dms.dot.gov. The docket number is FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

Issued in Kansas City, Missouri, on January 20, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 145 and 147

RIN 3038–AC05

Alternative Market Risk and Credit Risk Capital Charges for Futures Commission Merchants and Specified Foreign Currency Forward and Inventory Capital Charges

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Commission regulations that impose minimum financial and related reporting requirements upon each person registered as a futures commission merchant (''FCM''). The amended regulations address the capital computations of FCMs that are registered with the Securities and Exchange Commission (''SEC'') as securities brokers or dealers (''FCM/BDs''), and, who, pursuant to SEC's regulations governing consolidated supervised entities (''CSEs''), have received SEC approval to use internal mathematical models to determine the deductions from their capital for market risk and credit risk associated with their proprietary trading assets. Subject to the reporting and other requirements specified in the amended regulations, these FCM/BDs may elect to compute their adjusted net capital using their SEC-approved alternative market risk and credit risk capital deductions in lieu of CFTC requirements. The Commission is also adopting other rule amendments that address confidential treatment for the reports and statements that would be required to be filed under the amended regulations, and also address the confidential treatment of certain other information that all FCMs must file with both the Commission and the SEC.

Finally, the Commission is also adopting amendments that will affect the minimum financial requirements of FCMs and introducing brokers (''IBs'') by reducing the capital deductions for their uncovered inventory or forward contracts in specified foreign currencies. This reduction is consistent with guidance currently provided by the Commission to FCMs and IBs.

DATES: Effective February 2, 2006.

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2005, the Commission published a release in the **Federal Register** to provide public notice of, and request comment on, proposed amendments to its capital rules.[1] The Commission encourages interested persons to read the detailed analysis of the proposing amendments in the October 11 release, and has included citations to pertinent pages of the release as part of the discussion in this final rulemaking release.[2] In response to the proposals issued by the Commission, four commenters sent letters that were generally supportive of the proposed regulations.[3] The commenters included the National Futures Association (''NFA''), a registered futures association; Goldman, Sachs and Co., an FCM/BD; and two industry trade groups, the Futures Industry Association (''FIA'') and the Securities Industry Association (''SIA'').[4] The comments received from each of these organizations are addressed elsewhere in this release, in connection with the specific Commission regulations discussed in these letters.

[1] The RIN Number for the release published in the **Federal Register** on October 11, 2005 was identified as 3038–AC19. *See* 70 FR 58985 (October 11, 2005). The correct RIN Number, 3038–AC05, has been used in this release.

[2] The October 11 Release may be accessed electronically on the Commission's Web site, at *http://www.cftc.gov/*.

[3] The original deadline for the receipt for comments was extended from November 10th to November 30, 2005. *See* 70 FR 70749 (November 23, 2005).

[4] The comment letters are available for inspection and copying at the Commission's Washington office in its public reading room, Room 4072, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The telephone number for the public reading room is (202) 418–5025. The comment letters also are available on the Commission's public Web site, at *http://www.cftc.gov/foia/comment05/foi05_ _006_1.htm*.

II. Amendments Allowing Alternative Capital Computation for Proprietary Trading Assets of Qualifying FCM/BDs That Are Part of CSEs

A. Request to Commission for Amendment to Rule 1.17

As noted in the October 11 release, Commission Rule 1.17(a) requires each FCM to maintain a minimum amount of ''adjusted net capital'', which is defined as the FCM's net capital less the deductions, or ''haircuts'', that are specified in Rule 1.17(c)(5) and (8).[5] For purposes of the required haircuts on the FCM's proprietary positions in securities, Rule 1.17(c)(5) incorporates by reference percentage deductions that are set forth in SEC regulations 17 CFR 240.15c3–1(c)(2)(vi) and (vii). Also, Commission Rule 1.17(c)(2)(ii), in a manner similar to the SEC's requirements for BDs under 17 CFR 240.15c3–1(c)(2)(iv), requires unsecured receivables arising from an FCM's transactions in over-the-counter (''OTC'') derivatives to be excluded from the FCM's current assets for purposes of determining the firm's regulatory capital. The deductions required for other proprietary assets of the FCM are set forth in other parts of Commission Rule 1.17(c).

The October 11 release also noted that the Commission and SEC have, to the extent practical, harmonized their respective capital rules in order to avoid creating inconsistent regulatory obligations for firms that are dually-registered FCMs and securities brokers or dealers (''BDs''). This harmonization of capital rules extends to the computation of net capital and adjusted net capital, and to the qualifications that subordinated debt must meet in order to qualify as regulatory capital. Furthermore, if an FCM is also registered as a BD, it may file an SEC Form X–17a–5, ''Financial and Operational Combined Uniform Single Report'' (''FOCUS Report'') to satisfy its requirement to file with the Commission a Form 1–FR–FCM financial report. In particular, Commission Rule 1.10(h) treats Part II and Part IIA of the FOCUS report as acceptable substitutes for the Form 1–FR–FCM, provided that the FOCUS report includes all information required to be furnished on and submitted with Form 1–FR–FCM. Also, for those portions of the Form 1–FR–FCM that the Commission has designated as either publicly available or as exempt from mandatory public

[5] The rules of the Commission cited in this release may be found at 17 CFR Ch. I (2005). SEC rules cited in this release may be found at 17 CFR Ch. II (2005).

disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act, the Commission extends the same treatment to those portions of the FOCUS Report that are equivalent to the Form 1–FR–FCM. The uniform capital computations, and related single-form filing requirements, harmonize the regulatory requirements imposed upon dual registrants while providing the Commission and SEC with the necessary financial information to assess whether firms maintain a minimum level of regulatory capital while engaging in futures and securities businesses.

