

(b) Each person referred to in paragraph (a) of this section shall also keep a record in permanent form which shall show the true name and address of each maker, underwriter, issuer or other person who assumes or purports to assume any financial responsibility for the fulfillment of any commodity option transaction solicited or accepted by such person, to the extent that such information is known or may be reasonably obtained by such person.

(c) Each person which accepts an order for a commodity option transaction from a person other than an option customer, shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to the transaction. Such records shall at least include the items set forth in paragraph (b) of this section and, to the extent necessary to reflect such person's participation in the transaction, shall include all items set forth in paragraph (a) of this section.

(d) Each person which accepts an order for a commodity option shall immediately upon receipt thereof prepare a written record of such order, including an account identification and order number, and shall record thereon by timestamp or other device, the date and time, to the nearest minute, that (1) the order is accepted, (2) the order is transmitted for execution, and (3) the order is executed.

(e) All records, memoranda and other documents required to be maintained by paragraphs (a) through (c) of this section, and to be prepared by paragraph (d) of this section shall be retained for the period specified in §1.31 of this chapter, and each person required to maintain such records shall be required to produce the same for inspection and furnish true and correct copies thereof and information and reports as to the contents or meaning thereof when and as requested by any authorized representative of the Commission or the United States Department of Justice.

(Approved by the Office of Management and Budget under control number 3038-0001)

[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

§ 32.8 Unlawful representations; execution of orders.

It shall be unlawful for:

(a) Any person required to be registered with the Commission in accordance with this part expressly or impliedly to represent that the Commission, by declaring effective the registration of such person or otherwise, has directly or indirectly approved such person, or any commodity option transaction solicited or accepted by such person;

(b) Any person in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction expressly or impliedly to represent that compliance with the provisions of this part constitutes a guarantee of the fulfillment of the commodity option transaction;

(c) Any person, upon receipt of an order for a commodity option transaction, unreasonably to fail to secure prompt execution of such order.

§ 32.9 Fraud in connection with commodity option transactions.

It shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever; in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction.

§ 32.10 Option transactions entered into prior to the effective date of this part.

Nothing contained in this part shall be construed to affect any lawful activities that occurred prior to the effective date of this part.

§ 32.11 Suspension of commodity option transactions.

(a) Notwithstanding any other provision of this part 32, it shall be unlawful on and after June 1, 1978, until further

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rule, regulation or order of the Commission, for any person to solicit or accept orders for, or to accept money, securities or property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged.

(b) The provisions of paragraph (a) of this section shall not apply to any commodity option transaction conducted in accordance with the provisions of § 32.4(a) of this part, or any commodity option transaction conducted on or subject to the rules of a contract market or a foreign board of trade in accordance with the provisions of section 4c of the Act and any rule, regulation or order promulgated thereunder.

(c) Nothing in this section shall apply to, or affect the rights, privileges or obligations of any person arising out of any commodity option transaction entered into prior to June 1, 1978.

(7 U.S.C. 2, 6c(a), 6c(b) and 12a (1976); secs. 2(a)(1), 4c(a)-(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)-(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[43 FR 16161, Apr. 17, 1978, as amended at 52 FR 29003, Aug. 5, 1987]

§ 32.12 Exemption from suspension of commodity option transactions.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities, or property in connection with, the purchase or sale of any commodity option on a physical commodity granted by a person domiciled in the United States who, on May 1, 1978, was both in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) The grantor has a net worth of at least \$1,000,000;

(2) Under the express contractual terms of each option offered by the grantor (or under such terms and conditions as are found satisfactory to the Commission which would provide option customers substantially equivalent financial protection), the grantor is liable jointly and severally with any

person that sells its options to an option customer for all damages sustained by any option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person or firm who sold the option to the option customer or by any agent or employee of that person;

(3) The grantor segregates daily, exclusively for the benefit of option customers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(4) The grantor provides an identification number for each transaction;

(5) The grantor provides to the futures commission merchant selling the option a confirmation of all orders for such transactions executed, including striking price and premium and a transaction identification number;

(6) Each person who is offering and selling the option to an option customer (i) is fully in compliance with each and every requirement of this part 32, (ii) includes in the confirmation statement required by § 32.5(d) to be furnished to option customers the transaction identification number provided by the grantor, (iii) makes such reports to the Commission as are provided for in paragraphs (f) and (h) of this section and as the Commission may otherwise require by rule or regulation or order, and (iv) keeps a record in permanent form which shows, for each commodity option account carried by such person

(A) The principal occupation or business of the option customer owning the account,

(B) The name and address of any other person having a financial interest in such account,

(C) The name, address and principal business or occupation of any other person exercising any trading control with respect to such account, and