

that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Gregory J. Michalik, Aerospace Engineer, FAA, Chicago ACO, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294-7135; facsimile: (847) 294-7834.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided you comply with the following:

(1) The aircraft is operated in Visual Flight Rules (VFR) conditions only; and

(2) The aircraft is operated during daytime hours only.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Ballistic Recovery Systems Inc. Service Bulletin SBA 95-01, Issued: February 25, 2002, as specified in Cirrus Alert Service Bulletin SBA 20-95-01, Issued: February 25, 2002, and Cirrus Alert Service Bulletin A22-95-01, Issued: February 25, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cirrus Design Corporation, 4515 Taylor Circle, Duluth, MN 55811; telephone: (218) 727-2737; or electronically at the following address: www.cirrusdesign.com/sb. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 19, 2002.

Issued in Kansas City, Missouri, on March 5, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02-5703 Filed 3-12-02; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, 41, and 155

RIN 3038-AB83

Regulation To Restrict Dual Trading in Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") hereby adopts regulation 41.27 that restricts dual trading by floor brokers in security futures products. Under the regulation, the dual trading restriction affects floor brokers that trade security futures products through open outcry on the trading floor of a designated contract market ("DCM") or registered derivatives transaction execution facility ("DTF"). The regulation provides for certain exceptions to the restriction, including provisions for the correction of errors, customer consent, spread transactions, market emergencies, and unique or special characteristics of an agreement, contract, or transaction, or of the DCM or DTF.

EFFECTIVE DATE: April 12, 2002.

ADDRESSES: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418-5521 or by e-mail to secretary@cftc.gov. Reference should be made to "Restriction of Dual Trading in Security Futures Products by Floor Brokers."

FOR FURTHER INFORMATION CONTACT: Stephen Braverman, Associate Director, or Rachel Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5490, Electronic mail: sbraverman@cftc.gov or rberdansky@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 15, 2000, Congress passed the Commodity Futures Modernization Act of 2000 ("CFMA"), which was signed by the President and became effective on December 21, 2000. Among other things, the CFMA, which substantially amended the Commodity Exchange Act ("Act"), establishes two categories of markets subject to Commission regulatory oversight, DCMs

and DTFs.¹ In addition, Title II of the CFMA repeals the longstanding ban on single stock futures and directs the Commission and the Securities and Exchange Commission ("SEC") to implement a joint regulatory framework for security futures products.

On July 11, 2001, the Commission published proposed regulation 41.27 ("proposing release"), which generally restricts floor brokers from dual trading security futures products through open outcry during the same trading session, in accordance with the statutory mandate of section 4j(a) of the Act, as amended by section 251(c) of the CFMA.² Section 4j(a), as amended, also requires that the Commission permit exceptions to the dual trading restriction in order to ensure fairness and orderly trading in security futures product markets.³ Moreover, section 2(a)(D)(i) of the Act sets forth listing standards for security futures products traded on a DCM or DTF. In particular, section 2(a)(D)(i)(VI) requires that security futures products be subject to the dual trading restriction of section 4j of the Act and the regulations thereunder or section 11(a) of the Securities Exchange Act of 1934 (" '34 Act") and the regulations thereunder.⁴

Section 5f of the Act provides that any board of trade that is registered with the SEC as a national securities exchange or as a national securities association, or as an alternative trading system, shall be considered a DCM in security futures products, provided that certain enumerated requirements are satisfied upon filing a notice with the Commission. Section 5f(b)(1)(B), however, specifically exempts such notice-registered entities from section 4j of the Act. Similarly, section 6(g) of the '34 Act, as amended by section 202(a) of

¹ Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000). Prior to its recent amendment, the Act referred to "designated contract markets" as Commission-approved products traded on a board of trade. The Act, as amended, however, uses the term "designated contract market" to refer to the approved or licensed market on which futures contracts and commodity options are traded. Regulation 41.27 refers to DCMs in this sense.

² See Proposed Regulation to Restrict Dual Trading in Security Futures Products, 66 FR 36218.

³ Section 4j of the Act, as amended, is different in scope than its predecessor and the Commission regulation promulgated thereunder. Commission regulation 155.5 restricted dual trading in any contract market that exceeded certain volume thresholds unless an exchange requested, and the Commission granted, a dual trading exemption. As part of this rulemaking, the Commission is removing regulation 155.5.