On June 21, 2004, the SEC adopted final rule amendments to its capital rules to provide an alternative net capital computation for broker-dealers that voluntarily elect to be supervised on a consolidated basis (the ''Alternative Capital Computation'').[6] As amended, SEC Rule 15c3–1(a)(7), (17 CFR 240.15c3–1(a)(7)), provides that the SEC may approve a BD's application, if submitted in accordance with the provisions of a new Appendix E (17 CFR 240.15c3–1e), to use the Alternative Capital Computation when calculating its net capital.[7] To the extent approved by the SEC, the BD using the Alternative Capital Computation would compute a total deduction for market risk for positions in the proprietary accounts of the BD, in accordance with the specific standards set forth in Appendix E.[8] The BD would calculate its regulatory capital using this deduction in lieu of the haircuts that SEC Rules 15c3–1(c)(2)(vi) and (c)(2)(vii) require for the BD's positions in securities. The SEC may also approve alternative market risk deductions for the BD's proprietary positions in forward contracts and commodity futures contracts. Also, Appendix E provides that where the alternative market risk deduction has been used to compute the deduction on the underlying instrument for OTC derivatives of the BD, the BD would compute a deduction for credit risk, using the standards set forth in Appendix E, and it would use this deduction in lieu of the capital charges that SEC Rule 15c3–1(c)(2)(iv) requires for the BD's credit exposures arising from OTC transactions in derivatives.[9]

As the SEC noted when first proposing rules for the Alternate Capital Computation, the required market risk and credit risk deductions are expected to be substantially smaller in amount than the standardized deductions.[10] As the SEC rule amendments were being discussed and proposed, Commission staff identified that continued harmonization of the capital rules of the two agencies would require amendment of Rule 1.17, and communicated this to various market participants potentially affected by the difference between the SEC's proposed rules and CFTC Rule 1.17. After the SEC adopted rule amendments allowing BDs to apply for approval to use the Alternative Capital Computation, several FCM/BDs, along with representatives of the SIA and the FIA, contacted staff of the Commission's Division of Clearing and Intermediary Oversight (the ''Division'') to express their support for Commission rulemaking that would allow dually-registered FCM/BDs to use their SEC-approved alternative market risk and credit risk deductions when computing their adjusted net capital under Rule 1.17.[11] In addition, two dually-registered FCM/BDs that had received SEC approval for the Alternative Capital Computation requested no-action positions from Division staff, without which the Alternative Capital Computation could not be used for purposes of their capital computation and reporting requirements to the Commission. The Division granted such relief on an interim basis, to be superseded by such final rules as the Commission might eventually adopt in connection with the Alternative Capital Computation.[12]

B. Amendments to Rule 1.17 for FCMs Electing To Use SEC-Approved Capital Deductions.

After consideration of the amendments as proposed in the October 11 release, and in view of the comments that the Commission received in response to the proposed amendments, which generally supported their adoption, the Commission is amending Rule 1.17 to provide that an FCM/BD may elect, if the firm satisfies all of the requirements of a new paragraph (c)(6), to compute its adjusted net capital using alternative capital deductions that the SEC has approved by written order under 17 CFR 240.15c3–1(a)(7). The amended regulation permits an FCM, to the extent that the SEC has approved alternative capital deductions for the FCM/BD's unsecured receivables from OTC transactions in derivatives, or for its proprietary positions in securities, forward contracts, or futures contracts, to use these same alternative capital deductions when computing its adjusted net capital under the Commission's regulations. These alternative deductions would be used in lieu of the amounts that otherwise would be required by the following regulations: Rule 1.17(c)(2)(ii) for unsecured receivables from OTC derivatives transactions; Rule 1.17(c)(5)(ii) for proprietary positions in forward contracts; Rule 1.17(c)(5)(v) for proprietary positions in securities; and Rule 1.17(c)(5)(x) for proprietary positions in futures contracts. The amendments do not alter or affect the haircuts that Rule 1.17(c)(5)(v) and Rule 1.32(b) require for securities that are held in segregation under section 4d of the Commodity Exchange Act, because the alternative deductions apply solely to an FCM/BD's proprietary positions.[13]

The terms of the amended Rule 1.17(c)(6) has been adopted as originally proposed by the Commission in the October 11 release. The effective date for the amended regulations is the date of the publication of this release in the **Federal Register**, at which time all FCMs that determine to elect to use the Alternative Capital Computation must comply with the requirements of the amended regulations. If a firm has already elected to use the Alternative Capital Computation under earlier no-action positions issued by the Division

[6] The SEC's new rule was published at 69 FR 34428 (June 21, 2004). The effective date of the rule was August 20, 2004.

[7] A detailed description of the application process was included in the October 11 release. *See* 70 FR at 58989.

[8] The requirements for the computation of the deduction for market risk were summarized in the October 11 Release. *See* 70 FR at 58987–58988.

[9] The requirements for the computation of the deduction for credit risk were summarized in the October 11 Release. *See* 70 FR at 58988–58989.

[10] The SEC's proposed rules for the Alternative Capital Computation were published in the **Federal Register** in 2003. 68 FR 62872 (November 6, 2003).

[11] The Securities Industry Association and the Futures Industry Association are industry trade groups whose members include broker-dealers, futures commission merchants, and representatives of other segments of the securities and futures industries.

[12] Two additional FCMs have received SEC approval to use the Alternative Capital Computation, and have received similar no-action positions from the Division pending the rulemaking process.

