

not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or under common ownership with, the party to the option.

(2) *Provided, however,* that §32.9 continues to apply to such option transactions.

[63 FR 18832, Apr. 16, 1998]

## PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

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SOURCE: 46 FR 54529, Nov. 3, 1981, unless otherwise noted.

### §33.1 Definitions.

As used in this part:

(a) *Purchase price* means the total amount paid or to be paid, directly or indirectly, by a person to acquire a commodity option.

(b) *Promotional material* includes: (1) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to an option customer or prospective option customer concerning a commodity option transaction; (2) any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to an option customer or prospective option customer; and (3) any other written material disseminated or directed to an option customer or prospective option customer for the purpose of soliciting an option transaction, including any disclosure statement required by §33.7.

### §33.2 Applicability of Act and rules; scope of part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)-(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to commodity option transactions. Nothing contained in this section shall be

construed to confer designation as a contract market absent issuance of an order of the Commission so designating an applicant board of trade.

(b) The provisions of this part apply to commodity option transactions except for transactions which are governed by part 32 of this chapter.

(Approved by the Office of Management and Budget under control number 3038-0007)

[46 FR 54529, Nov. 3, 1981, as amended at 46 FR 63036, Dec. 30, 1981; 47 FR 57016, Dec. 22, 1982; 59 FR 5526, Feb. 7, 1994]

**§ 33.3 Unlawful commodity option transactions.**

(a) It shall be unlawful for any person to offer to enter into, enter into, confirm the execution of, or maintain a position in, any commodity option transaction subject to the provisions of this part unless the commodity option involved is traded (1) on or subject to the rules of a contract market which has been designated to trade commodity options pursuant to this part and (2) by or through a member thereof in accordance with the provisions of this part.

(b) It shall be unlawful for:

(1) Any person to solicit or accept orders from an option customer (other than in a clerical capacity) for any commodity option transaction, or to supervise any person or persons so engaged, unless such person is:

(i) Registered as a futures commission merchant under the Act, and either:

(A) Is a member of the contract market on which the option is traded, or

(B) 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 and, in addition to the requirements of that section, has 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 sec-

tion 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 involving 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