

### § 34.3

### 17 CFR Ch. I (4–1–04 Edition)

(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), respectively, offered by an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act; an insured credit union as defined in section 101 of the Federal Credit Union Act; or a Federal or State branch or agency of a foreign bank as defined in section 1 of the International Banking Act;

(2) The sum of the commodity-dependent values of the commodity-dependent components is less than the commodity-independent value of the commodity-independent component;

(3) Provided that:

(i) An issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity; and

(ii) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(iii) The instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designed contract market;

(4) The instrument is initially issued or sold subject to applicable federal or state securities or banking laws to persons permitted thereunder to purchase or enter into the hybrid instrument.

## PART 35—EXEMPTION OF SWAP AGREEMENTS

Sec.

35.1 Definitions.

35.2 Exemption.

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