[13] FCM/BDs using the Alternative Capital Computation would continue to be required, under Rule 1.17(c)(5)(v), to deduct the securities haircuts specified in SEC Rules 15c3–1(c)(2)(vi) and (vii) from the value of securities that are held in segregated accounts under Section 4d and the Commission's implementing regulations and which were not deposited by customers. Such FCM/BDs would also continue to be required, when computing the amount of funds required to be in segregated accounts, to use the standard SEC securities haircut expressly referenced in Rule 1.32(b), *i.e.*, SEC Rule 15c3–1(c)(2)(vi). Rule 1.32 applies this haircut for purposes of the permissible offset of any net deficit in a customer's account against the current market value of readily marketable securities, less the SEC standard haircut, that are held for the same customer's account.

of Clearing and Intermediary Oversight, it may not continue to use the Alternative Capital Computation unless it maintains compliance with the reporting and other continuing obligations required by the amended regulations, as the earlier no-action positions are withdrawn as of the effective date of the amended regulations.

In formulating the amendments to its rules, the Commission has taken into consideration that the Alternative Capital Computation, unlike the current standardized charges, is determined by an ongoing oversight process that results in individualized capital charges that require considerable firm-specific information.[14] Pursuant to Commission Rule 1.17(a)(3), FCMs must be able to demonstrate to the satisfaction of the Commission their continuous compliance with their minimum financial requirements under the Commodity Exchange Act and implementing regulations of the Commission. The Commission also took into consideration that SEC Rule 15c3–1(a)(7) requires the BD to maintain at all times ''tentative net capital'' [15] of not less than $1 billion and net capital of not less than $500 million, and to provide same day notice if the BD's tentative net capital is less than $5 billion, or some other ''early warning'' amount specified by the SEC.[16] The Alternative Capital Computation is also limited to those firms who: (i) Have in place an internal risk management system that complies with 17 CFR 240.15c3–4 (previously applicable only to OTC derivatives dealers registered with the SEC), which addresses not only their market risk and credit risk, but also liquidity, legal and operational risks at the firm; and (ii) whose ultimate holding company and affiliates have consented to SEC consolidated supervision, *i.e.*, they elect CSE status.[17] For purposes of such consolidated supervision, the BD's ultimate holding company and affiliated entities must consent to direct examination by the SEC, unless the holding company is subject to supervision by the Federal Reserve or foreign banking regulators because it is a U.S. holding company or foreign bank that has elected financial holding company status under the Bank Holding Company Act of 1956.[18] The SEC has added a new Appendix G to Rule 15c3–1 (17 CFR 240.15c3–1g), which establishes the minimum reporting, recordkeeping, and notification requirements for all holding companies of BDs that apply for, or have received approval for the use of, the Alternative Capital Computation.[19]

1. Notice of Election or of Changes to Election

Amended paragraph (c)(6)(ii) of Rule 1.17 specifies that an FCM's election to use the Alternative Capital Computation shall not be effective unless and until it has filed with the Commission a notice, addressed to the Director of the Division of Clearing and Intermediary Oversight, that is to include: (i) A copy of the SEC order approving its alternative market risk and credit risk capital charges; and (ii) a statement that identifies the amount of tentative net capital below which the FCM is required to provide notice to the SEC, and that also includes portions of the information made available to the SEC for purposes of its request for approval to use the Alternative Capital Computation, as follows:

(1) A list of the categories of positions that the firm holds in its proprietary accounts, and, for each such category, a description of the methods that the firm will use to calculate its deductions for market risk and credit risk, and, if calculated separately, its deductions for specific risk;

(2) A description of the VaR models to be used for its market risk and credit risk deductions, and an overview of the integration of the models into the internal risk management control system of the firm;

(3) A description of how the firm will calculate current exposure and maximum potential exposure for its deductions for credit risk;

(4) A description of how the firm will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and

(5) A description of the estimated effect of the alternative market risk and credit risk deductions on the amounts reported by the firm as net capital and adjusted net capital.

Amended Rule 1.17(c)(6)(ii) also requires the FCM to supplement its statement, upon the request of the Commission made at any time, with any other explanatory information for the firm's computation of its alternative market risk and credit risk deductions as the Commission may require at its discretion. The requests for explanatory information under amended Rule 1.17(c)(6)(ii) may be made by the Director of the Division of Clearing and Intermediary Oversight, to whom, as set forth in Commission Rule 140.91(a)(6), the Commission has delegated authority for the functions reserved for the Commission under Rule 1.17.

Amended Rule 1.17(c)(6)(ii) further provides that the FCM must file, as a supplemental notice with the Director of the Division of Clearing and Intermediary Oversight, a notice advising that the SEC has imposed additional or revised conditions after the date of the SEC order filed with the FCM's original notice to the Director of the Division of Clearing and Intermediary Oversight. The FCM must also file as a supplemental notice a copy of any approval by the SEC of amendments that the firm has requested for its application to use the Alternative Capital Computation.

An FCM is also permitted under the amended rule to voluntarily change its election, by filing with the Director of the Division of Clearing and Intermediary Oversight a written notice that specifies a future date as of which its market risk and credit risk capital charges will no longer be determined by the Alternative Capital Computation, but will instead be computed as otherwise required under the Commission's rules.

2. Conditions Under Which FCM May No Longer Elect Alternative Capital Charges

Amended paragraph (c)(6)(iii) of Rule 1.17 specifies that an FCM may no longer elect to use its SEC-approved alternative market risk and credit risk

[14] See 70 FR 58989–90.

[15] The BD's ''tentative net capital'' consists of its net capital before the approved deductions for market risk and credit risk under the SEC's amended rule, and also increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments that would otherwise be deducted by virtue of paragraph (c)(2)(iv) of Rule 15c3–1.

