2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. 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.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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. The FAA amends § 39.13 by adding the following new AD:

Pratt & Whitney Canada Corp.: Docket No. FAA–2009–0046; Directorate Identifier 2008–NE–05–AD.

Comments Due Date

(a) We must receive comments by March 23, 2009.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. (P&WC) Models PW305A and PW305B turbofan engines with high pressure compressor (HPC) drum rotor assemblies, post P&WC Service Bulletin (SB) PW300–72–24287 but without P&WC SB PW300–72–24376, installed. These engines are installed on, but not limited to, Bombardier Learjet M60 and Hawker Beechcraft 1000 series airplanes.

Reason

(d) P&WC has determined that the Post-Service Bulletin (SB) PW300–72–24287 High Pressure Compressor (HPC) drum rotor assemblies P/N 30B2478 and 30B2542 on PW305A and 305B engines with single stage coated labyrinth seals, are susceptible to developing significant cracks in the region of the labyrinth seal.

We are issuing this AD to detect cracks in the HPC drum rotor assembly, which could lead to an uncontained failure of the drum rotor assembly and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 500 flight hours after effective date of this directive, borescope-inspect the interiors of affected HPC rotor assemblies for cracks. If a crack is found, remove the engine before next flight for HPC drum rotor replacement. Pratt & Whitney Maintenance Manual, Chapter 72–00–00, contains information about borescope inspection.

Credit for Previous Inspections

(2) Inspection of affected HPC drum rotor assembly per P&WC SB PW300–72–24462 and or SB PW305 MM 05–20–00 inspection requirements prior to the effective date of this directive satisfies the requirements of paragraph (e)(1) of this AD.

(3) Repeat borescope inspection per paragraph (e)(1) of this AD, at intervals not exceeding 1,350 flight cycles. If a crack is found, remove the engine before next flight for HPC rotor drum replacement.

Optional Terminating Action

(4) Replacement of the affected HPC rotor assembly P/N 30B2478 or 30B2542 with Post-SB PW300–72–24376 assembly P/N 31B6325–01 or later superseding P/N, will constitute terminating action for the inspection requirements of the above paragraphs (e)(1) and (e)(2) of the corrective action requirements of this AD.

Other FAA AD Provisions

(f) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) Refer to Canadian Airworthiness Directive CF–2007–25R1, dated February 13, 2008, and P&WC SB PW300–72–24462, dated December 13, 1999, for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G 1A1, *telephone:* (800) 268–8000, for a copy of this service information.

(h) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on February 13, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–3622 Filed 2–19–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, and 140

RIN 3038–AC72

Acknowledgment Letters for Customer Funds and Secured Amount Funds

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations regarding the required content of the acknowledgment letter that a registrant must obtain from any depository holding its segregated customer funds or funds of foreign futures or foreign options customers, and certain technical changes.

DATES: Submit comments on or before March 23, 2009.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov*. Follow the instructions for submitting comments on the Web site.
- *E-mail: secretary@cftc.gov*. Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov*; Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation 1.20 (17 CFR 1.20) requires futures commission merchants (FCMs) that accept customer funds and derivatives clearing organizations (DCOs) that accept customer funds from FCMs to segregate and separately account for those funds.[1] Currently, Regulation 1.20 requires such FCMs and DCOs to obtain from the bank, trust company, FCM or DCO holding customer funds in the capacity of a depository (each, a ''Depository'') a written acknowledgment that the Depository was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Commodity Exchange Act (Act)[2] and CFTC

[1] *See* 17 CFR 1.3(gg) (defining the term ''customer funds'').

[2] 7 U.S.C. 1 *et seq.*

regulations.[3] Regulation 1.26 (17 CFR 1.26), which requires FCMs and DCOs to segregate and separately account for instruments purchased with customer funds, repeats the requirement to obtain an acknowledgment letter. FCMs also must obtain a similar written acknowledgment from Depositories holding ''secured amount'' funds[4] required under Regulation 30.7 (17 CFR 30.7), which governs the treatment of money, securities, and property held for or on behalf of the FCM's foreign futures and foreign options customers.

The proposed amendments to Regulations 1.20, 1.26, and 30.7 set out specific representations that would be required in these acknowledgment letters in order to reaffirm and clarify the obligations Depositories incur when accepting customer funds or secured amount funds. The Commission also is proposing several technical changes to Regulations 1.20, 1.26, 30.7, and 140.91. The Commission invites public comment on all aspects of the proposed regulations.

