

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin MD90-24A074, excluding Appendix, Revision 02, dated June 3, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846; Attention: Data and Service Management, Dept. C1-L5A (D800-0024). You can review copies at the Docket Management Facility office, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on January 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 155

RIN 3038-AC16

Distribution of "Risk Disclosure Statement" by Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending Rule 1.55 to provide that non-institutional customers may indicate with a single signature, in addition to the acknowledgment of receipt of various disclosures and the making of certain elections, the consent referenced in Rules 155.3(b)(2) and 155.4(b)(2) and 155.4(b)(2) concerning customer permission for futures commission merchants ("FCMs") and introducing brokers ("IBs") to take the opposite side of an order. The

Commission is also amending Rule 1.55(f) to specify that the acknowledgments required by Rules 155.3(b)(2) and 155.4(b)(2) are not required of institutional customers when they open an account.

DATES: Effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Deputy Director, or Susan A. Elliott, Special Counsel, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5439 or (202) 418-5464, or electronic mail: lpatent@cftc.gov or selliott@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 2004 (69 FR 64873), the commission published a proposed amendment to Rule 1.55 to provide that the single signature by which non-institutional customers acknowledge receipt of basic risk disclosures of futures and option trading, and elect how hedging positions shall be handled in the event of a commodity broker bankruptcy, may also reflect the consent referenced in Rules 155.3(b)(2) and 155.4(b)(2) concerning customer permission for FCMs and IBs to take the opposite side of an order. The Commission adopted a similar rule amendment in November 2000,¹ but withdrew it the following month upon passage of the Commodity Futures Modernization Act of 2000.² Most of the rules adopted and withdrawn in 2000 were re-proposed and re-adopted in 2001,³ but this one was not. Because Commission staff received an inquiry about this issue, the Commission re-proposed the rule amendment and sought comments.

II. Rule Amendments

Three comments were received, from the National Futures Association ("NFA"), the Futures Industry Association ("FIA") and an FCM, Goldman Sachs & Co. All comments supported adoption of the proposed amendment to Rule 1.55(d)(1). In addition, the three commenters were unanimous in their recommendation that the Commission adopt another rule amendment that clarifies, in Rule 1.55(f), that acknowledgment to consent for an FCM or IB to take the opposite side of an order is not required of

institutional customers when they open an account.

The commenters requested that Rule 1.55(f) also be amended to add the consent required under Commission Rules 115.3(b)(2) and 155.4(b)(2) to the prescribed disclosures, consents and elections that institutional customers are not required to acknowledge in opening an account with an FCM. The Commission believes that such a further amendment is consistent with the proposal and with the general structure of Rule 1.55 and that it is appropriate to clarify Rule 1.55(f) as the commenters suggest. The Commission emphasizes the point by cross-referencing Rule 1.55 in Rules 1.55.3 and 155.4.⁴

As the Commission emphasized in its proposal, the single signature acknowledgment format was first adopted in 1993 based on a rationale of customer sophistication. If, with the Commission's proposed rule amendment, non-institutional customers are now deemed sufficiently sophisticated to have their consents acknowledged with a single signature, it is certainly appropriate to assume that more sophisticated institutional customers understand that they are consenting to the trade practices described in Rule 155.3(b)(2) and 155.4(b)(2) without a separate acknowledgment when an account is opened.

Section 4b of the Act⁵ nonetheless requires intermediaries to have the prior consent of the customer before knowingly taking, directly or indirectly, the opposite side of a customer's order. Thus, as one of the commenters pointed out, it is still the responsibility of the entity opening the account to ensure that prospective customers give "the consent required under this rule," even when the customer is an institutional customer.⁶ The amendment of Rule 1.55(f) permits an entity to choose the most appropriate means to accomplish that objective. Finally, Rules 155.3(b)(2) and 155.4(b)(2) are amended to cross-reference Rule 1.55(d)(1).

⁴ The Commission took a similar approach when it amended Rule 1.55 as well as Rule 1.33 concerning electronic transmission of customer account statements. See 66 FR 53517 (Oct. 23, 2001).

⁵ Commodity Exchange Act § 4b(a)(2)(iv) ("unlawful * * * to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person"), 7 U.S.C. 4b(2)(C)(iv) (2003).