⁴ With certain enumerated exceptions, section 11(a)(1) of the '34 Act and SEC rule 11a-1 make it unlawful for any member of a national securities exchange to effect any transaction for his or her own account, the account of an associated person, or an account with respect to which it or an associated person has discretion.

the CFMA, provides that any board of trade that has been designated as a contract market by the Commission or has registered with the Commission as a DTF may register with the SEC as a national securities exchange by filing notice with the SEC solely for the purposes of trading security futures products, provided that certain enumerated requirements are satisfied. DCMs and DTFs that notice register with the SEC for the purpose of trading security futures products are exempt from section 11(a)(1) of the '34 Act.

The Commission received four comment letters on a variety of issues regarding the proposing release.⁵ CME fully supported proposed regulation 41.27, and stated that, "the Commission's proposed dual trading regulation for security futures products appropriately balances customer protection with regulatory oversight." CBOT, AMEX, and NYBOT raised several issues regarding the proposing release's definition of "customer" and "dual trading," application of the dual trading restriction under certain circumstances to electronic trading systems, and the possible addition of a low volume exception. Those comments are discussed, as appropriate, below.

II. Final Rule

A. Definitions

1. Customer

Proposed regulation 41.27(a)(4) defined "customer" to mean an account owner for which a trade is executed other than (i) an account in which a floor broker's ownership interest or share of trading profits is ten percent or more; (ii) an account for which a floor broker has discretion; (iii) an account controlled by a person with whom a floor broker has a relationship through membership in a broker association; (iv) a house account for a floor broker's clearing member; or (v) an account for another member present on the floor of a DCM or DTF or an account controlled by such other member. To make the regulation more consistent with section 11(a) of the '34 Act, the Commission has modified the language of section 41.27(a)(4)(i) by deleting the reference to "ten percent or more."⁶ Thus, § 41.27(a)(4)(i), as adopted, provides, "(c)ustomer means an account owner for which a trade is executed other than (i)

⁵ Letters were received from: (1) Chicago Mercantile Exchange ("CME"), (2) Board of Trade of the City of Chicago ("CBOT"), (3) The American Stock Exchange ("AMEX"), and (4) Board of Trade of the City of New York ("NYBOT").

⁶ See *infra* note 4.

an account in which such floor broker has any interest."⁷

CBOT and NYBOT commented regarding the proposed definition of "customer" in § 41.27(a)(4). NYBOT commented that proposed § 41.27(a)(4)(iv) and (v) included two categories of non-customer accounts, a house account for a floor broker's clearing member, and an account for another member present on the floor of a DCM or DTF or an account controlled by such other member, that were not considered non-customer accounts under regulation 155.5.⁸ Specifically, NYBOT believes that regulation 155.5 permitted a floor broker to trade security futures products for a customer and for the house account of a floor broker's clearing member or for another member present on the floor during the same trading session.⁹

After carefully reviewing regulation 155.5, the Commission believes that although it intended that a house account for a floor broker's clearing member and an account for another member present on the floor or an account controlled by such other member be considered non-customer accounts, the language in regulation 155.5 was ambiguous. Accordingly, regulation 41.27 clearly expresses the Commission's intent that floor brokers be prohibited from trading the same security futures product for a customer and for a house account for a floor broker's clearing member or for an account for another member present on the floor or an account controlled by such member during the same trading session. In this regard, the Commission believes that to allow otherwise could disadvantage customers because a floor broker may be motivated to obtain a better fill for its clearing member or for another member present on the floor. Regulation 41.27, however, would permit a floor broker to trade the same

⁷ AMEX commented that the final regulation should delete the "ten percent or more" ownership provision because it limited the definition of dual trading and was not included in section 4j of the Act, as amended.

⁸ Similarly, CBOT commented that the inclusion of an account for another member present on the floor of a DCM or DTF or an account controlled by such other member as a non-customer account differs from the treatment of such accounts under Regulation 155.5.

⁹ NYBOT would like the Commission to remove an account for a floor broker's clearing member, or an account for another member present on the floor of a DCM or DTF or an account controlled by such other member, from the list of non-customer accounts. CBOT would include the house account for a floor broker's clearing member as a non-customer account, but would like the Commission to create an exception to the dual trading restriction for the accounts of all other clearing members, members present on the floor, and members not present on the floor.

security futures product for his or her own account and non-customer accounts enumerated under regulation 41.27(a)(4)(i)-(v) during the same trading session.