II. Discussion of the Proposed Regulations

A. Regulations 1.20 and 1.26

The Commission is proposing to add paragraphs (d) and (e) to Regulation 1.20 to set out specific representations that Depositories would have to include in the acknowledgment letter required by paragraphs (a) and (b) of the regulation. Proposed paragraph (d) concerns the letter required by paragraph (a), which applies to customer funds being held for an FCM by a bank, trust company, DCO or another FCM. Proposed paragraph (e) concerns the letter required by paragraph (b), which applies to customer funds being held for a DCO by a bank or trust company.

Proposed paragraphs (d)(1)(i) and (e)(1)(i) require the Depository to acknowledge that the FCM or DCO, respectively, has established the account for the purpose of depositing customer funds. The FCM or DCO may have other accounts, in addition to the customer account, with the same Depository, and therefore the Depository must recognize that the funds being deposited in this particular account belong not to the FCM or DCO, but to customers.

Proposed paragraphs (d)(1)(ii) and (e)(1)(ii) require the Depository to acknowledge that the customer funds deposited therein are those of commodity or option customers of the FCM, or clearing members of the DCO, respectively, and that those funds are to be segregated in accordance with the provisions of the Act and Part 1 of the CFTC regulations. These provisions would reaffirm the Depository's obligation to segregate customer funds from any other funds that the Depository may hold on behalf of the FCM or DCO.

Proposed paragraphs (d)(1)(iii) and (e)(1)(iii) require the Depository to acknowledge that the customer funds shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM or DCO, respectively. The FCM or DCO may hold other non-customer funds with the Depository that do not carry such restrictions.

Proposed paragraphs (d)(1)(iv) and (e)(1)(iv) require the Depository to acknowledge that it must treat the customer funds in accordance with the Act and CFTC regulations. These provisions restate requirements currently included in paragraphs (a) and (b), respectively.

Proposed paragraphs (d)(1)(v) and (e)(1)(v) require the Depository to acknowledge that it must immediately release the customer funds upon proper notice and instruction from the FCM or DCO, respectively, or from the Commission. The Commission is not proposing specific standards for what constitutes ''proper notice.'' This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. The Commission recognizes that the release of funds may be delayed by practical considerations—for example, electronic transfers may not be possible if the Fedwire is unavailable. But the Depository must make every effort to execute the transfer as soon as possible. The transfer of customer funds from a segregated account cannot be delayed due to concerns about the financial status of the FCM or DCO that deposited the funds.

Proposed paragraphs (d)(1)(vi) and (e)(1)(vi) require the Depository to acknowledge that the FCM or DCO has informed the Depository that the FCM or DCO will provide the Commission with a copy of the written acknowledgment.

Proposed paragraphs (d)(2) and (e)(2) require the written acknowledgment to include the account number for each account covered by the acknowledgment. If multiple accounts are covered by a single written acknowledgment, the account numbers may be listed on an attachment to the written acknowledgment.

Proposed paragraphs (d)(3) and (e)(3) require that a copy of the written acknowledgment be filed with the regional office of the Commission with jurisdiction over the state in which the FCM's or DCO's principal place of business is located.

The proposed changes to Regulation 1.26 would affirm that the written acknowledgment required for instruments in which customer funds are invested is identical to the written acknowledgment required under Regulation 1.20 and therefore must meet the requirements set out in Regulation 1.20.

B. Regulation 30.7

The Commission is proposing to amend Regulation 30.7 to set out specific representations that Depositories holding secured amount funds would have to include in the acknowledgment letter required by the regulation.[5]

Proposed paragraph (c)(2)(i)(A) requires the Depository to affirm that it meets the requirement set out in Regulation 30.7(c)(1). Regulation 30.7(c)(1) lists the types of depositories that may accept secured amount funds.

Proposed paragraph (c)(2)(i)(B) requires the Depository to acknowledge that the FCM has established the account for the purpose of depositing money, securities, or property for or on behalf of customers that include, but are not limited to, foreign futures and foreign options customers. The FCM may have other accounts, in addition to the secured amount account, with the same Depository, and therefore the Depository must recognize that the funds being deposited in this particular account are obligated not to the FCM but to the FCM's foreign futures and foreign options customers.