⁶ Comment letter of Goldman Sachs & Co., December 9, 2004 at p. 2.

¹ 65 FR 77993 at 78013 (December 13, 2000).

² 65 FR 82272 (December 28, 2000).

³ 66 FR 45221 at 45226 (August 28, 2001)

(proposed rules) and 66 FR 53510 at 53513 (October 23, 2001) (final rules).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small business. The Commission has previously 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.⁷ The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements. FCMs should be excluded from the definition of small entities. With respect to IBs, the CFTC has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule.⁸ In the regard, the amendment to Rule 1.55(d)(1) adopted herein does not require any IB to change its current method of doing business, and in fact eases a regulatory burden by permitting a single signature of the customer to represent an additional consent required by Commission regulations. The amendments to Rules 1.55(f) and 155.3(b)(2) and 155.4(b)(2) clarify existing rules. No comments were received on this issue.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995⁹ imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act (“PRA”). The amendments to Rules 1.55(d) and 155(f) that are the subject of this rulemaking do not alter the paperwork burden associated with the OMB Collection of Information submission, OMB Control Number 3038–0022, Rules Pertaining to Contract Markets and Their Members, where the Commission most recently described the paperwork burden associated with the 2001 rulemaking amendments.¹⁰ Thus, there is no need for an additional submission pursuant to the PRA.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Disclosure, Reporting and recordkeeping requirements.

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4b, 4c(b), and 8a(5) thereof, 7 U.S.C. 6b, 6c(b), and 12a(5) (2000), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (2003), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 4, 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 1.55 is amended by revising paragraphs (d)(1) and (f) to read as follows:

§ 1.55 Distribution of “Risk Disclosure Statement” by futures commission merchants and introducing brokers.

* * * * *

(d) * * *

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgement from the customer, which may consist of a single signature at the end of the futures commission merchant’s or introducing broker’s customer account agreement, or on a separate page, of the disclosure statements, consents and elections specified in this section and § 1.33(g), and in §§ 33.7, § 155.3(b)(2), § 155.4(b)(2), and § 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement, consent or election that the customer has received and understood such

disclosure statement or made such consent or election; and

* * *

(f) A futures commission merchant or, in the case of an introduced account, an introducing broker, may open a commodity futures account for an “institutional customer” as defined in § 1.3(b) without furnishing such institutional customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a), 155.3(b)(2), 155.4(b)(2) and 190.10(c) of this chapter.

* * * * *

PART 155—TRADING STANDARDS

■ 3. The authority citation for part 155 continues to read as follows:

Authority: U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.

■ 4. Section 155.3 is amended by revising paragraph (b)(2) as follows:

§ 155.3 Trading standards for futures commission merchants.

* * * * *

(b) * * *

(2)(i) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the futures commission merchant or any of its affiliated persons by reason of their relationship to such other person, except with such other person’s prior consent and in conformity with contract market rules approved by or certified to the Commission.

(ii) In the case of a customer who does not qualify as an “institutional customer” as defined in § 1.3(g) of this chapter, a futures commission merchant must obtain the customer’s prior consent through a signed acknowledgment, which may be accomplished in accordance with § 1.55(d) of this chapter.

* * * * *

■ 5. Section 155.4 is amended by revising paragraph (b)(2) as follows:

§ 155.4 Trading standards for introducing brokers.

* * * * *

(b) * * *

(2)(i) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other persons’s prior consent and in conformity with contract market rules approved by or certified to the Commission.

⁷ 47 FR 18618–18621 (April 30, 1982).

⁸ Id.

⁹ Pub. L. 104–13 (May 13, 1995).

¹⁰ See 66 FR 45221, 45228 (August 28, 2001).

(ii) In the case of a customer who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, an introducing broker must obtain the customer's prior consent through a signed acknowledgment, which may be accomplished in accordance with § 1.55(d) of this chapter.

* * * * *

Dated: January 27, 2005.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-1906 Filed 2-3-05; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310 and 1313

[Docket No. DEA-137N]

RIN 1117-AA31

Chemical Mixtures; Temporary Waiver of Import/Export Requirements

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Temporary waiver of import/export requirements.