Additionally, the Commission requested comment as to whether accounts for clearing members other than the house account of a floor broker's clearing member and members not present on the floor should be considered non-customer accounts for the purpose of regulation 41.27(a)(4). By defining these accounts as non-customer accounts, a floor broker would be permitted to trade for these accounts and the floor broker's personal account during the same trading session. NYBOT and CBOT commented that accounts for clearing members other than the house account of a floor broker's clearing member and members not present on the floor, should not be included as non-customer accounts in § 41.27(a)(4).¹⁰ The Commission therefore has determined that the accounts of clearing members other than the floor broker's clearing member, and the accounts of members not present on the floor of a DCM or DTEF, should be included as customer accounts for purposes of this rule.

2. Dual Trading

Section 41.27(a)(6) of the proposing release, which is renumbered as § 41.27(a)(5) in the final rule, defined "dual trading" as the "execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes, directly or indirectly, either through open outcry or through a trading system that electronically matches bids and offers, a transaction for the same security futures product on the same designated contract market or registered derivatives transaction execution facility for an account" of a non-customer.

This definition referred to a floor broker executing "directly or indirectly" a transaction for a non-customer account, but did not explain what was meant by "indirectly." Rather, in discussing the various sections of the proposed rule, the proposing release noted that the word "indirectly" was

¹⁰ Both NYBOT and CBOT contend that if clearing members other than the house account of a floor broker's clearing member and members not present on the floor are included as non-customer accounts in § 41.27(a)(4), floor brokers would be limited to trading security futures products during the same trading session for such accounts and other non-customer accounts listed in § 41.27(a)(4)(i)-(v). In particular, CBOT believes that "these are not the types of brokers to whom other clearing firms or members would be likely to direct their orders."

intended to prevent a floor broker from executing a customer order and during the same trading session initiating and passing an order for a non-customer account identified by regulations 41.27(a)(4)(i)–(v) to another broker for execution. CBOT commented that to avoid ambiguity, the Commission should explicitly state what it means by “indirect execution” in the final regulation, similar to the dual trading definition in regulation 155.5(a)(4).¹¹ The Commission agrees and has made the appropriate change in the final regulation.

Additionally, the Commission is amending the language of the dual trading definition that describes an electronic trading system not subject to the dual trading prohibition to make it more precise and consistent with current practices. Specifically, the words “a trading system that electronically matches bids and offers” has been amended in § 41.27(a)(5) of the regulation to read “a trading system that electronically matches bids and offers pursuant to a predetermined algorithm.”¹²

3. Other Definitions

The proposing release also defined the terms “trading session,” “member,” “broker association,” and “security futures product.”¹³ The term “security futures product” will be deleted from § 41.27(a) in the final regulation because of a final Commission rulemaking subsequent to the proposing release that defined the term.¹⁴ No comments were received regarding § 41.27(a)(1)–(3) of the proposing release and the Commission has determined to adopt those sections as proposed.

¹¹ Regulation 155.5(a)(4) defined dual trading as “the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or *initiates and passes to another member* for execution in the same contract market. * * *” (emphasis added).

¹² The “dual trading” definition set forth in § 41.27(a)(5) will now read:

Dual trading means the execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes directly or by initiating and passing to another member, either through open outcry or through a trading system that electronically matches bids and offers pursuant to a predetermined algorithm, a transaction for the same security futures product on the same designated contract market or registered derivatives transaction execution facility for an account described in paragraphs (a)(4)(i)–(v) of this section.

¹³ See sections 41.27(a)(1), (2), (3), and (5) of the proposing release, respectively.

¹⁴ Regulation 41.1(i) provides that “(s)ecurity futures product shall have the meaning set forth in section 1a(32) of the Act.” 66 FR 44960, 44965 (August 27, 2001).

