

Commodity Futures Trading Commission

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order to comply with this section, but the futures commission merchant employing such person shall immediately notify the Commission in writing, specifying the date such person commenced or intends to commence engaging in activities otherwise requiring registration under this section.

(7 U.S.C. 2, 6c(a), 6c(b) and 12a (Supp. V, 1975))

[41 FR 51814, Nov. 24, 1976, as amended at 42 FR 61831, Dec. 6 1977; 59 FR 5703, Feb. 8, 1994]

§ 32.4 Exemptions.

(a) Except for the provisions of §§ 32.2, 32.8 and 32.9, which shall in any event apply to all commodity option transactions, the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that 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 by-products thereof, and that 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.

(b) The Commission may, by order, upon written request or upon its own motion, exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, other than §§ 32.2, 32.8 and 32.9, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

§ 32.5 Disclosure.

(a) Except as provided in paragraph (b) of this section, prior to the entry into a commodity option transaction, each option customer or prospective option customer shall be furnished a summary disclosure statement by the person soliciting or accepting the order therefor. The disclosure statement shall contain the following:

(1) A brief description of the commodity option transactions being offered including:

(i) The duration of the commodity options being offered and the total quantity and quality of the commod-

ities which may be purchased or sold upon exercise of the options being offered or which underlie the contracts of sale for future delivery which may be purchased or sold upon exercise of such commodity options;

(ii) A listing of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, as well as the method by which the premium is established;

(iii) The services to be provided for the separate elements comprising the purchase price; and

(iv) The method by which the striking price is established;

(2) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise), and all similar fees and charges which may be incurred;

(3) A statement to the effect that the price of the commodity or contract of sale for future delivery underlying each option transaction being offered must either rise above the striking price, or fall below the striking price, as the case may be, by an amount in excess of the sum of the premium and all other costs incurred in entering into and exercising the commodity option in order for the option customer to realize a profit on the commodity option transaction;

(4) A clear explanation of the effect of any foreign currency fluctuations with respect to commodity option transactions which are to be executed on or through the facilities of a foreign board of trade;

(5) The following boldfaced statements on the first page of the summary disclosure statement:

BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE OF COMMODITY OPTIONS IS NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. A PERSON SHOULD NOT PURCHASE A COMMODITY OPTION UNLESS HE IS PREPARED TO SUSTAIN A TOTAL LOSS OF THE PURCHASE PRICE OF THE COMMODITY OPTION. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO ARE

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AWARE OF THE POTENTIAL FOR LOSS AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS.

THESE COMMODITY OPTIONS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMODITY FUTURES TRADING COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS THEREUNDER;

(6) Statements to the effect that:

(i) Specific market movements of the commodities or contracts of sale for future delivery underlying the options being offered cannot be accurately predicted, and

(ii) Generally, an option customer will be unable to sell any option purchased in any market to recover any of the purchase price, but rather may only liquidate by exercising an option before the expiration date of the option.

(b) A person shall not be required to deliver the summary disclosure statement to an option customer as required by paragraph (a) of this section if a summary disclosure statement has previously been furnished by such person to the option customer: *Provided, however*, That notwithstanding the foregoing, a disclosure statement shall be delivered in any event (1) upon the request of the option customer, or (2) if the previously delivered disclosure statement has become outdated or has become inaccurate in any material respect.

(c) Prior to the entry into a commodity option transaction, each option customer or prospective option customer shall, to the extent the following amounts are known, be informed by the person soliciting or accepting the order therefor of the actual amount of the premium, markups on the premium, costs, fees and other charges comprising the purchase price, as well as the striking price and all costs to be incurred by the option customer if the commodity option is exercised.

(d) Not more than 24 hours after the execution of a commodity option transaction, each person which accepts any money, securities or property (or extends credit in lieu thereof) from an op-

tion customer as payment of the purchase price in connection with a commodity option transaction shall furnish, by mail or other generally accepted means of communication, such option customer with a written confirmation statement containing at least the following information:

(1) The actual amount of the purchase price including a separate listing of the premium, mark-ups on the premium, costs, fees, and other charges;

(2) The striking price;

(3) The total quantity and quality of the commodity which may be purchased or sold, or which underlies the contract of sale for future delivery which may be purchased or sold, upon exercise of the commodity option;

(4) The exercise date of the commodity option purchased, and in the case of an option on a contract of sale for future delivery, the final trading date on such contract; and

(5) The date the commodity option was executed.

(Approved by the Office of Management and Budget under control number 3038-0003)

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

§ 32.6 Segregation.

(a) Any person which accepts money, securities, or property from an option customer as payment of the purchase price in connection with a commodity option transaction shall treat and deal with such money, securities, and property as belonging to such option customer until expiration of the term of the option or, if the option customer exercises the option, until all rights of the option customer under the commodity option have been fulfilled. Such money, securities, and property (1) shall be separately accounted for and segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities, or property of any other person, including the money, securities, or property received by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in § 1.3(k) of this chapter) or with the money accruing to