the NFA expressly supported the proposal to increase the minimum dollar amount capital requirement for FCMs and IBs. FIA also supported the increase in the minimum dollar amount for FCM capital requirements, and noted that IBs were already required by the NFA to maintain adjusted net capital of at least $45,000. SIFMA's comment was that it lacked sufficient information, either from the CFTC or derived on its own, on which to base a comment, while the letters from FC Stone and Newedge were silent on the proposed amendments to revise the specified dollar amounts in CFTC Regulation 1.17(a)(1). For the reasons described above, the Commission has determined to adopt the revised minimum dollar amounts as proposed in the Proposing Release.

III. Cleared OTC Positions in FCM Capital Calculations

In 2004, the Commission amended Regulation 1.17(a)(1)(i)(B) to include a ''risk-based'' capital computation based on margin, or performance bond, requirements applicable to positions carried by the FCM for its customers and noncustomers.[6] Specifically, Commission Regulation 1.17(a)(1)(i)(B) was amended to require an FCM to compute its risk-based capital requirement as the sum of: (1) Eight percent of the total risk margin [7] requirement for positions carried by the FCM in customer accounts and (2) four percent of the total risk margin requirement for positions carried by the FCM in noncustomer accounts. The Commission did not revise its regulations with respect to proprietary futures and granted options positions of FCMs, as such positions were already subject to capital deductions under Commission Regulation 1.17(c)(5)(x).[8]

The Proposing Release noted that the risk-based calculations of FCMs include margin requirements for positions in cleared OTC derivative instruments [9] held in customer segregated accounts governed by Section 4d of the Act and Commission regulations. Various DCOs, as part of their increasing efforts to clear OTC derivative instruments, have requested Commission orders authorizing their clearing FCMs to commingle customers' money, securities, and other property margining OTC-cleared derivative positions with the money, securities, and other property deposited by said customers to margin futures and options positions in segregated accounts established pursuant to Section 4d of the Act.[10] Therefore, the risk exposure of clearing OTC derivative instruments extends not only to the FCM, but also to the segregated funds of its OTC, futures and options customers. Where OTC customer funds are commingled with the funds of futures and options customers, the Commission has deemed it necessary to include OTC customer positions in the definition of ''customer

[5] The objections in Yost's letter were directed primarily to the requirement for her to register as an IB.

[6] The term noncustomer refers generally to affiliated persons of the FCM, including certain officers and other employees.

[7] The term ''risk margin'' is defined at Commission Regulation 1.17(b)(8).

[8] In general, an FCM's proprietary futures and granted options positions are subject to a deduction equal to 100 percent of the maintenance margin requirement for positions that are cleared by clearing organizations of which the FCM is a clearing member, and 150 percent of the maintenance margin requirement for positions that are cleared by clearing organizations of which the FCM is not a clearing member.

[9] OTC derivative instrument is defined by Section 408(2) of the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C.A. § 4421. As defined there, the term ''over-the-counter derivative instrument'' includes ''(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option; (B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value; (C) any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act; and (D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.''

[10] Examples of Commission orders under Section 4d of the Act related to OTC clearing by DCOs include an Order dated May 30, 2002 regarding Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by the New York Mercantile Exchange, and also Orders dated March 3, 2006 and September 26, 2008 regarding Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by Chicago Mercantile Exchange, Inc.

accounts'' for purposes of computing an FCM's risk-based capital requirement.

FCMs may also, however, clear OTC derivative instruments for which the margin received from customers is not held in segregated accounts under Section 4d of the Act. The Proposing Release therefore included amendments to enhance and update the provisions of Regulation 1.17 to reflect the increase in clearing by FCMs of OTC derivative instruments. Under the proposed amendments to paragraphs (b) and (c) of Regulation 1.17, the capital treatment for all cleared OTC derivative instrument positions would be similar to the capital treatment applicable to exchange-traded futures and options positions that are carried by the FCM for itself, its customers, or its noncustomers.

