

**§ 73.50 [Amended]**

2. § 73.50 is amended as follows:

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**R-5002A Warren Grove, NJ [Amended]**

By removing "Using agency, Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ," and adding "Using agency, Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ."

**R-5002B Warren Grove, NJ [Amended]**

By removing "Using agency, Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ," and adding "Using agency, Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ."

**R-5002C Warren Grove, NJ [Amended]**

By removing "Using agency, Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ," and adding "Using agency, Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ."

**R-5002D Warren Grove, NJ [Amended]**

By removing "Using agency, Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ," and adding "Using agency, Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ."

**R-5002E Warren Grove, NJ [Amended]**

By removing "Using agency, Commander, 108th Tactical Fighter Wing, New Jersey Air National Guard, McGuire AFB, NJ," and adding "Using agency, Air National Guard, 108th Air Refueling Wing, McGuire AFB, NJ."

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**§ 73.52 [Amended]**

3. § 73.52 is amended as follows:

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**R-5203 Oswego, NY [Amended]**

By removing "Using agency, 24th Air Division/DOTS, Griffiss AFB, NY," and adding "Using agency, Air National Guard, Northeast Air Defense Sector/DOS, Rome, NY."

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Issued in Washington, DC, on June 8, 1998.

**Reginald C. Matthews,**

*Acting Program Director for Air Traffic  
Airspace Management.*

[FR Doc. 98-15957 Filed 6-15-98; 8:45 am]

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**COMMODITY FUTURES TRADING  
COMMISSION**
**17 CFR Part 1****Minimum Financial Requirements for  
Futures Commission Merchants**

**AGENCY:** Commodity Futures Trading  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is amending its minimum financial requirements for futures commission merchants ("FCMs"). The amendment will eliminate a charge presently required to be taken by FCMs in the computation of the amount of their net capital. This charge is commonly referred to as the "short option value charge" ("SOV charge"). The Commission is rescinding this charge, because it has found that the charge is not closely correlated to the actual risk of the customers' short option positions and, in any event, there are other protections in place to address this risk.

**EFFECTIVE DATE:** July 16, 1998.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Bjarnason, Jr., Chief Accountant, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W. Washington, D.C. 20581; telephone (202) 418-5459 or 418-5439.

**SUPPLEMENTARY INFORMATION:****I. Background**

The minimum adjusted net capital requirement for an FCM is currently the greatest of: (A) \$250,000; (B) four percent of the customer funds required to be segregated pursuant to the Commodity Exchange Act and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade: Provided, however, that the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts; (C) the amount of adjusted net capital required by a registered futures association of which it is a member; or (D) for securities brokers and dealers, the amount of net capital required by Rule 15c3-1(a) of the Securities and Exchange Commission (17 CFR 240.15c3-1(a)).

In calculating the amount of adjusted net capital needed to meet the minimum requirement, FCMs are presently required under Commission Rule 1.17(c)(5)(iii) to deduct a capital charge, based upon four percent of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market or a foreign board of trade. The Commission adopted this provision in 1982 to require that an FCM recognize the risk involved in customers selling or going

short an option. Under this provision, an FCM is required to take this charge, regardless of the trading strategy of the customer. Some customers have used a short option position in combination with another futures or commodity option position, such as an inter-month spread position. Although such a position would involve less risk than a naked position, the SOV charge would be the same or, perhaps, greater.

On March 9, 1998, the Commission proposed an amendment to the minimum financial requirements for futures commission merchants which would eliminate Rule 1.17(c)(5)(iii).<sup>1</sup> The Commission received two (2) comment letters. Both supported elimination of the charge. One letter was jointly signed by representatives from each of seven (7) U.S. commodity exchanges and the other was filed by an FCM.

The effect of the amendment is to decrease the amount of charges taken against capital in the computation of net capital. The reduction in capital charges taken by an FCM will result in an increase in the stated amount of adjusted net capital of an FCM carrying short option positions in customer accounts. The total amount of the increase in an FCM's net capital would depend on the quantity and value of short options carried in the accounts of the FCM's customers.

As stated in the proposing release, the Commission proposed to rescind this rule, because the charge is not closely correlated to the actual risk of the options carried on behalf of customers and, in any event, there are other protections in place to address the risk of short options. In particular, the Standard Portfolio Analysis of Risk ("SPAN") margining system has been effectively used in setting appropriate levels of risk margin, and there are many other non-capital protections. These protections include effective self-regulatory organization ("SRO") audit and financial surveillance programs and modern risk management and control systems at FCMs. All of the comments received on the Commission's proposal to rescind the SOV charge confirmed these views. Moreover, no comments were received which provided any reason to believe that the SOV charge should not be rescinded.

