

**§ 33.11 Exemptions.**

The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, other than §§ 33.9 and 33.10, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

[52 FR 29508, Aug. 10, 1987]

**PART 34—REGULATION OF HYBRID INSTRUMENTS**

Sec.

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

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**§ 34.1 Scope.**

The provisions of this part shall apply to any hybrid instrument which may be subject to the Act, and which has been entered into on or after October 23, 1974.

**§ 34.2 Definitions.**

(a) *Hybrid instruments.* Hybrid instrument means an equity or debt security or depository instrument as defined in § 34.3(a)(1) with one or more commodity-dependent components that have payment features similar to commodity futures or commodity option contracts or combinations thereof.

(b) *Commodity-independent component.* Commodity-independent component means the component of a hybrid instrument, the payments of which do not result from indexing to, or calculation by reference to, the price of a commodity.

(c) *Commodity-independent value.* Commodity-independent value means the present value of the payments attributable to the commodity-independent component calculated as of the time of issuance of the hybrid instrument.

(d) *Commodity-dependent component.* A commodity-dependent component means a component of a hybrid instrument, the payment of which results

from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity-dependent value.* For purposes of application of Rule 34.3(a)(2), a commodity-dependent value means the value of a commodity dependent-component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price, calculated as of the time of issuance of the hybrid instrument.

(f) *Option premium.* Option premium means the value of an option on the referenced commodity of the hybrid instrument, and calculated using the same method as that used to determine the issue price of the instrument, or where such premia are not explicitly calculated in determining the issue price of the instrument, the value of such options calculated using a commercially reasonable method appropriate to the instrument being priced.

(g) *Reference price.* A reference price means a price nearest the current spot or forward price, whichever is used to price instrument, at which a commodity-dependent payment becomes non-zero, or, in the case where two potential reference prices exist, the price that results in the greatest commodity-dependent value.

**§ 34.3 Hybrid instrument exemption.**

(a) A hybrid instrument is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice or rendering other services with respect to such exempt hybrid instrument is exempt for such activity from all provisions of the Act (except in each case section 2(a)(1)(B)), provided the following terms and conditions are met:

(1) The instrument is:

(i) An equity or debt security within the meaning of section 2(1) of the Securities Act of 1933; or

(ii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e),