Five commenters (RJO, MF Global, CME, FIA and the NFA) supported the Commission's proposal to require FCMs to account for all cleared OTC derivative positions carried for customers and noncustomers in their risk-based capital calculations. They also supported the Commission's proposal to require FCMs to take proprietary capital deductions for their cleared OTC derivative positions similar to the capital deductions required for their proprietary futures and options positions. Yost, FC Stone and Newedge made no comments regarding either proposal, and SIFMA stated that it was unable to offer a definitive view on the appropriateness of the proposed changes and suggested that the Commission refrain from taking action pending further analysis of the issue. SIFMA also expressed concern that the capital requirements for cleared OTC positions be coordinated among regulators to prevent regulatory arbitrage or capital disincentives to clear such transactions.

The adoption of the proposed amendments will neither prohibit nor inhibit the existing interaction among Commission staff and the staff members of other regulators of financial institutions regarding matters of common interest and concern. To the extent that new developments related to clearing suggest that further modification of the Commission's capital regulations may be appropriate, the Commission may proceed, as applicable, by issuing appropriate interpretive guidance to FCMs or by requesting notice and comment on other proposed amendments to its regulations.[11]

The Commission has therefore adopted the amendments to 1.17(b) and (c) as proposed in the Proposing Release. As hereby amended, the terms proprietary account, noncustomer account, and customer account, as defined in Regulations 1.17(b)(3), (b)(4), and (b)(7), are expanded to include ''cleared OTC derivative positions'', which are defined in Regulation 1.17(b)(9) as the over the counter derivative instrument positions of any person[12] in accounts carried on the books of the FCM and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction. Additionally, the term ''cleared OTC customers'' is defined in paragraph (b)(10), and such customers have been included among the FCM customers listed in paragraph (b)(2) of Regulation 1.17. Finally, the Commission has amended Regulation 1.17(c)(5)(x) to require FCMs to take proprietary capital deductions for their cleared OTC derivative positions similar to the capital deductions required for their proprietary futures and options positions.

III. Increasing Risk Margin Percentage for Noncustomer Positions

The Commission also proposed amending Regulation 1.17 so that an FCM's risk-based capital requirement would be ten percent of the total risk margin requirement for positions carried by the FCM in both customer accounts and noncustomer accounts. The proposed increase represented a more significant increase with respect to noncustomer accounts, as the FCM's risk-based capital calculations currently includes a lower required percentage of risk maintenance margin for noncustomer positions (four percent) than the required percentage for the same positions in customer accounts (eight percent).

The Commission received no comments supporting the general increase for all margin-based capital calculations to ten percent. The reasons cited for this lack of support varied among the commenters, but the Commission is mindful that a common underlying theme was that such an indiscriminate, broad-brush approach may be inconsistent with the current financial environment's continuing shifts and alterations. In contrast, the majority of commenters (RJO, MF Global, CME, FIA and the NFA) endorsed the Commission's proposed amendment to increase from four percent to eight percent the required percentage applicable to noncustomer accounts in the risk-based capital calculations of FCMs. In proposing this amendment, the Commission had noted that when the lower risk margin percentage for noncustomer positions had been adopted in 2004, the Commission and the self-regulatory organizations believed that noncustomers' accounts reflected less credit risk to FCMs and the clearing system because they were guaranteed by a parent organization or other affiliated entity. However, the majority of the commenters agreed with the Commission's conclusion in the Proposing Release that recent events had demonstrated that the risk associated with noncustomer accounts may not necessarily be less than the risk associated with customer accounts. The Commission has therefore adopted as proposed the amendment to Regulation 1.17(a) that requires the application of the same percentage with respect to the noncustomer and customer risk margin requirements, thus requiring the FCM's total risk margin requirement to be multiplied by eight percent.