Proposed paragraph (c)(2)(i)(C) requires the Depository to acknowledge that the money, securities, or property deposited therein are held on behalf of foreign futures and foreign options customers of the FCM and may not be commingled with the FCM's own funds or any other funds that the Depository may hold, in accordance with the provisions of the Act and Part 30 of the CFTC regulations. This provision would reaffirm the Depository's obligation to keep the money, securities, or property held for the FCM's foreign futures and options customers separate from any

[3] 17 CFR Parts 1–199.

[4] *See* 17 CFR 1.3(rr) (defining the term ''foreign futures or foreign options secured amount'').

[5] The Commission has issued an interpretative statement with respect to the secured amount requirement set forth in Regulation 30.7. *See* 17 CFR Part 30, App. B.

other funds that the Depository may hold on behalf of the FCM, including those customer funds required to be separately accounted for and segregated under Section 4d of the Act.[6]

Proposed paragraph (c)(2)(i)(D) requires the Depository to acknowledge that the money, securities, or property shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM. The FCM may hold other funds with the Depository that do not carry such restrictions.

Proposed paragraph (c)(2)(i)(E) requires the Depository to acknowledge that it must treat the money, securities, or property in accordance with the provisions of the Act and CFTC regulations. Under this provision, the Depository must recognize not only the prohibition against commingling referenced in proposed paragraph (c)(2)(ii), but all of its legal obligations as a holder of customer money, securities, or property.

Proposed paragraph (c)(2)(i)(F) requires the Depository to acknowledge that it must release immediately, subject to requirements of applicable foreign law,[7] the money, securities, or property upon proper notice and instruction from the FCM or the Commission. The Commission is not proposing specific standards for what constitutes ''proper notice.'' This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. The Commission recognizes that the release of money, securities, or property may be delayed by practical considerations—for example, electronic transfers may not be possible if the Fedwire is unavailable. But the Depository must make every effort to execute the transfer as soon as possible. The transfer cannot be delayed due to concerns about the financial status of the FCM that deposited the money, securities, or property.

Proposed paragraph (c)(2)(i)(G) requires the Depository to acknowledge that the FCM has informed the Depository that the FCM will provide the Commission with a copy of the written acknowledgment.

Proposed paragraph (c)(2)(ii) requires the written acknowledgment to include the account number for each account covered by the acknowledgment. If multiple accounts are covered by a single written acknowledgment, the account numbers may be listed on an attachment to the written acknowledgment.

Proposed paragraph (c)(2)(iii) requires the FCM to file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the FCM's principal place of business is located.

C. Technical Amendments

Regulation 1.20(a) imposes upon ''[e]ach registrant'' the requirement to obtain and retain a written acknowledgment when customer funds are deposited with ''any bank, trust company, clearing organization, or another futures commission merchant.'' Regulation 1.20(a) applies to FCMs, as distinguished from Regulation 1.20(b), which applies to DCOs. Therefore, the Commission proposes to substitute the term ''futures commission merchant'' for the term ''registrant'' to more accurately reflect the intent and meaning of Regulation 1.20(a). In connection with this, the Commission further proposes to insert the word ''other'' before the term ''futures commission merchant'' that appears subsequently in the same sentence, to distinguish between the FCM holding the funds of its own customers and an FCM holding customer funds of another FCM.

Regulations 1.20, 1.26, and 30.7 currently require that acknowledgment letters be retained for the period specified in Regulation 1.31, which applies to all recordkeeping required by the Act and CFTC regulations. Regulation 1.31 requires records to be kept for five years and to be readily accessible for the first two years of that five-year period. The proposed revisions would make clear that an acknowledgment letter is to be kept readily accessible for as long as the account remains open and that the retention requirements that would otherwise apply under Regulation 1.31 would only take effect once the account has been closed. For example, if the account remains open for ten years, the letter must be kept readily accessible for twelve years (the ten years during which the account is open plus the two years required by Regulation 1.31) and then for an additional three years, also as required by Regulation 1.31.

Regulations 1.20 and 1.26 use the term ''clearing organization'' to describe an entity that performs clearing functions. The Act, as amended by the Commodity Futures Modernization Act of 2000,[8] now provides that a clearing organization for a contract market must register as a ''derivatives clearing organization.''[9] To be consistent with the Act and other CFTC regulations, the Commission proposes to replace the term ''clearing organization,'' wherever it appears in Regulations 1.20 and 1.26, with the term ''derivatives clearing organization.''