**II. Summary of Comments****A. Portfolio Margining System**

Commenters noted that the four percent capital charge is not closely correlated to the actual risk of customer

<sup>1</sup> 63 FR 12713 (March 16, 1998).

short option positions and that, subsequent to the adoption of Rule 1.17(c)(5)(iii), the SPAN margining system was developed. SPAN uses option pricing models to calculate the theoretical gains and losses on an option at various market prices of the underlying commodity and is a significant improvement in measuring the risk of an option. All U.S. commodity exchanges and many foreign exchanges have adopted SPAN to assess option risk. In addition, SPAN recognizes trading strategies in which short option positions are risk reducing and SPAN has been tested and proven to assess adequately the risk in the customer's portfolio.

#### B. Large Trader Positions

Commenters also noted that the commodity exchanges closely monitor large trader positions in each contract market to identify those market participants that may pose a financial risk to the FCM carrying their account. This includes option positions at clearing firms carrying option customers' accounts. Safeguards such as intraday variation margin calls, continuous monitoring of the markets and direct contact with the FCMs alert the exchanges to any potential problems.

#### C. Financial Surveillance

Commenters further noted that additional protection exists in the form of capital and segregation requirements for FCMs. Commission regulations require FCMs not only to maintain a minimum amount of adjusted net capital, but also to maintain a sufficient amount of excess adjusted net capital. In the event an FCM's adjusted net capital falls below an early warning level, generally 150% of the minimum dollar amount (e.g., 6% of customer segregated funds), the FCM is required to notify the Commission within five (5) business days. The FCM must continue filing financial reports monthly until the FCM's adjusted net capital is at or above the early warning level for three consecutive months. In calculating adjusted net capital, FCMs must deduct deficits and any undermargined amounts in customer accounts. With respect to the segregation requirements, an FCM is required to deposit customer funds in accounts designated for the benefit of customers. The FCM must also make a daily calculation showing whether there are sufficient funds in segregated accounts.

### III. 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 has previously determined that FCMs are not "small entities" for purposes of the RFA.<sup>2</sup> Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995<sup>3</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed rule has no burden, the group of rules (3038-0024) of which this is a part has the following burden:

*Average burden hours per response:* 128.

*Number of respondents:* 235.

*Frequency of response:* Monthly.

Copies of the OMB-approved information collection package associated with this rule may be obtained from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395-7340.

#### List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Net capital requirements, Reporting and recordkeeping requirements.

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

#### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 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.

<sup>2</sup> 47 FR 18619-18620 (April 30, 1982).

<sup>3</sup> Pub. L. No. 104-13, 109 Stat. 163 (1995).

#### § 1.17 [Amended]

2. Section 1.17(c)(5)(iii) is removed and reserved.

Issued in Washington, DC on June, 10, 1998, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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BILLING CODE 6351-01-P

### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Parts 1 and 33

#### Final Rulemaking Permitting Futures-Style Margining of Commodity Options

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is repealing Commission Regulation 33.4(a)(2) and amending Commission Regulation 33.7(b). The Commission also is implementing technical amendments to its regulations imposing financial and segregation requirements on futures commission merchants ("FCMs") and introducing brokers ("IBs").

Regulation 33.4(a)(2) requires the purchaser of a commodity option to pay the full option premium at the initiation of the transaction. Regulation 33.7 requires an FCM, or an IB in the case of an introduced account, to provide each option customer with a written option disclosure statement prior to the opening of the account.

The repeal of Regulation 33.4(a)(2) will permit commodity options to be margined using a "futures-style" margining system. Futures-style margining requires both the purchaser ("long") and the seller ("short") of a commodity option to post risk-based, original margin upon entering into an option position. During the life of the option, the option value is marked to market daily, and gains and losses are posted to the accounts of the long and short position holders. The repeal does not impose an obligation on exchanges to adopt futures-style margining for commodity options. Exchanges may continue to use their current option margining systems. Any exchange wishing to implement futures-style margining must submit proposed rules for Commission review pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41.

Regulation 33.7(b) sets forth the terms of the disclosure statement and