B. Application of the Dual Trading Prohibition to Electronic Trading Systems

In the proposing release, the Commission stated that under the plain language of section 4j of the Act, as amended, the dual trading restriction would not apply to a DCM or DTF that trades security futures products solely through an electronic trading system. This interpretation takes into account the plain language of the statute, which refers to “floor brokers” who “execute” orders.¹⁵ In addition, this interpretation recognizes that a floor broker who executes a customer order through open outcry has more control over that order than a customer order entered into an electronic trading system that matches bids and offers pursuant to a predetermined algorithm where members do not have a time and place advantage. In the latter instance, the floor broker does not have the ability to influence or guide the order once it enters the system because the order is matched pursuant to a predetermined algorithm.

The Commission also acknowledged in the proposing release that a DCM or DTF may permit the simultaneous trading of security futures products through open outcry on a trading floor and on an electronic trading system for the same product, also known as “side-by-side trading.” The Commission would permit a floor broker, during the same trading session, to enter a bid or offer for a security futures product for a customer account on an electronic trading system and to trade the same product for non-customer accounts listed in §§ 41.27(a)(4)(i)–(v) through open outcry. However, recognizing the extent of control that a floor broker exercises with respect to an open outcry customer order, the Commission noted that a floor broker would be prohibited during the same trading session from executing a customer order for a particular security futures product through open outcry and entering a bid or offer on an electronic trading system for the same product for non-customer accounts.

NYBOT and AMEX contend that the Act does not limit the dual trading restriction to open outcry trading and commented that a dual trading restriction also should be applicable to the trading of security futures products on electronic trading systems. CBOT

¹⁵ Section 4j(b) defines dual trading as the “execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract [on a designated contract market] or registered derivatives transaction execution facility.”

disagrees with NYBOT and AMEX, and commented that it believes the Commission correctly determined that under the Act a dual trading restriction is not applicable to a DCM or DTF that trades security futures products solely through an electronic trading system, because there is no floor broker involved in the trade.¹⁶ CBOT, however, disagrees with the Commission’s application of the dual trading restriction with respect to side-by-side trading. Specifically, CBOT does not believe that a dual trading restriction should be applicable to side-by-side trading, regardless of whether the customer order is executed through open outcry or entered on an electronic trading system.

The Commission is not persuaded by the comments that its interpretation and application of the dual trading restriction is inconsistent with the Act. In this connection, NYBOT commented that “the definition of “floor broker” must be read in the light of the evolution of the markets to electronic trading, and the dual trading restrictions applied to all orders that are intermediated, regardless of the ultimate mode of execution.” In adopting the CFMA, however, Congress did not substantively amend the definition of “floor broker,” nor does the Act, as amended, include language demonstrating that Congress intended to apply a dual trading restriction to security futures products traded on an electronic trading system.

Nonetheless, the Commission has separately determined, given the possibility of further developments in electronic markets and electronic trading systems, to adopt § 41.27(b)(2).¹⁷ Section 41.27(b)(2) would require a DCM or DTF that operates an electronic market or electronic trading system that

¹⁶ As stated earlier, the Commission noted in the proposing release that the dual trading definition found in section 4j(b) of the Act refers to “floor brokers” who “execute” customer orders. Floor brokers execute customer orders on the trading floor, whereas various registrants as well as unregistered individuals enter orders into electronic trading systems that then match orders pursuant to a predetermined algorithm where members do not have a time and place advantage and relinquish the ability to influence or guide the order once it enters the system. In this connection, the definition of “floor broker” found in section 1a(16) of the Act contemplates a person “in or surrounding * * * any pit, ring, or post * * *” on the floor of an exchange and not through a system that electronically matches bids and offers.

¹⁷ Section 41.27(b) of the proposing release is renumbered as § 41.27(b)(1) in the final rule. In addition, a reference to § 41.27(e) has been added to this paragraph. Section 41.27(b)(1) will now read:

No floor broker shall engage in dual trading in a security futures product on a designated contract market or registered derivatives transaction execution facility, except as otherwise provided under paragraphs (d), (e), and (f) of this section.

provides market participants with a time or place advantage, or the ability to override a predetermined algorithm, to submit an appropriate rule proposal to the Commission pursuant to the procedures enumerated in regulation 40.5. Specifically, the proposed rule must prohibit electronic market participants with a time or place advantage or with the ability to override a predetermined algorithm from trading a security futures product for accounts in which these same participants have any interest during the same trading session that they also trade the same security futures product for other accounts.¹⁸ The Commission notes, however, that § 41.27(b)(2) would not apply to execution priorities or quantity guarantees granted to market makers who perform that function, or to market participants who receive execution priorities based on price improvement activity, in accordance with rules governing the DCM or DTF.