Finally, the Commission also is proposing technical amendments to Regulation 140.91 to explicitly delegate to the Director of the Division of Clearing and Intermediary Oversight the authority to perform certain functions that are reserved to the Commission under the proposed changes to Regulations 1.20 and 30.7. Thus, for example, the Director of the Division of Clearing and Intermediary Oversight would have delegated authority to instruct the Depository to release customer funds or secured amount funds.

D. Proposed Effective Date

FCMs and DCOs will need to obtain new acknowledgment letters that comply with the proposed regulations before the final regulations take effect. The Commission recognizes the need for time to obtain the letters; therefore, the proposed effective date of the amendments to Regulations 1.20, 1.26, and 30.7 is 180 days from the date of publication of the final regulations in the **Federal Register**.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[10] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The amendments adopted herein will affect FCMs and DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in

[6] *See* 17 CFR 30.7(d).

[7] The Commission notes that under the laws of some foreign countries, immediate release of customer funds may not always be possible. Regulation 30.6(a) (17 CFR 30.6(a)) requires FCMs to furnish customers with a separate written disclosure statement containing the language set forth in Regulation 1.55(b) (17 CFR 1.55(b)). Regulation 1.55(b)(7) states in relevant part:

No domestic organization regulates the activities of a foreign exchange * * * and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. * * * [F]unds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges.

[8] Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[9] *See* Section 5b of the Act, 7 U.S.C. 7a–1. *See also* Section 1a(9) of the Act, 7 U.S.C. 1a(9) (defining the term ''derivatives clearing organization'').

[10] 5 U.S.C. 601 *et seq.*

evaluating the impact of its regulations on small entities in accordance with the RFA.[11] The Commission has previously determined that FCMs [12] and DCOs [13] are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [14] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The regulations to be amended under this proposal are part of an approved collection of information (OMB Control No. 3038–0024). The proposed amendments would not result in any material modification to this approved collection. Accordingly, for purposes of the PRA, the Commission certifies that these proposed amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or 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) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation 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 Commission has evaluated the costs and benefits of the proposed regulations in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed regulations would benefit FCMs and DCOs, as well as customers of the futures and options markets, by reaffirming the legal obligation of Depositories holding customer funds or secured amount funds to treat those funds in accordance with the requirements of the Act and CFTC regulations.

2. *Efficiency and competition.* The proposed regulations are not expected to have an effect on efficiency or competition.

3. *Financial integrity of futures markets and price discovery.* The proposed regulations would enhance and strengthen the protection of customer funds and secured amount funds, thus contributing to the financial integrity of the futures and options markets as a whole. This, in turn, would further support the price discovery and risk transfer functions of such markets.

4. *Sound risk management practices.* The proposed regulations would reinforce the sound risk management practices already required of FCMs and DCOs holding customer funds or secured amount funds.

5. *Other public considerations.* Requiring specific representations in a Depository's written acknowledgment would reduce the likelihood that the Depository would misinterpret its obligations in connection with the safekeeping and administration of customer funds and secured amount funds.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

List of Subjects

17 CFR Parts 1 and 30

Commodity futures, Consumer protection.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 1, 30, and 140 as follows:

PART 1—GENERAL REGULATIONS

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Revise § 1.20 to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, derivatives clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each futures commission merchant shall obtain and maintain readily accessible in its files, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization, or other futures commission merchant, in accordance with the requirements of paragraph (d) of this section: *Provided, however,* that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a derivatives clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any derivatives clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a derivatives clearing organization from a member of the derivatives clearing

[11] 47 FR 18618 (Apr. 30, 1982).

[12] *Id.* at 18619.

[13] 66 FR 45604, 45609 (Aug. 29, 2001).

[14] 44 U.S.C. 3501 *et seq.*

organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's commodity or option customers and all money accruing to such commodity or option customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such commodity or option customers, and a derivatives clearing organization shall not hold, use or dispose of such customer funds except as belonging to such commodity or option customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the commodity or option customers of clearing members, segregated as required by the Act and these regulations. The derivatives clearing organization shall obtain and maintain readily accessible in its files, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of this section.

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a derivatives clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the derivatives clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in § 1.25.

