FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 39 work hours per wing to accomplish the proposed actions (includes access and close-up), and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,256 per airplane. Based on these figures, the cost impact of the actions proposed by this AD on U.S. operators is estimated to be $317,952, or $9,936 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–152–AD.

Applicability: Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–54A0102, dated November 8, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the fuse pin of the aft pitch load fitting of the diagonal brace, which could result in increased loads in the wing-to-strut joints and consequent separation of the strut and engine from the wing, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the aft pitch load fitting of the diagonal brace of the nacelle strut of each wing (including dye penetrant inspections for cracking or damage of the fitting; reworking the fitting if cracking or damage is found; honing, chamfering, measuring, and machining the fitting if no cracking or damage is found; and replacing the bushing and fuse pin with new components) by accomplishing all of the actions specified in paragraphs 3.A. through 3.J. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0102, dated November 8, 2001. Any applicable follow-on corrective actions must be done before further flight.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 1, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17315 Filed 7–8–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB64

Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is proposing to amend certain of its minimum financial and related reporting requirements for futures commission merchants (''FCMs'') and introducing brokers (''IBs''). Regulations currently require FCMs to maintain minimum adjusted net capital that is the greatest of: $250,000; 4 percent of customer funds required to be segregated by the Commodity Exchange Act (''Act'') and the Commission's regulations; the amount of adjusted net capital required by a registered futures association; or for those FCMs that also are registered as securities brokers or dealers with the Securities and Exchange Commission (''SEC''), the amount of net capital required by specified SEC regulations. This proposed rule would delete that part of the minimum adjusted net capital requirement that is based on segregated customer funds and replace it with an amount based on maintenance margin levels of futures and options positions carried by an FCM. The proposed amendment would reflect risk-based capital rules that have already been adopted by a clearing organization, two exchanges and the National Futures Association (''NFA'').

The Commission also is proposing to reduce the time periods allowed before an FCM must take a capital charge for outstanding margin calls. The Commission is further proposing conforming amendments to capital computations that FCMs must perform for purposes related to equity capital, subordination agreements and the Commission's ''early warning'' requirements. The Commission also is proposing to reduce the time frames for

FCMs to report certain events. The proposed time frames would be consistent with those currently provided in SEC rules applicable to securities brokers and dealers. The Commission also is proposing to amend reporting requirements for FCMs or IBs to streamline Commission procedures and to eliminate unnecessary filing requirements.

DATES: Comments must be received on or before September 8, 2003.

ADDRESSES: Comments may be sent to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Attn.: Secretariat. In addition, comments may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* References should be made to ''Proposed Rules for Risk-Based Capital.''

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Deputy Director, at (202) 418–5495 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—Financial Safeguards

As part of its regulatory responsibilities, the Commission monitors the financial integrity of the commodity futures and options markets and the intermediaries that market participants employ in their trading activities. The Commission's financial and related recordkeeping and reporting rules are part of a system of financial safeguards that also includes exchange and clearinghouse risk management and financial surveillance systems, exchange and clearinghouse rules and policies on clearing and settlements, and financial and operational controls and risk management employed by market intermediaries themselves.

Two primary financial safeguards under the Act are: (1) The requirement that FCMs segregate from their own assets all money and property belonging to their customers; and (2) the imposition of minimum capital requirements for FCMs and IBs.[1] The requirement that FCMs segregate customer funds is set forth in section 4d(a)(2) of the Act. Section 4d(a)(2) requires, among other things, that an FCM segregate from its own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to such customers from open futures and option positions.

Commission Rules 1.20 through 1.30, as well as 1.32 and 1.36 implement the segregation of funds provisions of section 4d(a)(2) of the Act for FCMs holding funds for customers trading on U.S. commodity futures and options markets.[2] These rules require FCMs to maintain, in segregated accounts, all of the money and other property deposited by customers to margin their futures and option positions on U.S. markets, as well as any funds accruing to such customers from open futures and option positions. The rules are intended to ensure that an FCM has readily available sufficient funds to meet its obligations, on a dollar-for-dollar basis, to its customers trading on U.S. futures and options markets at all times.

Rule 30.7 sets forth an FCM's obligation to secure funds of U.S.-domiciled customers trading on non-U.S. futures and options markets. Rule 30.7 requires an FCM to maintain in secured accounts funds and other property deposited by a U.S.-domiciled customer that represents required margin deposits for open futures and option positions on foreign markets, as well as any unrealized gains accruing on such open positions. The funds required to be segregated for customers trading on U.S. commodity markets pursuant to Section 4d(a)(2) and the funds required to be secured for customers trading on foreign commodity markets pursuant to Rule 30.7 hereinafter will be referred to jointly as the ''Segregated Amount.''

Section 4f(b) of the Act provides that in order to register as an FCM or IB a person must meet such minimum financial requirements as the Commission may by regulation prescribe. Commission rules that set forth the minimum financial and related reporting requirements for FCMs and IBs include Rules 1.10, 1.12, 1.16, 1.17, and 1.18. Commission Rules 1.10 and 1.16 set forth requirements for the periodic reporting of the financial condition of FCMs and IBs, while Commission Rule 1.12 requires ''early warning'' reporting of predefined events as they occur. The minimum requirements for the IB's or FCM's adjusted net capital, equity capital and subordinated agreements are set forth in Commission Rule 1.17. Rule 1.18 requires FCMs and IBs to prepare and to maintain formal adjusted net capital computations as of the close of business each month.[3]

The Commission's minimum financial requirements protect customers and other market participants by requiring FCMs and IBs to maintain minimum levels of liquid assets in excess of their liabilities to finance their business activities. In the event of a shortfall in the Segregated Amount, the Commission's minimum net capital requirement provides protection to customers by requiring FCMs to maintain a minimum level of assets that are readily available to be contributed to cover the shortfall. The minimum capital requirement also protects customers and market participants by ensuring that the FCM remains solvent while waiting for margin calls to be met.

II. Proposed Risk-Based Capital Requirement for FCMs

A. The Commission's Current Capital Requirement

The Commission's net capital requirement is set forth in Rule 1.17(a)(1)(i)(A)–(D) and requires an FCM to maintain adjusted net capital equal to, or in excess of, the greatest of the following:

a. $250,000;

b. Four percent of the Segregated Amount, less the market value of options purchased by customers for which the full premiums have been paid;

c. The amount of adjusted net capital required by a registered futures association of which the FCM is a member; [4] or

d. For FCMs that also are registered with the SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 15c3–1(a).[5]

In addition to the Commission's minimum capital requirements, FCMs also are subject to minimum capital requirements adopted by the self-regulatory organizations (''SROs'') of which they are members.[6] The SROs' capital requirements are required to be no less stringent than the Commission's minimum capital requirement.[7]

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] Commission regulations may be found at 17 CFR Ch. 1 (2002).

[3] In addition, FCMs are required by Rules 1.14 and 1.15 to maintain and to provide to the Commission certain information regarding affiliated entities.

[4] The NFA is a registered futures association that has adopted minimum capital rules for its member FCMs.

[5] 17 CFR 240.15c3–1(a).

[6] Rule 1.3(ee) defines an SRO as a contract market as defined in Rule 1.3(h) or a registered futures association under section 17 of the Act.

[7] For example, New York Mercantile Exchange (''NYMEX'') Rule 9.21 requires clearing members to maintain minimum net capital that is the greater of $5,000,000 or the minimum capital required by Rule 1.17.