[16] Upon written application by a BD, the SEC may lower the threshold for the early warning requirement, either unconditionally or subject to specified terms and conditions. The SEC will consider various factors to determine whether the early warning requirement should be modified. 69 FR at 34461.

[17] In adopting the Alternative Capital Computation, the SEC has also responded to concerns expressed by several U.S. BDs that are required, pursuant to a directive issued by the European Union (''EU'') at the end of 2002 (the ''Financial Groups Directive''), to demonstrate holding company supervision that is equivalent to EU consolidated supervision. See ''Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002.'' Absent a demonstration of comparable group-wide supervision, the EU may restrict or otherwise place conditions upon the operations of the European-based affiliates of these BDs. The consolidated supervision requirements in the SEC's amended rules provide a regulatory structure that is intended to satisfy the requirements of the Financial Groups Directive.

[18] The CSE rule specifically exempts FCM affiliates of BDs, and other functionally regulated BD affiliates, from the SEC's direct examination.

[19] To minimize duplicative regulation, Appendix G imposes fewer requirements on holding companies that have elected financial holding company status.

deductions, and must instead compute the charges otherwise required under Rules 1.17(c)(5) or 1.17(c)(2), upon the occurrence of any of the following: (i) The SEC revokes its approval of the firm's market risk and credit risk deductions; (ii) the firm fails to come into compliance with its filing requirements under the proposed rule, after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the firm is not in compliance with its filing requirements, and must cease using the Alternative Capital Computation if it has not come into compliance by a date specified in the notice; or (iii) the Commission by written order finds that permitting the firm to continue to use such alternative market risk and credit risk deductions is no longer appropriate for the protection of customers of the FCM or the financial integrity of the futures or options markets. In addition, since the amended rule permits only dual registrants to use the Alternative Capital Computation, an FCM's election to use the Alternative Capital Computation automatically terminates immediately, without further action by the Commission, if the firm ceases to be dually-registered as a BD.

3. Additional Filing Requirements

In addition to the notice and supplemental notices described above, amended paragraph (c)(6)(iv) also provides that any firm that elects to use the Alternative Capital Computation must file with the Commission copies of all additional monthly, quarterly, and annual reporting items that BDs who are approved to use the Alternative Capital Computation must file with SEC, as discussed above. The FCM must also file with the Commission a copy of the notice that it is required to file with the SEC whenever its tentative net capital falls below the amount required by the SEC, or of the notice filed with the SEC or the firm's designated examining authority in regard to planned withdrawals of excess net capital.

Specifically, the amended rule requires that the following be filed with the Commission, at the same time that originals are filed with the SEC: (i) All information that the firm files on a monthly basis with its designated examining authority or the SEC in satisfaction of SEC Rule 17a–5(a)(5)(i), whether by way of schedules to the firm's FOCUS reports or by other filings; (ii) the quarterly reports required by SEC Rule 17a–5(a)(5)(ii); (iii) the supplemental annual filings as required by SEC Rule 17a–5(k), which consist of a report on management controls that is prepared by a registered public accounting firm and is filed by the firm concurrently with its annual audit report, and also a related statement, filed prior to the commencement of the accountant's review but no later than December 10 of each year, that includes a description of the procedures agreed to by the firm and the accountant and a notice describing changes to the agreed-upon procedures, if any, or stating that there are no changes; and (iv) any notification to the SEC or the firm's designated examining authority of planned withdrawals of excess net capital, and any notification that the firm is required to file with the SEC when its tentative net capital is below an amount specified by the SEC.

4. Conforming Amendments To permit Filing of Part II CSE FOCUS Report

Those BDs that use the Alternative Capital Computation also file a revised Part II to the FOCUS report, designated ''Part II CSE''. This revised FOCUS report includes financial information that BDs previously reported in Part II of the FOCUS Report, and also includes new schedules that provide much of the additional information that BDs who use the Alternative Capital Computation must report on a monthly basis. In order to facilitate the firm's reporting requirements and reduce administrative burden, the Commission has amended Rule 1.10(h) to specify that a dual registrant may file, in lieu of its Form 1–FR–FCM report, a copy of the FOCUS Report, Part II CSE that the firm files with the SEC.[20]

All of the commenters supported the Commission's proposed amendments to Regulations 1.10(h) and 1.17(c)(6), which would have the effect of harmonizing capital calculations under the CFTC's and SEC's regulations. Two commenters, FIA and the SIA, recommended that the Commission should further take into consideration whether reporting and filing requirements under the Commission's ''risk assessment'' regulations, Rules 1.14 and 1.15, might be revised to allow five FCMs to substitute alternative means of compliance, either through making available for inspection certain holding company information provided to the SEC under its CSE regulations, or through information-sharing arrangements between the SEC and CFTC. Both FIA and SIA offered to meet with Commission staff to discuss these or other alternatives for the five firms, in light of the consolidated supervision of their holding companies by the SEC. While not opposed to such discussions, the commenters have raised issues that exceed the scope of the proposed regulations, and may be addressed separately from the amended rules in this release.

[20] Several other Commission rules include references to Parts II and Part IIA of the FOCUS report, in order to facilitate the filing of the FOCUS report in lieu of the Form 1–FR–FCM. The Commission has also amended these rules to add a reference to Part II CSE. In particular, conforming amendments have been made to the following rules: Rule 1.10(d)(4)(ii), which sets forth the requirements for ''authorized signers'' of the FOCUS report; Rule 1.10(f)(1), which sets forth the procedures required to obtain extensions of time for filing the FOCUS report; Rule 1.16(c)(5), which requires the accountant's supplemental report on material inadequacies to be filed as of the same date as the Form 1–FR or FOCUS report; Rules 1.18(a) and (b)(2), which permit FOCUS filings to satisfy certain recordkeeping requirements of the FCM; and Rule 1.52(a), which permits the designated self-regulatory organization of a dual registrant to accept a FOCUS report in lieu of a Form 1–FR–FCM.