IV. Effective Date

The Commission stated in the Proposing Release that it was contemplating an effective date of sixty days after publication in the **Federal Register** of any of the amendments adopted as final by the Commission. The Commission received comments from both the FIA and NFA on this topic, each of whom urged a longer period of time before the effective date, in order to avoid a potential undue burden as a result of the increased capital requirements being adopted for FCMs. FIA suggested a period of 120 days after publication before the effective date, while NFA stated only that the period should be longer than 60 days. Taking into consideration these comments and the purposes of the capital requirements adopted by this final rulemaking, the amendments adopted herein will be effective as of the date 90 days after their publication in the **Federal Register**.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires

[11] Included in such continued review and analysis is the possible revision of the definition of ''cover'' in 1.17(j) with respect to cleared OTC derivative instruments, for which the Commission requested comment but did not propose any specific amendments in the Proposing Release. Only the CME and NFA commented on this question, and both agreed with the general proposition that the definition should be revised to reflect that proprietary positions in cleared OTC derivatives instruments may be covered by positions that would qualify as cover for proprietary futures and option positions.

[12] The term ''person'' is defined in CFTC Regulation 1.3(u).

that agencies, in amending their rules, consider the impact of those amendments on small businesses. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[13] With respect to IBs, the amendment to the minimum adjusted net capital requirement for an IB merely conforms the Commission's requirement to that of the NFA and, therefore, should have no impact on an IB's financial operations. Thus, the proposal has no significant economic impact on IBs. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. § 605(b), that the action it is taking 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'') 44 U.S.C. 3501 et seq., 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. This rulemaking does not include any increase in information collection requirements. The increase in the percentage requirements applicable to risk margin requirements for customer and noncustomer positions included in risk-based capital calculation constitutes a minor change to line item 22 of the Form 1–FR–FCM, as does the minor change to Line 16 to include OTC-cleared products, but neither change would alter the related reporting burden. The above analysis was included in the proposing release, and as required by the PRA, the Commission submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in the notice of proposed rulemaking [14] to comment on any change in the potential paperwork burden associated with these rule amendments.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the Commodity Futures Modernization Act,[15] 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 proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be 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. The Commission, in its discretion, can choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation 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 Commission has considered the costs and benefits of the proposed amendments and determined that the amendments will result in additional protection of market participants and the public, enhancements to sound risk management practices, enhanced financial integrity of futures markets and other public interest considerations and should have minimal or no effect on the following areas: efficiency, competitiveness or price discovery. After considering these factors, the Commission has determined to adopt the amendments to Regulation 1.17 as discussed herein.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Minimum financial requirements, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR Chapter I is 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 1.17 is amended by:

■ a. Revising paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(iii)(A);

■ b. Revising paragraphs (b)(2), (b)(3), introductory text of (b)(4), introductory text of (b)(7) and introductory text of (b)(8);

■ c. Adding new paragraphs (b)(9) and (b)(10); and

■ d. Revising the introductory text of paragraph (c)(5)(x) to read as follows:

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

(a)(1)(i) * * *

(A) $1,000,000;

(B) The futures commission merchant's risk-based capital requirement, computed as eight percent of the total risk margin requirement for positions carried by the futures commission merchant in customer accounts and noncustomer accounts.

* * * * *

(iii) * * *

(A) $45,000;

* * * * *

(b) * * *

(1) * * *

(2) *Customer* means customer (as defined in § 1.3(k)), option customer (as defined in § 1.3(jj) and in § 32.1(c) of this chapter), cleared over the counter customer (as defined in § 1.17(b)(10)), and includes a foreign futures, foreign options customer (as defined in § 30.1(c) of this chapter).

(3) *Proprietary account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant for the applicant or registrant itself, or for general partners in the applicant or registrant.

(4) *Noncustomer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

* * * * *

(7) *Customer account* means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is either:

* * * * *

(8) *Risk margin* for an account means the level of maintenance margin or performance bond required for the customer or noncustomer positions by the applicable exchanges or clearing organizations, and, where margin or performance bond is required only for accounts at the clearing organization, for purposes of the FCM's risk-based capital calculations applying the same margin or performance bond requirements to

[13] See 47 FR 18618, 18619 (Apr. 30, 1982).