The current capital rule generally has worked well as a measure of the minimum amount of capital an FCM needs in order to augment the Segregated Amount to provide protection for customer funds and to meet the FCM's responsibility of maintaining orderly markets. In recent years, however, the scope of and participants in the commodity business have changed. Trading is conducted on a 24-hour a day basis on markets worldwide. FCMs have become significant participants in this global marketplace as evidenced by increasing numbers of U.S. and foreign customers trading on U.S. and foreign markets through FCMs and the increasing amount of customer funds held by FCMs.[8] The types of participants in the marketplace also have shifted from primarily agricultural traders to highly sophisticated money managers and financial institutions trading a wide variety of products, with the greatest volume of trading being in interest rate and stock index contracts.

The framework for the current capital rule was developed in 1978 and now should be modernized to reflect these changes. The current capital rule does factor in the risk inherent in the positions carried by an FCM for its customers' accounts to the extent that the amount of capital required is based on a percentage of the Segregated Amount, which, in turn, is partly a function of the margin (or performance bond) required on open futures and option positions. There are, however, a number of material limitations on the current method used to calculate required net capital.

A primary limitation is that the Segregated Amount does not fully reflect the extent to which an FCM is exposed to commodity positions it carries for both customers and noncustomers.[9] For example, the Segregated Amount does not include funds held by an FCM on behalf of foreign-domiciled customers trading on foreign commodity markets, nor does it include funds held by an FCM on behalf of noncustomers trading on either U.S. or foreign futures and options markets. Furthermore, the Segregated Amount does not include letters of credit deposited as margin or reflect the additional risks posed by open positions in customer accounts that liquidate to a deficit. Finally, calculating minimum capital as a percentage of the Segregated Amount subjects an FCM to a higher requirement in situations where the FCM requires additional margin from customers or carries free credit balances for its customers, despite the risk reducing effect of holding higher levels of customer funds.

To address the concerns noted above and to conform the Commission's capital requirements to those implemented by the NFA, two exchanges and a clearing organization, the Commission is proposing to adopt a minimum capital requirement calculated as a percentage of the margin required on all domestic and foreign futures and option accounts carried by the FCM on behalf of customers and noncustomers, instead of as a percentage of the Segregated Amount.

B. Proposed Risk-Based Capital Requirement

1. Overview of the Proposed Risk-Based Capital Computation

Margin-based (or risk-based) capital rules have been adopted and put into effect by the Board of Trade Clearing Corporation (''BOTCC''), Chicago Board of Trade (''CBOT''), Chicago Mercantile Exchange (''CME''), and NFA. BOTCC, CBOT, and CME adopted risk-based components to their respective minimum capital requirements for clearing member firms effective January 1, 1998. NFA adopted a risk-based capital component to its minimum capital requirements for member FCMs effective October 31, 2000.

Based upon the effectiveness of these rules as implemented at these organizations, the U.S. commodity exchanges and NFA, through the Joint Audit Committee (''JAC''), have requested that the Commission amend its capital rule by eliminating the calculation based on the Segregated Amount and adopting a calculation based on the required maintenance margin levels for customer and noncustomer futures and option positions carried by an FCM.[10] An additional benefit to FCMs of adopting the proposed risk-based capital requirement is that it would simplify adjusted net capital reporting requirements for FCMs. Commission Rule 1.17 includes among the categories from which an FCM's required net capital is determined ''[t]he amount of adjusted net capital required by a registered futures association of which [the FCM] is a member.'' Because all registered FCMs that handle customer funds are required to be members of NFA, the NFA's adoption of a risk based capital requirement, which is modeled on the requirement implemented by BOTCC, CBT, and CME, has effectively required almost all FCMs to perform adjusted net capital computations that are based both on percentages of maintenance margin levels of futures and options positions and on percentages of the Segregated Amount.

U.S. commodity exchanges and numerous foreign commodity exchanges use the Standard Portfolio Analysis of Risk (''SPAN'') margining system for calculating margin requirements on futures and option positions. SPAN is a system developed and maintained by the CME that calculates maintenance margin levels in an account containing both futures and option positions on the basis of overall portfolio risk. Commodity exchanges attempt to set maintenance margin levels that exceed the one-day price change for 95 percent to 99 percent of the trading days based upon statistical analyses of day-to-day price changes over a varied number of trading days.[11]

The SPAN maintenance margin level has two components:

1. The risk component, which covers potential future losses in the portfolio value. Such losses would include a market move against a futures position or a short (written) option; and

2. The equity component (option premium, marked-to-the market daily), which reflects the asset represented by long option positions or the liability represented by short (written) option positions in the portfolio.

The proposal would set the minimum capital requirement at the aggregate of eight percent of the risk maintenance margin level on customer accounts and four percent of the risk maintenance margin level on noncustomer accounts. The equity component of the SPAN maintenance margin level would not be included in the capital computation. Furthermore, as more fully discussed below, the risk maintenance margin imposed on long option positions that were not hedging other futures or option positions could be excluded from the computation. Proprietary (*i.e.*, firm-owned) accounts would be excluded

[8] Based upon financial reports filed with the Commission, FCMs held on behalf of their customers approximately $30 billion as of September 1995 and approximately $69 billion as of April 2003.

[9] Noncustomer accounts are defined in Rule 1.17(b)(4) and generally are accounts of entities affiliated with the FCM and the accounts of certain employees of the FCM.

[10] The JAC is comprised of representatives of the audit and financial compliance departments of the SROs.

[11] For more detailed information on the SPAN margining system, see the report *Review of Standard Portfolio Analysis of Risk (''SPAN'') Margin System as implemented by the Chicago Mercantile Exchange, Board of Trade Clearing Corporation, and the Chicago Board of Trade,* prepared by the Commission's Division of Trading and Markets and issued in April 2001. The report is available on the Commission's Web site: *http://www.cftc.gov.*

from the risk-based capital computation, because such positions currently are included in the calculation of adjusted net capital to the extent that uncovered proprietary positions result in a charge or ''haircut'' to net capital based on clearinghouse or exchange margin requirements.[12] The proposed computation will hereinafter be referred to as ''Risk-Based Capital.''[13]

For purposes of the proposed rule, ''customer accounts'' would include the account of any customer as defined by Rule 1.17(b)(2), which includes customers as defined by Rule 1.3(k), option customers as defined by Rules 1.3(jj) and 32.1(c), and foreign futures and foreign option customers as defined by Rule 30.1(c), and also would include the accounts of foreign customers trading on foreign commodity exchanges. The term ''noncustomer account'' would continue to be defined by Rule 1.17(b)(4) as an account that is not included in the definition of either customer or proprietary account in Rule 1.17, and would also include noncustomer accounts for foreign domiciled persons trading on foreign exchanges. The term ''noncustomer'' generally refers to accounts of entities affiliated with an FCM, including certain employees and officers of an FCM.

Generally, there is no risk to the FCM associated with a long option position because the maximum potential loss is the full option premium, which is required to be paid by the customer at the inception of the transaction. As previously noted, however, SPAN computes the margin for an account on a portfolio basis and long option positions may hedge other futures and option positions in a portfolio, thereby reducing the total margin requirement on the portfolio. Accordingly, SPAN includes a risk maintenance margin component for long option positions to protect against a decrease in the market value of long options that may be hedging other futures and option positions.

The propsal would permit an FCM to deduct the risk maintenance margin on long options that were not hedging other futures or option positions from the Risk-Based Capital computation. The Commission, however, understands that, under current back office operating procedures, calculating the maintenance margin on specific long option positions included in a portfolio may require a certain amount of manual processing, which some FCMs may wish to forgo if the amount would not materially increase their minimum capital requirement. Accordingly, the rule as proposed would not prohibit an FCM from including the risk maintenance margin for long options that do not hedge other futures and option positions in its Risk-Based Capital computation, if it elected to do so.

The proposal would set the Risk-Based Capital requirement at eight percent of customer risk maintenance margin and four percent of noncustomer risk maintenance margin, which are the same percentages that have been implemented under the existing exchange and NFA risk-based capital rules. The lower four percent factor applied to risk margin requirements in noncustomers' accounts is based upon the beliefs of BOTCC, CBT, CME and the NFA that affiliates and employees pose less credit risk to FCMs and the clearing system.