III. Treatment of Information Received From FCMs Electing the Alternative Capital Computation, and of Other Information Filed by FCMs and IBs

The release published October 11 also announced proposed amendments to Commission regulations in parts 145 and 147, which respectively implement the provisions of FOIA and the Sunshine Act. Specifically, the Commission proposed to amend Rules 145 and 147 to include all Forms 1–FR and FOCUS reports (except for certain information as discussed below), plus all reports and statements required to be filed pursuant to Rule 1.17(c)(6), as representative examples of information that would be exempt from mandatory public disclosure under exemptions that are available under both FOIA and the Sunshine Act (Exemptions 4 and 8 under FOIA, and the same exemptions under the Sunshine Act).[21] The proposed amendments to Commission Rule 1.10(g), however, specified that the Commission would continue to make available upon public request the following information:

(i) For each FCM or IB, the amount of its adjusted net capital, its minimum capital requirement under Rule 1.17, and its adjusted net capital in excess of its minimum capital requirement;

(ii) The statement of financial condition in the certified annual financial report, and footnote disclosures thereof;[22] and

(iii) The statements related to the segregation of customer funds under section 4d of the Commodity Exchange

[21] A summary of FOIA and the Sunshine Act, including exemptions 4 and 8, and their application to the Form 1–FR and FOCUS reports, was included in the October 11 release. *See* 70 FR 58991—58992.

[22] A BD's certified annual statement of financial condition is also publicly available under SEC Rule 17a–5(e)(3).

Act and to customer funds that are held as secured amounts under Rule 30.7.[23]

FIA strongly endorsed the Commission's proposal to amend Rules 1.10(g), 145.5(d) and (h), and 147.3(b) to provide that certain financial information filed with the Commission is exempt from disclosure pursuant to FOIA Exemption 8. The Commission received no comments opposing adoption of these proposed amendments. After considering the proposed amendments and the responses by commenters, the Commission has decided to amend Rules 1.10(g), 145.5(d) and (h), and 147.3(b) as proposed.

IV. Amendments To Reduce Capital Charges for Foreign Currency Forwards and Inventory in Specified Currencies

The Commission has also amended Commission Rule 1.17(c)(5)(ii), pursuant to which an FCM or IB, in computing its adjusted net capital, must deduct from its net capital specified percentages of the market value of its inventory, fixed price commitments and forward contracts. In general, the required deduction from market value for a forward contract that is not ''covered'', as defined in Rule 1.17(j), is twenty percent. The Commission has amended the rule by adding a provision that would specify a capital charge of six percent for uncovered inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs. Uncovered forward contracts and cash deposits in any other non-U.S. currency would remain subject to the capital charge of twenty percent currently set forth in the rule. As noted by the Commission when it proposed amending Rule 1.17 to reduce the charge for specified currencies to 6 percent, the lower charge is consistent with the reduced currency risk of these foreign currencies, given their stability relative to the U.S. dollar. As discussed in the October 11 release, the reduced charge is also consistent with similar capital charges that BDs are required to deduct from their net capital under SEC regulations.[24] Furthermore, the amendment provides greater clarity and transparency to the Commission's capital rule, as currently the lower capital charge for the specified major non-U.S. currencies is set forth only in the Commission's Form 1–FR Instructions Manual.[25]

FIA and the NFA generally supported this amendment, and no commenters expressed any objections to the amendment. In its comment letter, NFA advocated that the Commission undertake additional revision of Commission Regulation 1.17, to address the Commission's required deductions from capital in relation to the activities of retail foreign exchange (FOREX) dealers that are registered as FCMs. As noted in the NFA's letter, Division staff is already in the process of reviewing several of the issues listed in the letter, as part of separate guidance and/or future rulemaking related to FOREX.

V. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act (''APA'') provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, unless the agency is permitted to implement an earlier effective date under one of the exceptions recognized by the APA.[26] The exceptions set forth in the APA are as follows: (1) A substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.[27]

The amendments being made to Rule 1.17 ''grant or recognize an exemption or relieve a restriction'' that harmonizes unnecessarily conflicting capital deductions that would otherwise be required for FCMs that have received SEC approval to use the Alternative Capital Computation. The Commission is also adopting other amendments that permit FCMs to file their Part II CSE FOCUS reports in lieu of their required Form 1–FR, which also contributes to the exemption or relief made available by amended Rule 1.17(c)(6).[28] Accordingly, the Commission has determined to make these amendments effective immediately upon publication in the **Federal Register**.

Furthermore, the Commission has previously found ''good cause'' for making FOIA and Sunshine Act amendments effective immediately with the adoption of new financial filing requirements for FCMs, in particular where the new filings are required prior to the expiration of 30 days from the publication in the rule.[29] In this case, the no-action relief granted to firms prior to the adoption of the amendments of Rule 1.17(c)(6) will be superceded immediately upon the effective date of the amended rules in the attached release, and the firms will be required to comply with the reporting requirements mandated by the amended rules. In addition, other firms may receive SEC approval to use alternative capital charges prior to the expiration of 30 days from the publication of this rule, and would therefore seek to file with the Commission such notices and statements as are required by the amended rule. Accordingly, the Commission has determined to make the amendments to Rules 145 and 147 adopted in this final rulemaking effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.,* requires that agencies, when amending their rules, consider the impact of those amendments on small businesses. The Commission invited the public to comment on the Chairman's certification that these rules would not have a significant economic impact on a substantial number of small entities.[30] The Commission received no comments on the certification.

C. Paperwork Reduction Act

This rulemaking includes information collection requirements. As required by the Paperwork Reduction Act of 1995 (''PRA''),[31] the Commission submitted a copy of the proposed rule amendments to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in the proposed rules to comment on any potential paperwork burden associated with regulation.[32]

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[23] Rule 1.10(g) currently provides, and will continue to provide, that all information on Forms 1–FR and FOCUS reports that is nonpublic will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Rule 1.10(g) also specifies the rule does not limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

[24] *See* 70 FR 58993.

[25] An electronic copy of the ''Instructions for Form 1–FR–FCM'' is available to the public on the Commission's Web site, at *http://www.cftc.gov/files/tm/tminstructionsmanualfinalseptember2004.pdf.*

[26] 5 U.S.C. 553(b) and (d).

[27] 5 U.S.C. 553 (d).

[28] As noted earlier, the amendments related to filing the Part II CSE version of the FOCUS report affect Rules 1.10, 1.18, and 1.52.

[29] The Commission's prior determination that there was ''good cause'' for making amendments to parts 145 and 147 effective immediately appears in 44 FR 13435 (March 27, 1979) (Adoption of Changes to Form 1–FR and Freedom of Information and Sunshine Act Rules).

[30] 70 FR at 58994.

[31] 44 U.S.C. 3507(d).

[32] 70 FR at 58994.

D. Cost-Benefit Analysis

Section 15(a) 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 under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule 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 amended Rule 1.17(c)(6) allows FCM/BDs that meet the requirements of the rule to compute their adjusted net capital using the same alternative capital deductions that have been approved by the SEC. The amended Rule 1.17(c)(5)(ii) reduces a capital charge to which FCMs and IBs are subject under the Commission's current regulations. The Commission is considering the costs and benefits of these amended rules in light of the specific provisions of section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The amendments to Rule 1.17(c)(6) provides the benefit of increasing the accuracy of the reflection of risks in the net capital charges for FCM/BDs approved for using the alternative net capital charges based on internal risk measurement tools, while bettering the Commission's ability to perform appropriate financial and risk oversight. Furthermore, the Commission considers that no FCM/BD will elect to use the Alternative Capital Computation unless the costs of compliance would be outweighed by the benefits to such FCM/BD from using the alternative net capital charges.

2. *Efficiency and competition.* The Commission anticipates that the amendments to Rule 1.17(c)(6) will benefit efficiency by eliminating a difference in the computation of net capital charges between the SEC and the CFTC for dually-registered FCM/BDs that have been approved by the SEC to use such charges. The amendments to Rule 1.17(c)(5)(ii) reduce the capital charges applicable to FCMs and IBs, which may therefore result in the more efficient utilization of their capital.

3. *Financial integrity of futures markets and price discovery.* The notification and reporting requirements in amended Rule 1.17(c)(6) contribute to the benefit of ensuring that eligible FCMs can meet their financial obligations to customers and other market participants. Customers and other market participants would also benefit from the provisions in amended Rule 1.10(g), which continues to make publicly available certain information in Form 1–R and FOCUS reports related to capital requirements and requirements for customer funds to be held in segregated or separate accounts. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* The alternative capital computation permitted under amended Rule 1.17(c)(6) is limited to FCMs who have in place an internal risk management system that expressly addresses market risk, credit risk, liquidity risk, legal risk and operational risks at the firm. The amended rule also requires that the Commission receive copies of written reviews, which are to be prepared annually by registered public accountants, of the firm's internal risk management control system. The amended rule may therefore contribute to the sound risk management practices of futures intermediaries.

5. *Other public interest considerations.* The Commission also believes that the amendments to Rule 1.17(c)(6) are beneficial in that they minimize what would otherwise be a conflict between Commission and SEC rules, which conflict would otherwise make the SEC's opportunity for qualifying BDs to use alternative net capital charges unavailable to dually registered FCM/BDs, despite the commonality of interest and purpose for the CFTC and SEC minimum net capital rules. The amendments to Rule 1.17(c)(5)(ii), which incorporates agency guidance not presently included in the Commission's regulations, enhances the transparency of the Commission's rulemaking for FCMs and IBs.

The Commission invited, but did not receive, public comment on its application of the cost-benefit provision. After considering these factors, the Commission has determined to issue this final rule.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 145

Freedom of information.

17 CFR Part 147

Sunshine Act.

■ 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 1.10 is amended by revising paragraphs (d)(4)(ii), (f)(1) introductory text, (g)(1), (g)(2), (g)(4), and (h) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(d) * * *

(4) * * *

(ii) If the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, the representative authorized under § 240.17a–5 of this title to file for the securities broker or dealer its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by the Commission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(f) *Extension of time for filing uncertified reports.* (1) In the event a registrant finds that it cannot file its

Form 1–FR, or, in accordance with paragraph (h) of this section, its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report), for any period within the time specified in paragraphs (b)(1)(i) or (b)(2)(i) of this section without substantial undue hardship, it may request approval for an extension of time, as follows:

* * * * *

(g) *Public availability of reports.* (1) Forms 1–FR filed pursuant to this section, and FOCUS reports filed in lieu of Forms 1–FR pursuant to paragraph (h) of this section, will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (g)(2) of this section.

(2) The following information in Forms 1–FR, and the same or equivalent information in FOCUS reports filed in lieu of Forms 1–FR, will be publicly available:

(i) The amount of the applicant's or registrant's adjusted net capital; the amount of its minimum net capital requirement under § 1.17 of this chapter; and the amount of its adjusted net capital in excess of its minimum net capital requirement; and

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter.

* * * * *

(4) All information that is exempt from mandatory public disclosure under paragraph (g)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (g) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report), in lieu of Form 1–FR: *Provided, however*, That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS report.

* * * * *

■ 3. Section 1.16 is amended by revising paragraph (c)(5) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(c) * * *

(5) *Accountant's report on material inadequacies.* A registrant must file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. An applicant must file concurrently with the audit report a supplemental report by the accountant describing any material inadequacies found to exist as of the date of the Form 1–FR being filed: *Provided, however*, That if such applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, and it files (in accordance with § 1.10(h)) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR, the accountant's supplemental report must be made as of the date of such report. The supplemental report must indicate any corrective action taken or proposed by the applicant or registrant in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report must so state.

* * * * *

■ 4. Section 1.17 is amended by revising paragraphs (c)(5)(ii) and adding (c)(6) to read as follows:

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

* * * * *

(c) * * *

(5) * * *

(ii) In the case of all inventory, fixed price commitments and forward contracts, the applicable percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical.—No charge.

(B) Inventory which is covered by an open futures contract or commodity option.—5 percent of the market value.

(C) Inventory which is not covered.—20 percent of the market value.

(D) Inventory and forward contracts in those foreign currencies that are purchased or sold for future delivery on or subject to the rules of a contract market, and which are covered by an open futures contract.—No charge

(E) Inventory and forward contracts in euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs, and which are not covered by an open futures contract or commodity option.—6 percent of the market value.

(F) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option.—10 percent of the market value.

(G) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option.—20 percent of the market value.

* * * * *

(6) Election of alternative capital deductions that have received approval of Securities and Exchange Commission pursuant to § 240.15c3–1(a)(7) of this title.

(i) Any futures commission merchant that is also registered with the Securities and Exchange Commission as a securities broker or dealer, and who also satisfies the other requirements of this paragraph (c)(6), may elect to compute its adjusted net capital using the alternative capital deductions that, under § 240.15c3–1(a)(7) of this title, the Securities and Exchange Commission has approved by written order. To the extent that a futures commission merchant is permitted by the Securities and Exchange Commission to use alternative capital deductions for its unsecured receivables from over-the-counter transactions in derivatives, or for its proprietary positions in securities, forward contracts, or futures contracts, the futures commission merchant may use these same

alternative capital deductions when computing its adjusted net capital, in lieu of the deductions that would otherwise be required by paragraph (c)(2)(ii) of this section for its unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for its proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for its proprietary positions in securities; and by paragraph (c)(5)(x) of this section for its proprietary positions in futures contracts.

(ii) *Notifications of election or of changes to election.* (A) No election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section shall be effective unless and until the futures commission merchant has filed with the Commission, addressed to the Director of the Division of Clearing and Intermediary Oversight, a notice that is to include a copy of the approval order of the Securities and Exchange Commission referenced in paragraph (c)(6)(i) of this section, and to include also a statement that identifies the amount of tentative net capital below which the futures commission merchant is required to provide notice to the Securities and Exchange Commission, and which also provides the following information: a list of the categories of positions that the futures commission merchant holds in its proprietary accounts, and, for each such category, a description of the methods that the futures commission merchant will use to calculate its deductions for market risk and credit risk, and also, if calculated separately, deductions for specific risk; a description of the value at risk (VaR) models to be used for its market risk and credit risk deductions, and an overview of the integration of the models into the internal risk management control system of the futures commission merchant; a description of how the futures commission merchant will calculate current exposure and maximum potential exposure for its deductions for credit risk; a description of how the futures commission merchant will determine internal credit ratings of counterparties and internal credit risk weights of counterparties, if applicable; and a description of the estimated effect of the alternative market risk and credit risk deductions on the amounts reported by the futures commission merchant as net capital and adjusted net capital.

(B) A futures commission merchant must also, upon the request of the Commission at any time, supplement the statement described in paragraph (c)(6)(ii)(A) of this section, by providing any other explanatory information regarding the computation of its alternative market risk and credit risk deductions as the Commission may require at its discretion.

(C) A futures commission merchant must also file the following supplemental notices with the Director of the Division and Clearing and Intermediary Oversight:

(*1*) A notice advising that the Securities and Exchange Commission has imposed additional or revised conditions for the approval evidenced by the order referenced in paragraph (c)(6)(i) of this section, and which describes the new or revised conditions in full, and

(*2*) A notice which attaches a copy of any approval by the Securities and Exchange Commission of amendments that a futures commission merchant has requested for its application, filed under 17 CFR 240.15c3–1e, to use alternative market risk and credit risk deductions approved by the Securities and Exchange Commission.

(D) A futures commission merchant may voluntarily change its election to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, by filing with the Director of the Division of Clearing and Intermediary Oversight a written notice specifying a future date as of which it will no longer use the alternative market risk and credit risk deductions, and will instead compute such deductions in accordance with the requirements otherwise applicable under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts.

(iii) *Conditions under which election terminated.* A futures commission merchant may no longer elect to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section, and shall instead compute the deductions otherwise required under paragraph (c)(2)(ii) of this section for unsecured receivables from over-the-counter derivatives transactions; by paragraph (c)(5)(ii) of this section for proprietary positions in forward contracts; by paragraph (c)(5)(v) of this section for proprietary positions in securities; and by paragraph (c)(5)(x) of this section for proprietary positions in futures contracts, upon the occurrence of any of the following:

(A) The Securities and Exchange Commission revokes its approval of the market risk and credit risk deductions for such futures commission merchant;

(B) A futures commission merchant fails to come into compliance with its filing requirements under this paragraph (c)(6), after having received from the Director of the Division of Clearing and Intermediary Oversight written notification that the firm is not in compliance with its filing requirements, and must cease using alternative capital deductions permitted under this paragraph (c)(6) if it has not come into compliance by a date specified in the notice; or

(C) The Commission by written order finds that permitting the futures commission merchant to continue to use such alternative market risk and credit risk deductions is no longer necessary or appropriate for the protection of customers of the futures commission merchant or of the integrity of the futures or options markets.