[14] 74 FR 21293 (May 7, 2009).

[15] 7 U.S.C. 19(a).

customer and noncustomer positions in accounts carried by the FCM, subject to the following.

* * * * *

(9) *Cleared over the counter derivative positions* means ''over the counter derivative instrument'' (as defined in 12 U.S.C. 4421) positions of any person in accounts carried on the books of the futures commission merchant and cleared by any organization permitted to clear such instruments under the laws of the relevant jurisdiction.

(10) *Cleared over the counter customer* means any person that is not a proprietary person as defined in § 1.3(y) and for whom the futures commission merchant carries on its books one or more accounts for the over the counter-cleared derivative positions of such person.

(c) * * *

(5) * * *

(x) In the case of open futures contracts or cleared OTC derivative positions and granted (sold) commodity options held in proprietary accounts carried by the applicant or registrant which are not covered by a position held by the applicant or registrant or which are not the result of a ''changer trade'' made in accordance with the rules of a contract market:

* * * * *

Issued in Washington, DC, on December 24, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–31058 Filed 12–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN50

Copayments for Medications

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking action to amend its medical regulations concerning the copayment required for certain medications. Under current regulations, the copayment amount must be increased based on the prescription drug component of the Medical Consumer Price Index, and the maximum annual copayment amount must be increased when the copayment is increased. Under the amendments in this document, we will freeze copayments at the current rate for the next 6 months, and thereafter resume increasing copayments in accordance with any change in the prescription drug component of the Medical Consumer Price Index.

DATES: This rule is effective on December 31, 2009. Comments must be received on or before February 1, 2010.

ADDRESSES: Written comments may be submitted by e-mail through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN50 Copayments for Medications.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Ave., Washington, DC 20420, 202–461–1586. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA ''may'' by regulation increase that copayment and establish a maximum annual copayment (a ''cap''). We interpret section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under current 38 CFR 17.110(b)(1), veterans are ''obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).'' The regulation ties any increase in that copayment amount to the prescription drug component of the Medical Consumer Price Index (CPI–P). The current regulation includes an escalator provision for the copayment amount. The regulation states that the copayment amount for each calendar year after 2002 is established using the CPI–P as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of $7. The copayment amount for the new year will be this result, rounded down to the whole dollar amount.

Current § 17.110(b)(2), also includes a cap on the total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6. The amount of the cap was $840 for the year 2002. The current regulation also requires that ''[i]f the copayment amount increases * * * the cap of $840 shall be increased by $120 for each $1 increase in the copayment amount.'' 38 CFR 17.110(b)(2).

In January 2006, based on this regulation, the copayment amount increased to $8 and the cap on priority categories 2 through 6 increased to $960. This change was announced in 70 FR 72329 (December 2, 2005). These are the current copayment requirements. Based on our analysis of the average rate of growth of the CPI–P, the current regulatory methodology, calculated according to the CPI–P as of September 30, 2009, would automatically escalate the copayment amount from $8 to $9 in January 2010. Current § 17.110(b) does not afford the Secretary any discretion on increasing the copayment amount as calculated by the CPI–P.

Although we continue to believe that the CPI–P is a relevant indicator of the costs of prescriptions nationwide, we need time to determine whether an increase might pose a significant financial hardship for certain veterans and if so, what alternative approach would provide appropriate relief for these veterans. In light of this anticipated review, we are delaying implementation of the $1 increase in the copayment amount (and the corresponding $120 increase in the cap) until the completion of our review. Maintaining the current copayment and cap amounts will give us time to determine whether the current methodology for establishing copayment amounts, consistent with our responsibility under 38 U.S.C. 1722A to require a copayment in order to control health-care costs, is appropriate for all veterans.

Therefore, we are, for the next 6 months (*i.e.,* through June 30, 2010), freezing the copayment amount at the