

determined to provide for the regulation of the commodity option related activity of its member futures commission merchants in a manner equivalent to that required of contract markets under these regulations; or

(ii) Registered as an introducing broker under the Act, and either:

(A) Is a member of a futures association registered under section 17 of the Act which has adopted rules which the Commission has approved under section 17(j) of the Act, or is a member of a contract market which has adopted rules which the Commission has approved under section 5a(a)(12) of the Act, and which, in addition to the requirements of those sections, has determined to provide for the regulation of the commodity option related activity of its member introducing brokers in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(B) Is operating pursuant to a guarantee agreement, and the futures commission merchant which has signed such agreement is a member of a self-regulatory organization that has adopted rules which the Commission has approved that provide for the regulation of the commodity option related activity of the introducing broker in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(iii) An individual registered as an associated person of a specified person registered as a futures commission merchant or as an introducing broker under the Act who meets the requirements of paragraphs (b)(1)(i) or (b)(1)(ii), respectively, of this section, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked.

(2) Any person registered or required to be registered as a futures commission merchant or as an introducing broker under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity in-

volving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction, or the supervision of any person or persons so engaged, if such person knows or should have known that such other person is or was not registered as required by this part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

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§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery on any commodity regulated under the Act, or for options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 1a(3) of the Act when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

(1) Applies for designation as a contract market for the purpose of trading “put” and/or “call” options which:

(i) Are not capable of being transferred, assigned or otherwise disposed of other than on or subject to the rules of the board of trade; and

(ii) With respect to options on futures contracts, may be exercised only by the establishment, by book entry, in the clearing organization of positions in the underlying futures contract.

(2) Provides that the clearing organization must receive from each of its clearing members, that each clearing member must receive from each other person for whom it clears commodity

option transactions, and that each futures commission merchant must receive from each of its option customers, the full amount of each option premium at the time the option is purchased.

(3) If designation for the trading of options on futures contracts is sought, is designated as a contract market for the underlying contract of sale for future delivery which is the subject of the option for which designation is sought, and submits, if so requested by the Commission, the information called for by §1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for the specified futures contract underlying the option for which the designation is sought, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in sections 5 and 5a(a) of the Act and as set forth in these regulations.

(4) In the case of a contract market which is requesting designation for the trading of options on physicals for which it is designated as a contract market for contracts of sale for future delivery or for options on futures contracts, submits, if so requested by the Commission, the information called for by §1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for that specified futures contract and/or options on that futures contract, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in sections 5 and 5a(a) of the Act and as set forth in these regulations.

(5) Demonstrates that:

(i) The commodity option for which it is requesting designation is likely to serve a legitimate economic purpose;

(ii)—(iii) [Reserved]

(iv) If designation for the trading of options on physicals is sought and thereafter for the purpose of demonstrating continued compliance with the Act and these regulations:

(A) The cash market for the underlying physical exhibits sufficient liquid-

ity such that the grantor and purchaser of the option have the opportunity to purchase or sell the underlying physical at its economic value in normal cash marketing channels;

(B) There exists an accurate and widely-disseminated price series for the underlying physical which is deliverable on the option contract;

(C) Trading of such options will not be disruptive of trading in the cash market for the underlying physical or of any futures contract; and

(D) The individual terms and conditions of the option contract conform to practices in the underlying cash market or are otherwise justified, including a demonstration that the terms and conditions of the option contract provide for a deliverable supply which is not conducive to price manipulation or distortion, consistent with a description of the cash market furnished by the board of trade.

(b) Such board of trade adopts rules which:

(1) Prescribe in regard to strike prices:

(i) The dollar amount of the intervals between strike prices;

(ii) The strike prices at which trading in a new option expiration will be introduced;

(iii) The point, in terms of the price of the underlying futures contract or underlying physical, at which a new strike price will be introduced in any option which is already trading;

(iv) [Reserved]

(2) Prescribe an expiration date of the option that is not less than one business day before the earlier of the last trading day or the first notice day of any futures contract on the same or a related commodity; *Provided, however,* That where the underlying futures contract is cash-settled, the option may expire simultaneously with the expiration of the futures contract.

(3) Require that upon exercise of each option, notification thereof be given to the option grantor.

(4) Require, with respect to all written option customer complaints, that each member futures commission merchant which engages in the offer or sale of commodity options regulated under this part:

(i) Retain all such complaints;

(ii) Make and retain a record of the date the complaint was received, the associated person who serviced, or the introducing broker who introduced, the account, a general description of the matter complained of, and what, if any, action was taken by the futures commission merchant in regard to the complaint; and

(5) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this part to adopt and enforce written procedures pursuant to which it will be able to supervise adequately each option customer's account, including but not limited to, the solicitation of any such account: *Provided*, That as used in this paragraph (b)(5), the term "option customer" does not include another futures commission merchant.