SUMMARY: On December 15, 2004, the Drug Enforcement Administration (DEA) published a final rule that implemented regulations pertaining to chemical mixtures that contain any of 27 listed chemicals regulated under the Controlled Substances Act (21 U.S.C. 801 *et seq.*). That rulemaking became effective on January 14, 2005.

Following publication of the final rule, certain segments of the chemical industry expressed concerns to DEA regarding difficulty in fully complying with DEA import/export notification requirements as specified in 21 CFR part 1313 by this deadline. Therefore, in order to avoid interruption of legitimate import/export distributions, DEA is providing a waiver of the import/export reporting requirements as specified in 21 CFR part 1313 until May 14, 2005. As such, regulated persons will temporarily not be required to submit advance notification for import, export and transshipment transactions for chemical mixtures regulated solely due to the presence of these 27 listed chemicals until May 14, 2005. This temporary waiver applies only to import, export and transshipment notification requirements; all other chemical control requirements set forth in the final rulemaking published on

December 15, 2004, shall remain in full force and effect.

DATES: Effective February 4, 2005. The new deadline for providing import, export and transshipment notification for regulated chemical mixtures containing these 27 listed chemicals will be May 14, 2005.

FOR FURTHER INFORMATION CONTACT:

Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7183

SUPPLEMENTARY INFORMATION: On

December 15, 2004, the Drug Enforcement Administration (DEA) published a final rule (69 FR 74957) that implemented regulations pertaining to chemical mixtures that contain any of 27 listed chemicals regulated under the Controlled Substances Act (CSA). That rulemaking became effective on January 14, 2005.

Following publication of the final rule concerns were raised by various segments of the chemical industry regarding their difficulty in fully complying with DEA import/export notification requirements as specified in 21 CFR part 1313 by this deadline. DEA received correspondence from two national chemical associations and from one major chemical producer. Additionally, DEA received verbal communication from industry that expressed concerns regarding the large number of potentially affected mixtures and the difficulty industry was having in meeting deadlines for submitting import/export notification. After carefully considering the concerns expressed by industry, DEA has decided to postpone the implementation of the import/export notification requirements as specified in 21 CFR part 1313 until May 14, 2005. This temporary waiver shall apply only to chemical mixtures which became regulated under the December 15, 2004 final rule (69 FR 74957).

While the submission of import, export and transshipment information to DEA is an important provision in countering the potential diversion of these materials, this temporary waiver is being provided to allow industry ample time to ensure their full compliance with CSA import/export regulatory requirements as specified in 21 CFR part 1313. As such, DEA will be temporarily waiving the requirement for regulated persons to submit advance notification for import, export and transshipment transactions for chemical mixtures which are regulated solely due to the presence of the 27 listed chemicals

which were the subject of the December 15, 2004 final rule. This temporary waiver applies only to import, export and transshipment notification requirements. All other chemical control requirements set forth in the final rulemaking published on December 15, 2004 (69 FR 74957) shall remain in full force and effect.

The new deadline for providing import, export and transshipment notification for regulated chemical mixtures containing these 27 listed chemicals will be May 14, 2005.

Provisions of December 15, 2004 Final Rule (69 FR 74957) Which Do Not Change

For any person distributing, importing, or exporting any amount of a regulated mixture containing a List I chemical, the CSA requires that person to obtain a DEA registration. DEA recognizes that it is not possible for persons who are subject to the registration requirement to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, in order to allow continued legitimate commerce in regulated mixtures, the December 15, 2004 final rule established a temporary exemption from the registration requirement (in 21 CFR 1310.09) for persons desiring to engage in activities with regulated mixtures that are subject to registration requirements, provided that DEA receives a properly completed application for registration or an application for exemption (pursuant to 21 CFR 1310.13) for their chemical mixture(s) on or before February 14, 2005. The temporary exemption from registration for such persons will remain in effect until DEA takes final action on their application(s).

Any person whose application for exemption is subsequently rejected by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for these persons, if DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The deadline for submission of an application for registration, or an application for exemption, remains February 14, 2005 in order to obtain the temporary exemption from registration.

None of the temporary exemptions discussed in this rulemaking suspend applicable federal criminal laws relating to the regulated mixtures, nor does it supersede state or local laws or regulations. All handlers of a regulated