C. Rules Implementing the Dual Trading Prohibition

As the Commission indicated in the proposing release, prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a DCM or DTF must adopt a rule prohibiting dual trading. Under regulation 41.27(c)(1), a DCM must submit such a rule to the Commission in accordance with regulation 40.6, along with a written certification that the rule complies with the Act and the regulations promulgated there-under, or must obtain Commission approval of such a rule pursuant to regulation 40.5. Under regulation 41.27(c)(2), a DTF must notify the Commission in accordance with regulation 37.7(b) that it has adopted a rule prohibiting dual trading or obtain Commission approval of such a rule pursuant to regulation 37.7(c). No comments were received regarding § 41.27(c). Accordingly, the Commission is adopting § 41.27(c) as proposed.

D. Specific Permitted Exceptions to the Dual Trading Prohibition and Unique or Special Characteristics of an Agreement, Contract, or Transaction, or of the DCM or DTF

Proposed regulation 41.27(d) would implement the directive of sections

¹⁸ An example of a time advantage would be providing certain market participants with faster access to an electronic trading system. An example of a place advantage would be granting certain market participants with better access to the market or market information. To date, however, no entity with electronic trading system characteristics identified in section 41.27(b)(2) has sought designation as a contract market or registration as a derivatives transaction execution facility.

4j(a)(2)(A) and (B) of the Act to permit certain exceptions to the dual trading restriction. Regulation 41.27(d)(1)–(4) provides exceptions to the dual trading restriction to permit the correction of errors resulting from the execution of a customer order, to permit a customer to designate in writing a floor broker to dual trade while executing orders for the customer's account, to permit a broker who unsuccessfully attempts to leg into a spread transaction to take the executed leg into his or her personal account and to offset such position, and to address market conditions that result in a temporary emergency. As the Commission indicated in the proposing release, a DCM or DTF, prior to permitting such exceptions to a dual trading prohibition, would have to adopt a rule permitting the specific exceptions and submit the rule to the Commission or obtain Commission approval pursuant to the rule submission procedures of regulations 41.27(e)(1) or (2).¹⁹

One comment was received regarding § 41.27(d). CBOT encouraged the Commission to add a low volume exception to regulation 41.27. The CBOT believes that adding a low volume exception may assist fledgling security futures products to become established before a trading prohibition would become applicable, and would improve liquidity. CBOT noted that section 11(c) of the '34 Act permits the SEC, upon application of an exchange, to grant a low volume exemption from section 11(a).

At this time, the Commission does not have data on the trading volume of security futures products upon which to base a threshold amount to create a low volume exception. However, similar to section 11(c) of the '34 Act with respect to the SEC, section 4j(a)(2)(C) of the Act affords the Commission broad authority to permit exceptions to "further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities." Specifically, § 41.27(f) would allow DCMs and DTFs to permit, pursuant to a rule, an exception to the dual trading prohibition to address an agreement, contract, or transaction that presents a unique or special characteristic, or to address a unique or special characteristic of the specific DCM or DTF. Accordingly, an exchange seeking a low volume exception to the dual trading restriction could seek to

¹⁹ These procedures are identical to the procedures under regulation 41.27(c)(1) and (2) for a DCM or DTF to submit a rule prohibiting dual trading.

implement such an exception by making a submission pursuant to the procedures set forth in § 41.27(f).

The Commission did not receive any other comments regarding § 41.27(d) or (f) and is adopting those sections as proposed.

III. Amendments to Regulations 37.2, 38.2 and 41.34

In order to facilitate the promulgation of proposed regulation 41.27, the Commission also is promulgating procedural amendments to regulations 37.2 and 38.2. Regulations 37.2 and 38.2 generally exempt DCMs and DTFs from certain Commission regulations and list those regulations that are applicable under the Act. Regulation 41.27 is hereby added to the list of regulations that remain applicable to DCMs and DTFs pursuant to regulations 37.2 and 38.2.²⁰

Additionally, the Commission is amending regulation 41.34(b) to exempt notice designated contract markets in security futures products ("SFPCMs") from regulation 41.27.²¹ As discussed

²⁰ Amended § 37.2 would provide:

Contracts, agreements, or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, 41.27, part 40, and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities. (emphasis added).