(6) [Reserved]

(7) Require each member futures commission merchant which engages in the offer or sale of option contracts regulated under this part to enforce the disclosure requirements set forth in § 33.7.

(8)-(9) [Reserved]

(10) Prohibit fraudulent or high-pressure sales communications by member futures commission merchants relating to the offer or sale of option contracts regulated under this part.

(11) Establish appropriate criteria which are reasonably designed to secure performance, upon exercise, of the option contracts.

(c) Such board of trade establishes procedures and conducts sales practice audits of member futures commission merchants which engage in the offer or sale of option contracts regulated under this part. These sales practice audits must be of sufficient scope to enforce the contract market's rules, including investigation for the improper handling of discretionary accounts, inadequate internal supervision, fraudulent or high-pressure sales communications, compliance with disclosure re-

quirements, improper handling and disposition of option customer complaints, and, where applicable, the futures commission merchant's offer or sale of deep-out-of-the-money options.

(d) A board of trade must submit an analysis and justification of the individual terms and conditions of the option contract. In determining whether to approve option contract terms and conditions, the Commission may consider the analysis and justification submitted for such terms and conditions, including, without limitation:

(1) [Reserved]

(2) The conditions precedent to the exercise of the commodity option and the method by which the option may be exercised;

(3) The nature of the clearing mechanism to be utilized for the commodity option, and the differences, if any, among the clearing mechanisms for options on futures contracts, options on physicals, and futures contracts;

(4) Specific notice periods, including the periods from the date notice of intent to exercise an option is given until exercise is accomplished;

(5) The default provisions and procedures of the commodity option, if any; and

(6) Permitted deviations from or substitutes for compliance with the terms and conditions set forth in paragraphs (d) (1) through (5) of this section.

(e) Such board of trade provides for the general quotation and dissemination of volume and last sale price information on a timely basis with respect to the commodity option for which designation is sought and with respect to the underlying futures contract.

(f) Such board of trade demonstrates that clearance and processing of option transactions on or subject to the rules of the board of trade will not adversely affect the clearance and processing of any transactions for future delivery on

or subject to the rules of the board of trade.

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(Secs. 2(a)(1)(A), 4c(b), 4c(c), and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c(b), 6c(c) and 12a; secs. 2(a)(1)(A), 4c, 4d, 4f, and 8a(5) (7 U.S.C. 2(a)(1)(A), 6c, 6d, 6f and 12a(5) (1982)))

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§33.5 Application for designation as a contract market for the trading of commodity options.

(a) Any board of trade desiring to be designated as a contract market for a particular commodity option contract shall make application to the Commission and accompany the same with a written showing that it meets the conditions set forth in, and provides all the information and materials required by, these regulations.

(b) Subject to the provisions of the Act and these regulations, in the event of a refusal to designate any board of trade as a contract market for a particular commodity option, such board of trade shall be afforded notice and an opportunity for a hearing on the record: *Provided*, That pending the conclusion of any such hearing, such designation shall not be granted.

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§33.6 Suspension or revocation of designation as a contract market for the trading of commodity options.

The Commission may, after notice and opportunity for a hearing on the record, suspend or revoke the designation of any board of trade as a contract market in a commodity option for which it is designated if the Commission determines that:

(a) The board of trade, or any director, officer, agent, or employee thereof,

is violating or has violated any of the provisions of this part.

(b) Cause exists which, under §33.2 or §33.4, would warrant the denial of a designation;

(c) The option market is not used on more than an occasional basis for other than speculative purposes by producers, processors, merchants or commercial users engaged in handling or utilizing the commodity (including the products, by-products or source commodity thereof) underlying an option, in interstate commerce; or

(d) Option trading on the contract market in that contract is contrary to the protection of option customers or the underlying futures or cash markets, or is otherwise contrary to the public interest: *Provided*, That pending completion of any proceeding under this section, the Commission may suspend such designation for the duration of the proceedings, if in the Commission's judgment, the continuation of such trading presents a substantial risk to the public interest.

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§33.7 Disclosure.

(a)(1) Except as provided in §1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open or cause the opening of a commodity option account for an option customer, other than for a customer specified in §1.55(f) of this chapter, unless the futures commission merchant or introducing broker first:

(i) Furnishes the option customer with a separate written disclosure statement as set forth in this section or another statement approved under §1.55(c) of this chapter and set forth in appendix A to §1.55 which the Commission finds satisfies this requirement, or includes either such statement in a booklet containing the customer account agreement and other disclosure statements required by Commission rules; *provided, however*, that if the statement contained in §33.7 is used it