(d)(1) The written acknowledgment made by a bank, trust company, derivatives clearing organization or other futures commission merchant, as required under paragraph (a) of this section, shall include the following representations:

(i) That the futures commission merchant has established the account for the purpose of depositing customer funds;

(ii) That the customer funds deposited therein are those of commodity or option customers of the futures commission merchant and shall be segregated from the futures commission merchant's own funds in accordance with the provisions of the Act and this part;

(iii) That the customer funds shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the futures commission merchant;

(iv) That the customer funds shall be treated in accordance with the provisions of the Act and Commission regulations;

(v) That the customer funds shall be released immediately upon proper notice and instruction from the futures commission merchant or the Commission; and

(vi) That the futures commission merchant has informed the bank, trust company, derivatives clearing organization, or other futures commission merchant that the futures commission merchant will provide the Commission with a copy of the written acknowledgment.

(2) The written acknowledgment shall include the account number for each account covered by the acknowledgment.

(3) The futures commission merchant shall file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the futures commission merchant's principal place of business is located.

(e)(1) The written acknowledgment made by a bank or trust company, as required under paragraph (b) of this section, shall include the following representations:

(i) That the derivatives clearing organization has established the account for the purpose of depositing customer funds;

(ii) That the customer funds deposited therein are those of commodity or option customers of clearing members and shall be segregated from the derivatives clearing organization's own funds in accordance with the provisions of the Act and this part;

(iii) That the customer funds shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the derivatives clearing organization;

(iv) That the customer funds shall be treated in accordance with the provisions of the Act and Commission regulations;

(v) That the customer funds shall be released immediately upon proper notice and instruction from the derivatives clearing organization or the Commission; and

(vi) That the derivatives clearing organization has informed the bank or trust company that it will provide the Commission with a copy of the written acknowledgment.

(2) The written acknowledgment shall include the account number for each account covered by the acknowledgment.

(3) The derivatives clearing organization shall file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the derivatives clearing organization's principal place of business is located.

3. Revise § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, derivatives clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and maintain readily accessible in its files, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization or other futures commission merchant, in accordance with the requirements of paragraph (d) of § 1.20: *Provided, however,* that an acknowledgment need not be obtained

from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such bank, trust company, derivatives clearing organization or other futures commission merchant shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

(b) Each derivatives clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each derivatives clearing organization upon opening such an account shall obtain and maintain readily accessible in its files, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of § 1.20. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

4. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

5. Revise paragraph (c)(2) of § 30.7 to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

* * * * *

(c) * * *

(2)(i) Each futures commission merchant must obtain and maintain readily accessible in its files, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such depository that shall include the following representations:

(A) That the depository meets the requirement set out in § 30.7(c)(1);

(B) That the futures commission merchant has established the account for the purpose of depositing money, securities, or property for or on behalf of customers that include, but are not limited to, foreign futures and foreign options customers;

(C) That the money, securities, or property deposited therein are held for or on behalf of customers that include, but are not limited to, foreign futures and foreign options customers of the futures commission merchant and may not be commingled with the futures commission merchant's own funds or any other funds that the depository may hold, in accordance with the provisions of the Act and this part;

(D) That the money, securities, or property shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the futures commission merchant;

(E) That the money, securities, or property shall be treated in accordance with the provisions of the Act and Commission regulations;

(F) That the money, securities, or property shall be released immediately, subject to requirements of applicable foreign law, upon proper notice and instruction from the futures commission merchant or the Commission; and

(G) That the futures commission merchant has informed the depository that the futures commission merchant will provide the Commission with a copy of the written acknowledgment.

(ii) The written acknowledgment shall include the account number for each account covered by the acknowledgment.

(iii) The futures commission merchant shall file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the futures commission merchant's principal place of business is located.

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PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

6. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

7. In § 140.91, redesignate paragraph (a)(8) as paragraph (a)(10) and paragraph (a)(7) as paragraph (a)(8); and add new paragraphs (a)(7) and (a)(9) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(7) All functions reserved to the Commission in § 1.20 of this chapter.

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(9) All functions reserved to the Commission in § 30.7 of this chapter.

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Issued in Washington, DC, on February 13, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–3551 Filed 2–19–09; 8:45 am]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1612

Government in the Sunshine Act Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise the method of public announcement of agency meetings subject to the Government in the Sunshine Act.

DATES: The agency must receive comments on or before April 21, 2009.

ADDRESSES: Written comments should be submitted to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, Room 6NE03F, 131 M Street, NE., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public can be reviewed at *http://www.regulations.gov* or by appointment at the Commission's library, 131 M Street, NE., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m. (call 202–663–4630