Amended § 38.2 would provide:

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, 41.27, parts 15 through 21, part 40, and part 190 of this chapter. (emphasis added).

²¹ Amended § 41.34 provides:

Any board of trade notice-designated as a contract market in security futures products pursuant to § 41.31 of this chapter also shall be exempt from:

(a) The following provisions of the Act, pursuant to section 5f(b)(1) of the Act:

- (1) Section 4(c)(c);
- (2) Section 4(c)(e);
- (3) Section 4(c)(g);
- (4) Section 4j;
- (5) Section 5;
- (6) Section 5c;
- (7) Section 6a;
- (8) Section 8(d);
- (9) Section 9(f);
- (10) Section 16 and;

(b) The following provisions, pursuant to section 5f(b)(4) of the Act:

- (1) Section 6(a);
- (2) Part 38 of this chapter;
- (3) Part 40 of this chapter; and

earlier, section 5f(b)(1)(B) of the Act specifically exempts boards of trade that register with the SEC as a national securities exchange, a national securities association, or as an alternative trading system from section 4j of the Act, upon filing notice with the Commission.²² Regulation 41.34(b) generally exempts SFPCMs from certain Commission regulations. Therefore, because regulation 41.27 is being promulgated pursuant to section 4j of the Act, the Commission is adding regulation 41.27 to the list of 41.34(b) exemptions.

IV. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to consider the costs and benefits of its action in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations.

The Commission's proposing release contained an analysis of the consideration of the costs and benefits and solicited public comment thereon.²³ The Commission specifically invited commenters to submit any data that they had quantifying the costs and benefits of the proposed rules with their comment letters.²⁴ The Commission did not receive any comments on this issue.

Compliance with regulation 41.27 would impose costs on DCMs and DTFs with respect to enacting and enforcing rules restricting dual trading of security futures products traded through open outcry on a trading floor. The costs of enacting and enforcing rules associated with regulation 41.27 are either balanced or outweighed by the increased protection of market participants and the public. The Commission's exercise of its discretion in implementing the Congressional directive to restrict dual trading, as set forth in section 4j of the Act, would not unreasonably increase costs related to efficiency, competitiveness, and

financial integrity of financial markets; price discovery; or sound risk management practices. After considering these factors, the Commission has determined to adopt regulation 41.27.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The regulation adopted herein would affect DCMs, DTFs, and floor brokers. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.²⁵ In its previous determinations, the Commission has concluded that contract markets are not small entities for the purpose of the RFA.²⁶ The Commission has recently determined that DTFs, for reasons similar to those applicable to contract markets, are not small entities for purposes of the RFA.²⁷

As the Commission stated in its proposing release, certain floor brokers would be affected by proposed regulation 41.27. The Commission, however, believes that regulation 41.27 as adopted will not have a significant economic impact on a substantial number of small entities. The Commission requested comment on this issue, but received no comments. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rule amendments will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995

This rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)) the Commission has submitted a copy of this rule to the Office of Management and Budget for its review. No comments were received in response to the Commission's invitation in the proposing release to comment on any potential paperwork burden associated with this regulation.

List of Subjects in 17 CFR Parts 37, 38, 41, and 155

Commodity futures, Contract markets, Reporting and recordkeeping requirements, Security futures products.

PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7a and 12a.

2. Section 37.2 is revised to read as follows:

§37.2 Exemption.

Contracts, agreements, or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, 41.27, part 40, and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

PART 38—DESIGNATED CONTRACT MARKETS

3. The authority citation for Part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7a and 12a.

4. Section 38.2 is revised to read as follows:

§38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, 41.27, parts 15 through 21, part 40 and part 190 of this chapter.

PART 41—SECURITY FUTURES

5. The authority citation for Part 41 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6f, 6j, 7a–2, 7b, 12a.

6. Section 41.27 is added as follows:

(4) Section 41.27 of this chapter. (emphasis added).

²² See section I. of the preamble for a more detailed discussion.

²³ 66 FR at 36221.

²⁴ *Id.*

²⁵ See 47 FR 18618–21 (Apr. 30, 1982).