If an FCM cannot determine the risk margin associated with cleared positions, the proposal would require the firm to apply the specified percentages to the total margin required by the exchange, clearing organization, other futures commission merchant or entity for the customer and noncustomer positions carried. This would be consistent with the approach taken by FCMs today for futures and option positions that they carry that are executed on foreign contract markets that do not use the SPAN margining system.

2. Accounts Included in the Risk-Based Net Capital Computation

Calculations of minimum required capital under the current method based on the Segregated Amount and the proposed Risk-Based Capital method would differ with respect to the types of accounts included in the calculation. These differences are summarized in the following table.

Are the following types of accounts factored into the calculation of required net capital?	Current segregated amount capital requirement	Proposed risk-based capital requirement
U.S.-domiciled customers trading on U.S. exchanges	Yes	Yes.
Foreign-domiciled customers trading on U.S. exchanges	Yes	Yes.
U.S.-domiciled customers trading on foreign exchanges	Yes	Yes.
Foreign-domiciled customers trading on foreign exchanges	No	Yes.
Accounts liquidating to a deficit	No	Yes.
Accounts with letters of credit for performance bond	No	Yes.
Noncustomer accounts	No	Yes.

The proposed Risk-Based Capital computation includes several types of accounts that affect the risk to an FCM inherent in commodity positions carried by its customers and noncustomers, and that are not included in the current Segregated Amount computation. Therefore, the Commission believes Risk-Based Capital may reflect the actual risk to FCMs better than the current Segregated Amount calculation of minimum required capital. Particularly, the proposed Risk-Based Capital computation would include futures and option positions carried by an FCM for noncustomers trading on U.S. and foreign commodity markets and foreign-domiciled customers trading on foreign futures and options markets, none of which currently are included in the minimum capital computation.

The proposed Risk-Based Capital computation also would include the risk maintenance margin on open futures and option positions that are carried in customer and noncustomer accounts that liquidate to a deficit. In such situations, an FCM is required to deposit its own funds into the segregated account in order to cover the customer's deficit. However, the capital requirement that is based upon the Segregated Amount does not reflect the positions of the customer that is in deficit.[14]

[12] *See* Commission Rule 1.17(c)(5)(x).

[13] The Commission also would amend the financial Form 1–FR–FCM if it were to adopt final rules for Risk-Based Capital.

[14] In computing its adjusted net capital, an FCM is required by Rule 1.17(c)(2)(i) to exclude from

Finally, customer and noncustomer accounts margined by letters of credit would be included in the Risk-Based Capital computation under the proposal. Such accounts currently have no effect on a firm's capital computation, because a letter of credit is not included in the Segregated Amount until the letter of credit is actually drawn upon.

3. Effect of Certain Events on the Risk-Based Net Capital Requirement

Certain events would have different effects on required capital under a Segregated Amount-based capital requirement as compared to the proposed Risk-Based Capital requirement. These differences are summarized in the following chart.

Event	Effect on net capital requirement	
	Segregated amount-based	Proposed risk-based rule
Excess margin deposited by a customer	Increase	No effect.
Excess margin withdrawn by customer	Decrease	No effect.
Firm increases margin required from a customer	Increase when customer deposits extra margin.	No effect.
Exchange increases margin requirements	Increase when funds are collected from customer.	Immediate increase.
Customer or noncustomer establishes riskier positions (indicated by increased risk margin requirement in trading account).	No immediate effect	Immediate increase.

Generally, Risk-Based Capital bases required levels of capital on the risks inherent in the futures and options positions that the FCM carries for customers and noncustomers. Conversely, the Segregated Amount computation is based upon the amount of funds the FCM is required to segregate or secure on behalf of its customers trading on U.S. and foreign commodity markets. Thus, an FCM that collects additional funds from its customer as a cushion for an increase in the market risks posed by the customer's portfolio is required by Commission rules to maintain a higher amount of capital, even though such additional funds reduce the FCM's overall exposure to a default by such customer. In contrast, an FCM that does not require a customer to deposit additional margin would not have an increase in its capital requirement, even though the firm may be more exposed to an increase in the market risk associated with the customer's portfolio. The proposed Risk-Based Capital computation, which is based upon a percentage of the risk maintenance margin on a portfolio of positions, would require the FCM to have higher minimum capital when the market risks associated with positions in the portfolio increases regardless of whether the FCM collected additional margin from the customer. Excess customer funds or margin held by an FCM would continue to be protected and regulated under the Commission's segregation requirements.

4. Impact of Adopting Risk-Based Capital

There were 169 registered FCMs as of April 30, 2003, of which 75 also were registered securities brokers or dealers with the SEC. The required regulatory capital for these 169 firms reflects an increase of more than $389 million, on a net basis, as a result of replacing adjusted net capital requirements that are currently based on the Segregated Amount with the risk-based capital requirements that are currently implemented by BOTCC, CBT, CME and the NFA. The following chart details the net increase for both sole FCMs and dually-registered firms.

	Effect of risk-based capital on total capital requirement	Total for all firms
Number of FCMs also registered as BDs with SEC:		
19	Increase	$244,688,814
2	Decrease	($415,526)
54	No change	0
Total: 75		
Number of FCMs not registered as BDs with SEC:		
17	Increase	$171,045,445
24	Decrease	($25,476,295)
53	No change	0
Total: 94		

Of the 75 dually-registered FCMs, 19 had an increase in their minimum capital requirements totaling approximately $245 million. Two firms realized a reduction in minimum net capital requirements totaling approximately $416,000. The minimum net capital for 54 firms did not change. The minimum capital requirement for these 54 firms was determined by SEC rules or the Commission's $250,000 minimum.

Of the 94 FCMs that were not dual registrants, 17 had a higher minimum capital requirement totaling approximately $171 million under Risk-Based Capital than under the Segregated Amount requirement. Minimum capital requirements decreased by approximately $25 million for 24 sole FCMs. Fifty-three FCMs had no change in their minimum capital requirements with the adoption of Risk-Based Capital. These 53 firms were subject to the Commission's $250,000 minimum.

III. Capital Charge for Undermargined Accounts

Commission Rule 1.17(c)(5)(viii) requires an FCM to take a capital charge for any customer account that is undermargined if the margin call issued

current assets the balance of any customer account that liquidates to a deficit or contains a debit ledger balance and such customer fails to answer a margin call or request for other deposits within one business day.

to the customer has not been answered by the third business day following the issuance of the call. Rule 1.17(c)(5)(ix) similarly requires a capital charge for noncustomer accounts if a noncustomer fails to answer a margin call by the second business day following the issuance of the call. When first adopted, these rules allowed collection periods of five business days for customer accounts and four business days for noncustomer accounts following the issuance of a margin call before a capital charge had to be taken. In 1980, the number of days was reduced to three business days for customer accounts and two business days for noncustomer accounts in recognition of the increased use of electronic communication for issuing and collecting margin calls.[15]

The Commission is now proposing to reduce the collection period before a capital charge would have to be taken to one business day following the issuance of a margin call for both customer and noncustomer accounts. The Commission is making this proposal in recognition of: (i) The advancements in electronic communications and the ability to transfer funds electronically which allow market participants to more easily meet a margin call; (ii) the increase in the number of products offered on futures markets since 1980, and the higher volatility associated with some of these products; and (iii) the expansion in the scope of FCM operations, including outside of the United States. In addition, the Commission believes the proposed amendment is consistent with the proposal to adopt a Risk-Based Capital computation.

An effective margining system is a key component of a sound financial risk management system. Such financial risk management should include a correlation between the time permitted for margin collection and the performance bonds or risk margin levels established for each contract. Because the Commission is proposing minimum capital requirements based on a percentage of risk maintenance margin required, not collected, a corresponding change to the allowed collection period for margin deficiencies is being proposed.

As noted previously, the SPAN margining system is intended to result in a level of maintenance margin that is expected to cover the probable one-day price move for a particular futures or option contract 95 percent to 99 percent of the time. Because price moves of that magnitude do not occur each day, the Commission believes it is appropriate to allow an FCM a reasonable period of time to collect the margin calls from customers and noncustomers prior to imposing a capital charge. However, with the increased use of electronic communications and electronic funds transfers, an FCM should be able to minimize the risks inherent in an account that has become undermargined. Reducing the period of time for collection to one business day from the date the margin call was issued for the purpose of taking charges against net capital would reflect the additional risk posed by a longer collection time than is necessary to transfer funds using current technology. It would also serve as an additional incentive to FCMs to issue margin calls and to collect margin promptly. An example of when a margin charge would have to be taken is as follows: on Monday a customer's or noncustomer's account becomes undermargined for the first time; the FCM makes a call to the customer or noncustomer for additional margin on Tuesday; if the margin deficiency is not collected by the close of business Wednesday, then any capital computation prepared as of the close of business Wednesday would include a capital charge for the margin deficiency.

[15] 45 FR 79416 (December 1, 1980). Under the current rule, if a customer account first experiences a margin deficiency on Monday, the FCM would issue a margin call to the customer on Tuesday. If the margin call had not been answered by the close of business on Friday, the FCM would be required to take a capital charge for its capital computation as of Friday for the amount of the margin deficiency on Monday.

IV. Financial Reporting Requirements for FCMs and IBs

A. Introduction

FCMs and IBs are required to be in compliance with the net capital rule at all times and to be able to demonstrate that compliance whenever requested to do so. Such close monitoring and awareness of capital positions is necessary in the high risk, high volatility futures trading business. Likewise, a sound financial surveillance program recognizes the need to monitor the financial condition of an FCM or IB through the regular collection of financial information. The Commission is proposing several amendments to Rules 1.10, 1.12, 1.16 and 1.18 that: (i) Reflect advances in technology that permit more rapid reporting, (ii) increase regulatory efficiency by harmonizing reporting requirements under comparable Commission and SEC rules, (iii) promote direct supervision of FCMs and IBs by SROs subject to Commission oversight, and (iv) streamline the Commission's reporting requirements by eliminating unnecessary filings. The proposed streamlined procedures and filing requirements are consistent with the oversight role envisioned for the Commission under the Commodity Futures Modernization Act of 2000 (''CFMA'') which includes among its stated purposes ''to transform the role of the [Commission] to oversight of the futures market'' and ''to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act''.[16]

B. Monthly Filing of Financial Reports by FCMs

The Commission conducts its monitoring of the financial condition of FCMs both directly and through coordination with the SROs. Pursuant to Commission Rule 1.52, an SRO must adopt, submit for Commission approval, and thereafter enforce minimum financial and related reporting requirements for its member FCMs.

Commission Rule 1.10 requires an FCM to file an unaudited Form 1–FR–FCM report on a quarterly basis with the Commission and with its designated self-regulatory organization (''DSRO'').[17] FCMs that also are registered as securities brokers or dealers may elect to file, in lieu of a Form 1–FR–FCM, a copy of their unaudited Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II or Part IIA (''FOCUS Report'').[18] FCM financial reports must be filed with the Commission and with an FCM's DSRO within 17 business days of the end of the fiscal quarter.

The Commission is proposing to amend Rule 1.10 to require each FCM to file an unaudited Form 1–FR–FCM or FOCUS Report with the Commission and with the FCM's DSRO as of the end of each month, including the FCM's fiscal year end. The FCM would be required to file the financial reports within 17 business days of the end of each month.

When the Commission initially adopted its financial reporting rules, quarterly reporting by FCMs was determined to be sufficient for adequate and timely monitoring of the FCM's financial condition. Commodity exchanges and NFA, however, have

[16] Section 2 of the CFMA, Pub. L. 106–554, Appendix E, 114 Stat. 2763 (2000).

[17] The DSRO is the self-regulatory organization that, pursuant to Commission Rule 1.52, is primarily responsible for monitoring an FCM's compliance with minimum financial and related reporting requirements, receiving and reviewing an FCM's financial reports, and auditing the FCM's books and records.

[18] The requirements for the FOCUS Report are set forth in SEC Rule 17a–5.

since recognized the need for more frequent filing of financial information by FCMs due to the substantial increase in the volume of business conducted in the futures and options markets and the high volatility of the markets in which FCMs operate. The NFA and CME currently require FCMs for which they are DSRO to file financial reports on a monthly basis.[19] Because the Commission receives copies of all financial reports filed at the SRO level, for most FCMs the Commission already receives monthly financial reports.

The Commission believes it is appropriate to amend its rules to require FCMs to report their financial condition monthly. Monthly filing would permit closer financial surveillance for any remaining entities that file quarterly, and would be consistent with the rules of the SROs that have already caused monthly reporting to be widely required. More frequent reporting allows SROs and the Commission to identify adverse financial trends sooner than is possible with quarterly filing. In addition, since most FCMs currently file monthly financial reports with their DSRO, a Commission regulation requiring FCMs to file monthly financial reports with the Commission and with the applicable DSRO should pose minimal additional burden on FCMs. Furthermore, an FCM's preparation of a monthly financial report would satisfy its requirement to prepare a monthly net capital computation under Rule 1.18.[20]

C. Requirements for Oath or Affirmation Filed With Form 1–FR

The Commission also is proposing to ease Form 1–FR filing requirements for FCMs and IBs by expanding the list of persons from whom the Commission would accept the oath or affirmation that is required by Rule 1.10(d)(4).[21] Pursuant to this rule, the individual providing the oath or affirmation attests to the truth and accuracy of the information provided in the Form 1–FR, to the best knowledge and belief of the individual. The oath or affirmation must be provided by one of the following individuals: If the FCM or IB is a sole proprietorship, the sole proprietor; if the FCM or IB is a partnership, a general partner; or if the FCM or IB is a corporation, the chief executive officer or chief financial officer.[22]

The list of individuals that appears in Rule 1.10(d) also appears in other Commission regulations that designate permitted signatories for required filings by commodity pool operators (''CPOs'') and commodity trading advisers (''CTAs''). The Commission recently has issued a release that proposes to revise these rules for CPOs and CTAs, as the ''existing list may be unnecessarily restrictive in that it leaves no room for other organizational structures under which CPOs and CTAs operate—*e.g.*, limited liability companies.''[23] The list in Rule 1.10(d)(4) similarly does not address all organizational structures under which FCMs and IBs operate. The Commission is therefore proposing to amend the rule to provide that the oath or affirmation may be made by either (i) a representative duly authorized to bind the FCM or IB, or, (ii) if the FCM or IB also is registered with the SEC as a securities broker or dealer, a representative authorized to file the FOCUS Report for the broker or dealer under SEC Rule 17a–5 (17 CFR 240.17a–5).

D. Extensions of Time To File Unaudited and Audited Financial Reports

Commission Rule 1.10(f)(1) provides that if an FCM or IB determines that it cannot file its unaudited Form 1–FR prior to the due date, it may file an application with the Commission for an extension of time to a specified date, which may not be more than 90 days after the original due date. The FCM or IB also is required to file a copy of the application for extension with its DSRO.

In addition to unaudited filings, Commission Rule 1.10 also requires that FCMs and IBs file audited financial statements and schedules on an annual basis. To request an extension of time for filing the annual audited financial report, the FCM or IB may file an application with the Commission pursuant to Commission Rule 1.16(f). Notice of the application must be filed by the FCM or IB with its DSRO.

Several exchanges have adopted rules or procedures to process requests from their member FCMs for extensions of time to file unaudited financial statements. In addition, in 1993 the SEC amended its rules to provide authority to the designated examining authority (''DEA'') of a broker or dealer to grant or deny a request for extension of time to file its unaudited FOCUS Report.[24] This has resulted in some requests for filing extensions being reviewed and acted upon by the Commission, DSRO staff and DEA staff.

The Commission proposes to provide greater clarity and uniformity to this area by amending Rules 1.10(f) and 1.16(f). The amended rules would provide that the DSRO of an FCM or IB may approve an application for an extension of time to file an unaudited or audited financial report, provided that the FCM or IB files with the Commission a copy of its DSRO's written approval or denial of the request to extend the time for filing the Form 1–FR. A registrant must file a copy of its application, and a copy of any notices it receives from the designated self regulatory organization to approve or deny its application, with the regional office of the Commission where the FCM or IB is required to file its unaudited or audited financial statements.

The Commission also is proposing that if the FCM or IB also is registered as a securities broker or dealer with the SEC (a ''dual registrant'') and has filed with its DEA a request for an extension of time to file its unaudited monthly FOCUS Report or audited annual financial statements, no separate application to its applicable DSRO would be required, but the dual registrant would be required to file with its DSRO and the Commission a copy of the application made to the FCM's or IB's DEA. Immediately upon the DEA's approval or denial of the request to extend the time for filing the unaudited monthly FOCUS Reports or audited annual financial statements, the dual registrant would be required to file a copy of such approval or denial with the Commission and its DSRO.

E. Change in Fiscal Year End

Commission Rule 1.10(e) provides that an FCM or IB must continue to use its elected fiscal year, unless a change is approved upon written application to the Commission and a notice of the change is filed with the FCM's or IB's DSRO. The Commission generally has approved such applications provided that the applicant files certified financial statements within 15 months of the as of date of its last certified

[19] Section 1(b) of NFA Rulebook and CME Rule 970C.1.

[20] Rule 1.18(b) requires an FCM to prepare and to maintain a formal computation of its net capital as of the close of business each month. The formal net capital computation must be completed within 17 business days of the end of the month.

[21] Not all IBs file a Form 1–FR-IB. An IB that operates pursuant to an FCM guarantee agreement that satisfies the requirements of Rule 1.10(h) is exempt from filing the form, which otherwise would be required from the IB pursuant to Rule 1.10(b)(2)(i). Generally, at least two-thirds of registered IBs operate pursuant to a guarantee agreement.

[22] Rule 1.10(d)(4) also provides that in the case of a Form 1–FR filed with the Commission via electronic transmission, 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.

[23] 68 FR 12622 (March 17, 2003).

[24] 58 FR 45838 (August 31, 1993).

financial statements and the certified financial statements cover the full period from the as of date of the previous certified financial statements. In addition, SEC rules provide for DEA approval in connection with changes to the fiscal year or ''as of'' date for the annual audited financial statements of a broker or dealer.[25]

The Commission is proposing to amend Rule 1.10(e) to provide that a DSRO may approve an FCM's or IB's application for a change in fiscal year, provided that the FCM or IB files with the Commission a copy of its application, and also files a copy of its DSRO's written approval or denial of a change in fiscal year end, in order to permit Commission staff to know when certified annual financial reports are to be filed.[26] The Commission also is proposing that any dual registrant that has filed a notice or application with its DEA to request a change to its fiscal year or ''as of'' date would not need to file a separate application with its DSRO, but the dual registrant would need to file with its DSRO and the Commission a copy of the notice or application filed by the registrant with its DEA. Further, immediately upon the approval or denial of the request to change the dual registrant's fiscal year or ''as of'' date, the dual registrant would be required to file a copy of such approval or denial with the Commission and its DSRO.

F. Filings by Introducing Brokers of Form 1–FR With NFA

Commission Rule 1.10(b) requires an IB to file with the Commission and with NFA on a semiannual basis an unaudited Form 1–FR–IB, or its FOCUS Report if the IB is also registered with the SEC as a securities broker or dealer. The IBs are required to file the unaudited financial reports within 17 business days of the as of date of the reports.

The Commission currently has direct access to a database maintained by NFA that includes the financial information reported by IBs on a Form 1–FR–IB or FOCUS Report. Therefore, the Commission is proposing to amend Rule 1.10(c) to provide that an IB must file an unaudited Form 1–FR–IB solely with NFA.[27]

Furthermore, the Commission invites comment on whether, and under what conditions, it should amend its rules to permit IBs to file annual certified financial statements solely with NFA. NFA would input the financial information into the database and would provide copies of the annual reports to the Commission upon request.

V. Early Warning Requirements

Commission Rule 1.12 requires an FCM to file notices and meet other requirements if certain predefined financial events occur that may raise concerns regarding the FCM's ability to continue its normal operations and to safeguard customer funds. The requirements in Rule 1.12 are generally referred to as ''early warning requirements.''

A. Adjusted Net Capital That Is Below the Early Warning Level

An FCM whose adjusted net capital falls below a level specified in Rule 1.12(b), the early warning level, is required to meet the notice and monthly filing requirements that are set forth in 1.12(b)(4).[28] The FCM must file written notice within five business days with the Commission and its DSRO, and the FCM must also file a Form 1–FR–FCM or FOCUS Report as of the close of business for the month in which the FCM's adjusted net capital is less than the required early warning level. Rule 1.12(b) further requires the FCM to continue to file monthly Forms 1–FR–FCM or FOCUS Reports, as opposed to filing quarterly reports that would ordinarily be required under Rule 1.10, until the end of a period of three successive months during which the adjusted net capital of the FCM remains at a level equal to or greater than the early warning level.

The Commission is proposing to eliminate the monthly filing requirement in Rule 1.12(b), because this provision will become unnecessary if Rule 1.10 is amended to require that all FCMs file monthly financial reports with the Commission and with their DSRO. The Commission also is retaining the requirement under Rule 1.12(b) that the FCM provide notice to the Commission and to the firm's DSRO that its adjusted net capital has fallen below 150 percent of its minimum capital requirement. In addition, the Commission is proposing to amend Rule 1.12(b) to provide that the early warning notice be filed with the Commission and with the firm's DSRO within 24 hours, instead of within five business days. This amendment would make the Commission's rule consistent with the SEC's early warning rule, which also requires that notice be provided promptly, within 24 hours.[29]

The JAC has requested that the Commission eliminate the early warning requirement since FCMs will be required to file monthly financial reports under the amended rules. The Commission, however, is concerned that eliminating the early warning notice requirement will diminish the DSRO's and Commission's ability to react promptly to potential financial crises at an FCM that has experienced a decrease in capital. The Commission, however, invites interested parties to comment on this aspect of the proposal, including on whether the 150 percent early warning level is appropriate or whether it should be adjusted or eliminated.

B. Failure To Maintain Current Books and Records and of Material Inadequacy in Internal Accounting Controls

Rule 1.12(c) requires an FCM or IB to notify the Commission if it fails to maintain current books and records that it is required to keep pursuant to Commission regulations. The FCM or IB must give such notice on the same day that the event occurs that causes it to not maintain current books and records. The notice must specify the books and records that have not been made or that are not current. The FCM or IB also is required to file a written report setting forth the steps taken, or that are being taken, to correct the situation within five business days of filing the initial notice.

Rule 1.12(d) requires an FCM or IB to notify the Commission within three business days of discovering or being

[25] SEC Rule 17a–5(m) requires that a securities broker or dealer notify its DEA and the SEC offices located in Washington, DC and the region where the broker or dealer has its principal place of business ''in the event any broker-dealer finds it necessary to change its fiscal year.'' The notice must contain a detailed explanation for the change, and any change in the ''as of'' date for the annual audit financial statements must be approved by the DEA under SEC Rule 17a–5(d)(1)(i).

[26] Rule 1.10(b)(1)(ii) requires that FCMs file reports that are ''as of the close of its fiscal year'' and filed ''no later than 90 days after the close'' of the fiscal year, or, if the FCM is also registered as a securities broker or dealer, no later than the 60 day period provided under SEC Rule 17a–5(d)(5).

[27] The proposed amendment will be similar to existing provisions in 1.10(c) that provide that guarantee agreements need be filed solely with the NFA.

[28] The level of adjusted net capital that is required under Rule 1.12(b) equals the greatest of the following:

a. $375,000;

b. Six percent of the Segregated Amount, less the market value of options purchased by customers for which the full premiums have been paid;

c. 150 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

d. for FCMs that also are registered with SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 17a–11(b).

The Commission is proposing a technical amendment to Rule 1.12(b) to correct the reference to SEC Rule 17a–11(b), which the SEC has redesignated as 17a–11(c). 58 FR 37655 (July 13, 1993.)

[29] SEC Rule 17a–11(c), (17 CFR 240.17a–11(c)).

notified by an independent public accountant of a material inadequacy in its accounting system, internal accounting controls, procedures for safeguarding customer and firm assets, or other systems. The FCM or IB also is required to file a written report setting forth the steps taken, or that are being taken, to correct the material inadequacy within five business days of the original notice.

The Commission is proposing to amend Rule 1.12(c) and (d) so that the time frames for reporting a failure to maintain current books and records and for reporting a material inadequacy in accounting systems are consistent with the time frames established by SEC rules for securities brokers and dealers. The Commission and SEC have attempted, to the extent possible, to develop capital and financial reporting rules that are consistent in order to simplify and to clarify the rules and procedures for firms that are dually-registered as securities brokers or dealers and FCMs or IBs. SEC Rule 17a–11(d) and (e) are analogous to Commission Rule 1.12(c) and (d). SEC Rule 17a–11(d), however, requires a broker or dealer to transmit within 48 hours a report to the SEC stating what the broker or dealer has done or is doing to correct the situation that has caused it to fail to maintain current books and records. SEC Rule 17a–11(e) requires a broker or dealer to notify the SEC within 24 hours of discovering a material inadequacy in its accounting systems and to transmit a report to the SEC within 48 hours of such discovery.

The Commission believes that financial surveillance would be improved if all FCMs and IBs, whether dual registrants or not, were required to file notices with the Commission in accordance with the earlier thresholds required by the SEC. The time frames in the Commission's rules were adopted in 1978 and have not been amended since then to reflect advances in technology that may help ensure more prompt reporting. The Commission further believes that FCMs and IBs and brokers and dealers would benefit if the Commission's and SEC's rules were harmonized so that the same time frames apply for compliance with both agencies.

VI. Equity Capital and Subordinated Agreements

The Commission also is proposing to make conforming changes to Rule 1.17(e) and Rule 1.17(h), as these rules also include adjusted net capital requirements that are based upon percentages of the Segregated Amount. Pursuant to these rules, an FCM[30] must maintain adjusted net capital in excess of its minimum adjusted net capital requirement in order to undertake or avoid undertaking certain actions in connection with the FCM's equity capital and subordination agreements.[31] Thus, for example, Rule 1.17(e) prohibits the withdrawal of equity capital from an FCM if, among other conditions, the FCM's adjusted net capital after giving effect to such withdrawals would be less than the greatest of:

a. 120 percent of the minimum dollar amount in 1.17(a)(1)(i)(A) or (a)(1)(ii)(A);[32]

b. Six percent of the Segregated Amount;

c. 120 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

d. For FCMs that also are registered with the SEC as securities brokers or dealers, the amount of net capital required by SEC Rule 15c3–1(e).

Similarly, several paragraphs of Rule 1.17 that address subordination agreements—(h)(2)(vi)(C) (restricting reductions of the unpaid principal balance under a secured demand note subject to a subordination agreement); (h)(2)(vii)(A) (restricting prepayments) and (B) (restricting special prepayments);[33] (h)(2)(viii)(A) (requiring suspension of repayment); (h)(3)(ii) (requiring notice of maturity or accelerated maturity) and (h)(3)(v) (restricting use of temporary subordinations)—also include adjusted net capital calculations that refer to specified percentages of the Segregated Amount.[34] The required percentages range from six percent to ten percent, all of which exceed the percentage (four percent) applied to the Segregated Amount for purposes of the minimum adjusted net capital requirement under Rule 1.17(a).

The Commission therefore is proposing to amend paragraphs (e) and (h) of Rule 1.17 to conform to the risk-based capital requirement that the Commission is proposing for Rule 1.17(a). The proposed amendments to paragraphs (e) and (h) of Rule 1.17 would: (i) Eliminate calculations based on the Segregated Amount; (ii) adopt calculations based on the required margin for customer and noncustomer futures and option positions carried by an FCM; and (iii) apply percentage requirements that reflect the same proportional increase currently required under 1.17(e) and (h). Thus, for example, where Rule 1.17(e) included a calculation based upon six percent of the Segregated Amount, the Commission proposes to eliminate this calculation and require 150 percent of the Risk-Based Capital amount that the Commission is proposing for FCMs under Rule 1.17(a)(1)(B).

The Commission also is proposing to ''grandfather'' in agreements that, prior to the effective date of the proposed amendments, have been determined to be satisfactory subordination agreements pursuant to Rule 1.17(h). The Commission is proposing to amend paragraph (h)(3)(vii) of Rule 1.17 to provide that any such agreement would continue to be deemed satisfactory until its maturity, so long as the agreement is not amended or renewed. If for any reason the agreement is amended or renewed, such amended or renewed agreement must comply with Rule 1.17 as amended.[35]

[30] Both FCMs and IBs must maintain specified levels of adjusted net capital for purposes of the actions that are either restricted or required under Regulations 1.17(e) and 1.17(h). Only FCMs, however, are required to include in their capital computations the funds that FCMs are required to segregate and set aside for the FCMs' customers. The discussion in this proposal is therefore limited to FCMs, since the proposed change relates to adjusted net capital computations that are based on funds required to be segregated and set aside for the FCMs' customers.

[31] Subordination agreements that meet the requirements of Rule 1.17(h) will be deemed ''satisfactory subordination agreements,'' thus permitting an FCM, pursuant to Rule 1.17(c)(4)(i), to exclude the subordinated debt that is governed by these agreements as liabilities when computing net capital.

[32] The Commission redesignated paragraph (a)(1)(ii)(A) of Rule 1.17 as paragraph (a)(1)(iii)(A) in 2001. 66 FR 53510 (October 23, 2001). The Commission therefore also proposes a technical amendment to Rule 1.17(e) to correct the reference to 1.17(a)(1)(ii)(A) to read 1.17(a)(1)(iii)(A).

[33] ''Special prepayments'' is the term used by the rule for prepayments made under revolving subordinated agreements. Because revolving agreements may permit prepayments at any time, such payments ordinarily would conflict with Rule 1.17(h)(2)(vii) (prohibiting prepayment within one year of the date upon which the governing subordination agreement became effective.) In 1982, the Commission determined that special prepayments would be acceptable if subject to various conditions, including a higher level of adjusted net capital (10 percent of segregated funds) than is required for prepayments that are subject to the one-year restriction (7 percent of segregated funds.) 47 FR 22352 (May 24, 1982).

[34] The cited paragraphs contain references to 1.17(a)(1)(ii)(A), which has been redesignated. (*See* discussion in footnote 31 of this release.) The Commission is proposing a technical amendment to change the reference to read as 1.17(a)(1)(iii)(A).

[35] Rule 1.17(h)(3)(vii) presently applies to satisfactory subordination agreements that were entered into prior to the date that Rule 1.17(h) first became effective (December 20, 1978). The Commission provided a period of up to five years for such agreements to come into compliance with Rule 1.17(h), and this period has long since expired. The Commission therefore is also proposing technical amendments to eliminate provisions in Rule 1.17(h)(3)(viii) that are applicable to

Continued

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has 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.[36] The Commission has determined previously that FCMs are not small entities for the purpose of the RFA.[37] With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered ''small entities'' for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on IBs of any such rule at that time.[38] Several of the proposed amendments would apply to FCMs only and therefore would have no economic impact on IBs (proposed amendments to Regulations 1.12(b), 1.17(a), 1.17(c), 1.17(e) and 1.17(h)). The proposed amendments to Regulations 1.10, 1.16 and 1.18 would reduce reporting requirements applicable to IBs, because financial reports that the IB must now file with both the Commission and the NFA would be filed with the NFA only. Proposed amendments to Regulation 1.12, which would shorten reporting time frames to the same periods required by comparable SEC rules, should have no economic impact on an IB that is also registered as a securities broker or dealer with SEC. Moreover, the advances in technology since 1978 would reduce the effect, if any, of the proposed Rule 1.12 amendments on those IBs that are not registered with the SEC. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on the significance of the economic impact of the proposed rules, if any, on IBs.

B. Paperwork Reduction Act

The proposed rulemaking includes information collection requirements as a result of the proposed amendment to Regulation 1.10, which would require FCMs to prepare and file unaudited financial reports on a monthly rather than a quarterly basis. The Paperwork Reduction Act of 1995 (''PRA'')[39] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review.

Collection Of Information. (Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.)

FCMs currently prepare and file quarterly unaudited financial reports under Rule 1.10, and they also prepare and file monthly capital computations under Rule 1.18. Under the proposed amendment to Rule 1.10, FCMs would file unaudited financial reports on a monthly basis, which would also satisfy the existing monthly reporting requirement of Rule 1.18. The Commission has therefore determined that the proposed amendments to Rule 1.10 and Rule 1.18 would increase by 537 hours the total annual reporting burden associated with the above-referenced collection of information, which has been approved previously by OMB.

The estimated burden of the proposed amendments to Rule 1.10 and Rule 1.18 was calculated as follows:

The burden associated with Rule 1.10 is expected to be 5,577 hours as a result of the proposed amendment to Rule 1.10, which represents an increase of 3,687 hours:

Estimated number of respondents: 169.

Reports annually by each respondent: 12.

Total annual responses: 2,028.

Estimated average number of hours per response: 2.75.

Annual reporting burden: 5,577.

The existing burden associated with Commission Rule 1.18 is expected to decline to zero as a result of the proposed amendment to Rule 1.18, which represents a decrease of 3,150 hours.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

C. 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

satisfactory subordination agreements that were entered into prior to December 20, 1978.

[36] 47 FR 18618 (April 30, 1982).

[37] 47 FR at 18619.

[38] 47 FR at 18618, 18620.

[39] 44 U.S.C. 3507(d).

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 proposed rulemaking consists of several proposed amendments to regulations pertaining to the minimum financial and related reporting requirements for FCMs and IBs.[40] The Commission is considering the costs and benefits of these various proposed 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 proposed amendments to reporting requirements provide the benefit of aiding the Commission and DSROs to monitor the financial condition of futures intermediaries and to protect the customers of those firms and the markets. The Commission anticipates that the costs of compliance with the proposed reporting requirements would be minimized by proposed amendments to streamline filing requirements. In addition, the proposed rules would ''grandfather'' in existing satisfactory subordination agreements, meaning that FCMs or IBs would incur no costs to comply with proposed amendments to Rule 1.17, unless such agreements would be amended or renewed for other reasons.

2. *Efficiency and competition.* As stated above, the Commission anticipates that the proposed amendments will benefit efficiency by eliminating duplicate filings and otherwise streamlining reporting requirements for FCMs and IBs. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on competition in the futures and options markets.

3. *Financial integrity of futures markets and price discovery.* The proposed amendments contribute to the benefit of ensuring that FCMs and IBs can meet their financial obligations to customers and other market participants, thus contributing to the financial integrity of the futures and options markets as a whole. 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 proposed capital standards seek to reflect appropriately the level of risk that different activities and obligations of FCMs and IBs may pose to their financial condition. The proposed amendments may therefore contribute to the sound risk management practices of futures intermediaries.

5. *Other public interest considerations.* The Commission also believes that the proposed rules are beneficial in that they harmonize Commission and SEC rules with respect to time frames for reporting conditions that may be potentially adverse to the financial condition of the FCM or IB.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

For the reasons presented above, 17 CFR Part 1 is proposed to be 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. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.10 is proposed to be amended by:

a. Adding the word ''monthly'' before the words ''financial reports'' and removing the parenthetical phrase in paragraph (b)(1)(ii);

b. Removing the last sentence of paragraph (e)(1); and

c. Removing paragraph (f)(2) and

d. Revising paragraphs (b)(1)(i), (b)(2)(i), (c), (d)(4), (e)(2), and (f)(1) to read as follows:

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

* * * * *

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM as of the close of business each month. Each Form 1–FR–FCM must be filed no later than 17 business days after the date for which the report is made.

* * * * *

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects, pursuant to paragraph (e)(1) of this section, to file a Form 1–FR–IB semiannually as of the middle and the close of each calendar year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made.

* * * * *

(c) *Where to file reports.* (1) A report filed by an introducing broker pursuant to paragraph (b)(2)(i) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office).

(2) Any report filed pursuant to paragraph (b)(1), (b)(2), or (b)(4) of this section or § 1.12(a) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, if the futures commission

[40] Section 4f(b) of the Act prohibits persons from becoming registered as FCMs or IBs if they do not meet the minimum financial requirements set forth in either the Commission's regulations or in such Commission-approved requirements as may be established by the contract markets and derivatives transaction execution facilities of which the FCM or IB is a member.

merchant, introducing broker or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.

(3) Any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with, and will be considered filed when received by, the National Futures Association.

(d) * * *

(4) Attached to each Form 1–FR filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR is true and correct. The oath or affirmation must be made by:

(i) a representative duly authorized to bind the applicant or registrant; or

(ii) if the registrant or applicant is registered with the Securities and Exchange Commission as a securities broker or dealer, by 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 or part IIA. 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.

(e) * * *

(2) (i) A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year has been approved pursuant to this paragraph (e)(2).

(ii) A registrant may file with its designated self-regulatory organization an application to change its fiscal year, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's application to change its fiscal year. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(iii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization copies of any notice or application filed with its designated examining authority, pursuant to § 240.17a–5(d)(1)(i) of this title, for a change in fiscal year or ''as of'' date for its annual audited financial statement. The registrant must also file immediately with the designated self regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the registrant's request for change in fiscal year or ''as of'' date. Upon the receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the change in fiscal year or ''as of'' date referenced in the notice shall be deemed approved under this paragraph (e)(2).

(iv) Any copy that under this paragraph (e)(2) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that such a notice of approval for a registrant under the jurisdiction of the Commission's Western Regional Office must be filed with the Commission's Southwestern Regional Office), and any copy or application to be filed with the designated self-regulatory organization shall be filed at its principal place of business.

(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 or part IIA (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:

(i) A registrant may file with its designated self-regulatory organization an application for extension of time, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's request for extension of time. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(ii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self-regulatory organization a copy of any application that the registrant has filed with its designated examining authority, pursuant to § 240.17–a5(l)(5) of this title, for an extension of time to file its FOCUS report. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the requested extension of time. Upon receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1).

(iii) Any copy that under this paragraph (f)(1) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file the required copies with the Commission's Southwestern Regional Office) (*See* § 1.16(f) for extension of the time for filing certified financial statements.)

3. Section 1.12 is proposed to be amended by:

a. Revising paragraphs (b)(1), (b)(2), (b)(4), (c) and (d), and

b. Removing the words ''telegraphic or'' from paragraphs (e), (f)(1), (f)(2), (f)(3), (f)(4), (f)(5)(i), and (h) to read as follows:

§ 1.12. Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(1) 150 percent of the minimum dollar amount required by paragraph (a)(1)(i)(A) of § 1.17;

(2) 150 percent of the amount required by paragraph (a)(1)(i)(B) of § 1.17;

(3) * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(c) of the Securities and Exchange Commission (17 CFR 240.17a–11(c)), must file written notice to that effect as set forth in paragraph (i)

of this section within twenty-four (24) hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of this chapter, of the existence of any material inadequacy, as specified in § 1.16(d)(2) of this chapter, such applicant or registrant must give facsimile notice of such material inadequacy within twenty-four (24) hours, and within forty-eight (48) hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

4. Section 1.16 is proposed to be amended by:

a. Revising paragraph (f)(1), and

b. Removing paragraph (f)(2) and redesignating paragraph (f)(3) as paragraph (f)(2), as follows:

§ 1.16. Qualifications and reports of accountants.

* * * * *

(f) *Extension of time for filing audited reports.* (1) In the event a registrant finds that it cannot file its certified financial statements and schedules for any year within the time specified in § 1.10 without substantial undue hardship, it may request approval for an extension of time, as follows:

(i) A registrant may file with its designated self-regulatory organization an application for extension of time, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from the designated self regulatory organization to approve or deny the registrant's request for extension of time. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(ii) A registrant that is registered with the Securities and Exchange Commission as a securities broker or dealer may file with its designated self regulatory organization a copy of any application that the registrant has filed with its designated examining authority, pursuant to § 240.17–a5(*l*)(1) of this title, for an extension of time to file audited annual financial statements. The registrant must also file immediately with the designated self-regulatory organization and the Commission copies of any notice it receives from its designated examining authority to approve or deny the requested extension of time. Upon receipt by the designated self-regulatory organization and the Commission of copies of any such notice of approval, the requested extension of time referenced in the notice shall be deemed approved under this paragraph (f)(1).

(iii) Any copy that under this paragraph (f) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file the required copies with the Commission's Southwestern Regional Office).

5. Section 1.17 is proposed to be amended by:

a. revising paragraphs (a)(1)(i)(B), (b)(4), (e)(1)(ii), (h)(2)(vi)(C)(1) and (2), (h)(2)(vii)(A)(1) and (2), (h)(2)(vii)(B)(1) and (2), (h)(2)(viii)(A)(1) and (2), (h)(3)(ii)(A) and (B), (h)(3)(v)(A) and (B) and (h)(3)(vii);

b. adding new paragraphs (b)(7) and (b)(8);

c. revising the words ''three business days'' to read ''one business day'' in both the first and second sentences of paragraph (c)(5)(viii);

d. revising the words ''three business days'' to read ''one business day'' in both the first and second sentences of paragraph (c)(5)(ix); and

e. revising the reference to ''(a)(1)(ii)(A)'' to read ''(a)(1)(iii)(A)'' in paragraph (e)(1)(i) to read as follows:

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

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

(B) The futures commission merchant's risk-based capital requirement computed as follows:

(1) Eight percent of the total risk margin requirement (as defined in § 1.17(b)(8)) for all futures and options on futures positions carried by the futures commission merchant in customer accounts (as defined in § 1.17(b)(7)), plus

(2) Four percent of the total risk margin requirement (as defined in § 1.17(b)(8)) for all futures and options on futures positions carried by the futures commission merchant in noncustomer accounts (as defined in § 1.17(b)(4)).

* * * * *

(b) * * *

(4) ''Noncustomer account'' means a commodity futures or option account carried on the books of the applicant or registrant which is either:

(i) An account that is not included in the definition of customer (as defined in § 1.17(b)(2)) or proprietary account (as defined in § 1.17(b)(3)), or

(ii) An account for a foreign-domiciled person trading futures or options on a foreign board of trade, and such account is a proprietary account as defined in § 1.3(y) of this title, but is not a proprietary account as defined in § 1.17(b)(3).

* * * * *

(7) ''Customer account'' means a commodity futures or option account carried on the books of the applicant or registrant which is either:

(i) An account that is included in the definition of customer (as defined in § 1.17(b)(2)), or

(ii) An account for a foreign-domiciled person trading on a foreign board of trade, where such account for the foreign-domiciled person is not a proprietary account (as defined in § 1.17 (b)(3)) or a noncustomer account (as defined in § 1.17(b)(4)(ii)).

(8) ''Risk margin'' for an account means the level of maintenance margin or performance bond that the exchange on which a position or portfolio of futures contracts and/or options on futures contracts is traded requires its members to collect from the owner of the account, subject to the following:

(i) Risk margin does not include the equity component of short or long option positions maintained in an account;

(ii) The maintenance margin or performance bond requirement associated with a long option position may be excluded from risk margin to the extent that the value of such long option position does not reduce the total risk maintenance or performance bond requirement of the account that holds the long option position;

(iii) The risk margin for an account carried by an FCM which is not a member of the exchange on which the positions are traded should be calculated as if the FCM were such a member; and

(iv) If a futures commission merchant does not possess sufficient information to determine what portion of an account's total margin requirement

represents risk margin, all of the margin required by the exchange, clearing organization, or other futures commission merchant or entity for that account, shall be treated as risk margin.

* * * * *

(e)(1) * * *

(ii) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(vi)(C) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(vii)(A) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(B) * * *

(*1*) 200 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 250 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(2)(viii)(A) * * *

(*1*) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(*2*) For a futures commission merchant or applicant therefor, 150 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(3)(ii) * * *

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 150 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(h)(v) * * *

(A) 120 percent of the appropriate minimum dollar amount required by paragraphs (a)(1)(i)(A) or (a)(1)(iii)(A) of this section;

(B) For a futures commission merchant or applicant therefor, 175 percent of the amount required by paragraph (a)(1)(i)(B) of this section;

* * * * *

(vii) *Subordination agreements that incorporate adjusted net capital requirements in effect prior to* [The Effective Date of the Rule Amendment]. Any subordination agreement that incorporates the adjusted net capital requirements in paragraphs (h)(2)(vi)(C)(*2*), (h)(2)(vii)(A)(*2*) and (B)(*2*), (h)(2)(viii)(A)(*2*), (h)(3)(ii)(B), and (h)(3)(v)(B) of this section as in effect prior to [The Effective Date of the Rule Amendment] and which has been deemed to be satisfactorily subordinated pursuant to this section prior to [The Effective Date of the Rule Amendment] shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. In the event, however, that such agreement is amended or renewed for any reason, then such agreement shall not be deemed a satisfactory subordination agreement unless the amended or renewed agreement meets the requirements of this section.

6. Section 1.18 is proposed to be amended by revising paragraph (b) to read as follows:

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

* * * * *

(b)(1) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

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

Issued in Washington, DC, on July 1, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–17218 Filed 7–8–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143679–02]

RIN 1545–BB68

Effect of Elections in Certain Multi-Step Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that give effect to section 338(h)(10) elections made in certain multi-step transactions. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by October 7, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–143679–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–143679–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Daniel Heins, Mary Goode or Reginald Mombrun at (202) 622–7930; concerning submissions of comments, Guy Traynor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of