(iv) *Additional filing requirements.* Any futures commission merchant that elects to use the alternative market risk and credit risk deductions referenced in paragraph (c)(6)(i) of this section must file with the Commission, in addition to the filings required by paragraph (c)(6)(ii) of this section, copies of any and all of the following documents, at such time as the originals are filed with the Securities and Exchange Commission:

(A) Information that the futures commission merchant files on a monthly basis with its designated examining authority or the Securities and Exchange Commission, whether by way of schedules to its FOCUS reports or by other filings, in satisfaction of 17 CFR 240.17a–5(a)(5)(i);

(B) The quarterly reports required by 17 CFR 240.17a–5(a)(5)(ii);

(C) The supplemental annual filings as required by 17 CFR 240.17a–5(k);

(D) Any notification to the Securities and Exchange Commission or the futures commission merchant's designated examining authority of planned withdrawals of excess net capital; and

(E) Any notification that the futures commission merchant is required to file with the Securities and Exchange Commission when its tentative net capital is below an amount specified by the Securities and Exchange Commission.

* * * * *

■ 5. Section 1.18 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or Form 1–FR–IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report) in lieu of Form 1–FR–FCM or Form 1–FR–IB, the account classification subdivisions specified on such FOCUS report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) * * *

(2) An applicant or registrant that has filed a monthly Form 1–FR or Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS report) in accordance with the requirements of § 1.10(b) will be deemed to have satisfied the requirements of paragraph (b)(1) of this section for such month.

* * * * *

■ 6. Section 1.52 is amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c): *Provided, however*, A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR: And, *provided further*, A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

■ 7. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

■ 8. Section 145.5 is amended by revising paragraphs (d)(1) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(1)(i) Reports of stocks of grain, such as Forms 38, 38C, 38M and 38T required to be filed pursuant to 17 CFR 1.44;

(ii) Statements of reporting traders on Form 40 required to be filed pursuant to 17 CFR 18.04;

(iii) Statements concerning special calls on positions required to be filed pursuant to 17 CFR part 21;

(iv) Statements concerning identification of special accounts on Form 102 required to be filed pursuant to 17 CFR 17.01;

(v) Reports required to be filed pursuant to parts 15 through 21 of this chapter;

(vi) Reports concerning option positions of large traders required to be filed pursuant to part 16 of this chapter;

(vii) Form 188; and

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

■ 9. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

■ 10. Section 147.3 is amended by revising paragraphs (b)(4)(i) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4)(i) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential including, but not limited to:

(A) Reports of stocks of grain, such as Forms 38, 38C, 38M and 38T, required to be filed pursuant to 17 CFR 1.44;

(B) Statements of reporting traders on Form 40 required to be filed pursuant to 17 CFR 18.04;

(C) Statements concerning special calls on positions required to be filed pursuant to 17 CFR part 21;

(D) Statements concerning identification of special accounts on Form 102 required to be filed pursuant to 17 CFR 17.01;

(E) Reports required to be filed pursuant to parts 15 through 21 of this chapter;

(F) Reports concerning option positions of large traders required to be filed pursuant to part 16 of this chapter;

(G) Form 188; and

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

Issued in Washington, DC, on January 30, 2006, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 06–982 Filed 2–1–06; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8656; 34–53186; 35–28081; 39–2441; IC–27219]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to support the amended rules and forms adopted by the Commission requiring that certain open-end management investment companies and insurance company separate accounts identify in their EDGAR submissions information relating to their investment company type, series and classes (or contracts, in the case of separate accounts), and ticker symbols. Revisions are also being made to support the final rule requiring that Form 25–NSE be filed electronically. In addition, revisions are being made to revoke submission types based on the Public Utility Holding Company Act of 1935 which was repealed in the enactment of the Energy Policy Act of 2005. Finally, revisions are being made to complete the removal of the submission types rescinded on December 1, 2005 as a result of the adoption of securities offering reform initiatives.

The revisions to the Filer Manual reflect changes within Volumes I and II, entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 2 (February 2006) and EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 3 (February 2006) respectively. The updated manual will be incorporated by reference into the Code of Federal Regulations.

EFFECTIVE DATE: February 6, 2006. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of February 6, 2006.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, at (202) 551–8800; for questions concerning the rescinding of Public Utility Holding Company Act of 1935 submission types, in the Division of Investment Management, Catherine A. Fisher, Assistant Director, Office of Public Utility Regulation at (202) 551–6944; for questions concerning Securities Offering Reform, in the Division of Corporation Finance, Herbert Scholl, Office Chief, EDGAR and Information Analysis at (202) 551–3615; for questions concerning the Form 25–NSE filings, in the Division of Market Regulation, Sharon Lawson, Senior Special Counsel, at (202) 551–5605; for questions concerning the inclusion of series and class (contract) data in filings for open-end management investment companies and insurance company separate accounts, in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, at (202) 551–6989; and, in the Office of Filings and Information Services, Shirley Slocum, at (202) 551–8900.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink [2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on November 7, 2005. *See* Release No. 33–8633 (November 1, 2005) [70 FR 67350].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release Nos. 33–6977 (February 23, 1993) [58 FR 14628], IC–19284 (February 23, 1993) [58 FR 14848], 35–25746 (February 23, 1993) [58 FR 14999], and 33–6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888],