²⁶ See 47 FR 18618 at 18619 (discussing contract markets).

²⁷ See A New Regulatory Framework for Trading Facilities, Intermediaries and Clearing Organizations 66 FR 42256, 42268 (August 10, 2001).

§ 41.27 Prohibition of Dual Trading In Security Futures Products By Floor Brokers.

(a) Definitions. For purposes of this section:

(1) Trading session means hours during which a designated contract market or registered derivatives transaction execution facility is scheduled to trade continuously during a trading day, as set forth in its rules, including any related post settlement trading session. A designated contract market or registered derivatives transaction execution facility may have more than one trading session during a trading day.

(2) Member shall have the meaning set forth in section 1a(24) of the Act.

(3) Broker association includes two or more designated contract market or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker who:

(i) Engage in floor brokerage activity on behalf of the same employer;

(ii) Have an employer and employee relationship which relates to floor brokerage activity;

(iii) Share profits and losses associated with their brokerage or trading activity; or

(iv) Regularly share a deck of orders.

(4) Customer means an account owner for which a trade is executed other than:

(i) An account in which such floor broker has any interest;

(ii) An account for which a floor broker has discretion;

(iii) An account controlled by a person with whom a floor broker has a relationship through membership in a broker association;

(iv) A house account of the floor broker's clearing member; or

(v) An account for another member present on the floor of a designated contract market or registered derivatives transaction execution facility or an account controlled by such other member.

(5) Dual trading means the execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes directly or by initiating and passing to another member, either through open outcry or through a trading system that electronically matches bids and offers pursuant to a predetermined algorithm, a transaction for the same security futures product on the same designated contract market or registered derivatives transaction execution facility for an account described in paragraphs (a)(4)(i)-(v) of this section.

(b) Dual Trading Prohibition. (1) No floor broker shall engage in dual trading

in a security futures product on a designated contract market or registered derivatives transaction execution facility, except as otherwise provided under paragraphs (d), (e), and (f) of this section.

(2) A designated contract market or a registered derivatives transaction execution facility operating an electronic market or electronic trading system that provides market participants with a time or place advantage or the ability to override a predetermined algorithm must submit an appropriate rule proposal to the Commission consistent with the procedures set forth in § 40.5. The proposed rule must prohibit electronic market participants with a time or place advantage or the ability to override a predetermined algorithm from trading a security futures product for accounts in which these same participants have any interest during the same trading session that they also trade the same security futures product for other accounts. This paragraph, however, is not applicable with respect to execution priorities or quantity guarantees granted to market makers who perform that function, or to market participants who receive execution priorities based on price improvement activity, in accordance with the rules governing the designated contract market or registered derivatives transaction execution facility.

(c) Rules Prohibiting Dual Trading. (1) Designated contract markets. Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a designated contract market:

(i) Must submit to the Commission in accordance with § 40.6, a rule prohibiting dual trading, together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to § 40.5.

(2) Registered derivatives transaction execution facilities. Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a registered derivatives transaction execution facility:

(i) Must notify the Commission in accordance with § 37.7(b) that it has adopted a rule prohibiting dual trading; or

(ii) Must obtain Commission approval of such rule pursuant to § 37.7(c).

(d) Specific Permitted Exceptions. Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a

designated contract market or a registered derivatives transaction execution facility pursuant to one or more of the following specific exceptions:

(1) Correction of errors. To offset trading errors resulting from the execution of customer orders, provided, that the floor broker must liquidate the position in his or her personal error account resulting from that error through open outcry or through a trading system that electronically matches bids and offers as soon as practicable, but, except as provided herein, not later than the close of business on the business day following the discovery of error. In the event that a floor broker is unable to offset the error trade because the daily price fluctuation limit is reached, a trading halt is imposed by the designated contract market or registered derivatives transaction execution facility, or an emergency is declared pursuant to the rules of the designated contract market or registered derivatives transaction execution facility, the floor broker must liquidate the position in his or her personal error account resulting from that error as soon as practicable thereafter.

(2) Customer consent. To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's account. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, provided, that the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(3) Spread transactions. To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his or her personal account and to offset such position, provided, that a record is prepared and maintained to demonstrate that the customer order was for a spread.

(4) Market emergencies. To address emergency market conditions resulting in a temporary emergency action as determined by a designated contract market or registered derivatives transaction execution facility.

(e) Rules Permitting Specific Exceptions. (1) Designated contract markets. Prior to permitting dual trading under any of the exceptions provided in paragraphs (d)(1)-(4) of this section, a designated contract market:

(i) Must submit to the Commission in accordance with § 40.6, a rule permitting the exception(s), together

with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to § 40.5.

(2) Registered derivatives transaction execution facilities. Prior to permitting dual trading under any of the exceptions provided in paragraphs (d)(1)–(4) of this section, a registered derivatives transaction execution facility:

(i) Must notify the Commission in accordance with § 37.7(b) that it has adopted a rule permitting the exception(s); or

(ii) Must obtain Commission approval of such rule pursuant to § 37.7(c).

(f) Unique or Special Characteristics of Agreements, Contracts, or Transactions, or of Designated Contract Markets or Registered Derivatives Transaction Execution Facilities.

Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market or registered derivatives transaction execution facility to address unique or special characteristics of agreements, contracts, or transactions, or of the designated contract market or registered derivatives transaction execution facility as provided herein. Any rule of a designated contract market or registered derivatives transaction execution facility that would permit dual trading when it would otherwise be prohibited, based on a unique or special characteristic of agreements, contracts, or transactions, or of the designated contract market or registered derivatives transaction execution facility must be submitted to the Commission for prior approval under the procedures set forth in § 40.5. The rule submission must include a detailed demonstration of why an exception is warranted.

7. Section 41.34 is revised to read as follows:

§ 41.34 Exempt Provisions.

Any board of trade notice-designated as a contract market in security futures products pursuant to § 41.31 also shall be exempt from:

(a) The following provisions of the Act, pursuant to section 5f(b)(1) of the Act:

- (1) Section 4(c)(c);
- (2) Section 4(c)(e);
- (3) Section 4(c)(g);
- (4) Section 4j;
- (5) Section 5;
- (6) Section 5c;
- (7) Section 6a;
- (8) Section 8(d);
- (9) Section 9(f);

(10) Section 16 and;

(b) The following provisions, pursuant to section 5f(b)(4) of the Act:

- (1) Section 6(a);
- (2) Part 38 of this chapter;
- (3) Part 40 of this chapter; and
- (4) Section 41.27.

PART 155—TRADING STANDARDS

8. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a, unless otherwise noted.

§ 155.5 [Removed and Reserved]

9. Section 155.5 is removed and reserved.

Issued in Washington, DC on March 1, 2002 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–5778 Filed 3–12–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket Nos. RM02–4–000]

Notice of Extension of Time

March 6, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of extension of time.

SUMMARY: On January 16, 2002, the Commission issued a Notice of Inquiry (NOI) to determine whether to revise its rules to address public availability of critical infrastructure information (67 FR 3129, January 23, 2002). The Commission is extending the date for filing responses to the NOI at the request of several major trade associations involved in energy infrastructure.

DATES: Comments should be filed on or before March 25, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 1st Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0457.

Rule Regarding Critical Energy Infrastructure Information and Policy Statement on the Treatment of Previously Public Documents; Notice of Extension of Time

On March 5, 2002, the Alliance of Energy Suppliers (Alliance), Edison Electric Institute (EEI), Electric Power Supply Association (EPSA), Interstate Natural Gas Association of America (INGAA), and National Hydropower Association (NHA) filed a joint request for an extension of time to file comments in response to the Commission's Notice of Inquiry and Guidance for Filings in the Interim issued January 16, 2002, in Docket No. RM02–4–000. The motion states that because the issues addressed in the NOI are of significant importance to each of the associations joining in this request and because each represents major sectors of the energy industry that will be directly affected by Commission's policy on Critical Energy Infrastructure Information, additional time is needed to allow the associations to pursue further discussions and to prepare complete responses to the NOI.

Upon consideration, notice is hereby given that an extension of time for filing responses to the Commission's January 16, 2002, NOI is granted to and including March 25, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–5972 Filed 3–12–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Blue Ridge Pharmaceuticals, Inc. The ANADA provides for oral use of ivermectin tablets for prevention of heartworm disease in dogs.

DATES: This rule is effective March 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug