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Jean A. Webb,

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## COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18, 19 and 21

RIN 3038-AC22

### Market and Large Trader Reporting

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing several amendments to its market and large trader reporting rules. First, the Commission is proposing to establish a new reporting level for futures and option contracts based on 3-Year U.S. Treasury Notes. Second, the Commission is proposing to clarify the application of the reporting rules to registered derivatives transaction execution facilities (DTEFs). Third, the Commission is proposing to require designated contract markets to publicly disseminate integrated volume data that separately identifies the volume generated from block trades. Fourth, the Commission is proposing to adopt a reporting framework for contracts that are exclusively self-cleared. Finally, the Commission is proposing a number of conforming, clarifying, and technical amendments.

**DATES:** Comments must be received by February 13, 2006.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile to 202.418.5521, or by e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). Reference should be made to the "Market and Large Trader Reporting." Comments may also be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Gary Martinaitis, Associate Deputy Director for Market Information, Market Surveillance Section (telephone 202.418.5209, e-mail [gmartinaitis@cftc.gov](mailto:gmartinaitis@cftc.gov)), or Bruce Fekrat, Special Counsel, Office of the Director (telephone 202.418.5578, e-mail [bfekrat@cftc.gov](mailto:bfekrat@cftc.gov)), Division of Market Oversight, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

### SUPPLEMENTARY INFORMATION:

#### I. The Commission's Authority To Implement the Reporting Rules

The market and large trader reporting rules (reporting rules) are contained in parts 15 through 21 of the Commission's regulations.<sup>1</sup> Together, the reporting rules are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs.<sup>2</sup> The reporting rules are implemented by the Commission partly pursuant to the authority of sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act (CEA or Act).<sup>3</sup> Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits.<sup>4</sup> Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options.<sup>5</sup> Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities, and requires each registrant, whether a futures commission merchant (FCM), introducing broker, floor broker, or floor trader, to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere.<sup>6</sup> Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on contract markets or DTEFs equal or exceed Commission-set levels.<sup>7</sup>

<sup>1</sup> 17 CFR parts 15 to 21.

<sup>2</sup> The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations. See 69 FR 76392 (December 21, 2004).

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> 7 U.S.C. 6a.

<sup>5</sup> 7 U.S.C. 6c(b).

<sup>6</sup> 7 U.S.C. 6g.

<sup>7</sup> 7 U.S.C. 6i. In addition, CEA section 8a(5) is an enabling provision that grants to the Commission the authority to adopt rules that in its judgment are reasonably necessary to accomplish any of the purposes of the Act. 7 U.S.C. 12a(5). Pursuant to CEA section 3(b), the Act seeks to ensure the financial integrity of regulated transactions and to prevent price manipulation and other disruptions to market integrity. 7 U.S.C. 5(b). Collectively, these purposes warrant the maintenance of an effective and vigorous system of market and financial surveillance.

#### II. Establishing a Reporting Level for Contracts Based on 3-Year U.S. Treasury Notes

The Commission's reporting rules, among other things, require FCMs, foreign brokers, and clearing members (collectively reporting firms) to report position and identifying information of the largest futures and option traders to the Commission.<sup>8</sup> Upon special call, traders must separately provide position and identifying information to the Commission.<sup>9</sup> For both reporting firms and traders, the obligation to report under parts 17 and 18 of the Commission's regulations is triggered when traders hold or control reportable positions.<sup>10</sup>

Commission rule 15.03(b) delineates contract reporting levels for commodity futures and option contracts.<sup>11</sup> Rule 15.03(b) applies a default reporting level of 25 contracts to contracts not specifically itemized by the rule. Notably, rule 15.03 does not specify a reporting level for futures or option contracts based on 3-Year U.S. Treasury Notes (3-Year T-Notes).

At the present time, 3-Year T-Notes are listed solely by the U.S. Futures Exchange, LLC (Eurex US). On January 26, 2005, the Division of Market Oversight (staff) issued no-action relief to Eurex US, FCMs, foreign brokers, clearing members, and traders that complied with all regulatory obligations arising from a contract reporting level of 750 contracts instead of the otherwise applicable default reporting level of 25 contracts.<sup>12</sup> The staff based its grant of relief primarily on the conclusion that historical trading in 2-Year T-Notes served as precedent for trading in 3-Year

<sup>8</sup> See 17 CFR part 17.

<sup>9</sup> See 17 CFR part 18.

<sup>10</sup> A reportable position is any open contract position, as further defined in the rules, that at the close of the market equals or exceeds the quantity specified in Commission rule 15.03. See 17 CFR 15.00 and 15.03. The firms that carry accounts for traders holding reportable positions are required to identify those accounts on Form 102 and to report positions in the accounts to the Commission. See 17 CFR 17.00 and 17.01. The individual traders who hold or control reportable positions are required to report position and identifying information to the Commission only in response to a special call. See 17 CFR part 18.

<sup>11</sup> The Commission typically calibrates contract reporting levels to ensure that the aggregate of all positions reported to the Commission represents approximately 70 to 90 percent of the open interest in any given contract. The Commission periodically analyzes contract terms, trading volume, open interest, the number and position sizes of individual traders, and its surveillance experience with specific contracts, to determine if coverage of open interest is adequate for effective market surveillance. 69 FR 76392, 76393 (December 21, 2004).

<sup>12</sup> CFTC Staff Letter 05-03 Comm. Fut. L. Rep. (CCH) ¶ 30,024 (January 26, 2005).

T-Notes.<sup>13</sup> Based upon the staff's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes,<sup>14</sup> the Commission is herein proposing to adopt a 3-Year T-Notes reporting level of 750 contracts.

### III. Derivatives Transaction Execution Facilities

#### A. The Commission's Authority To Subject DTEFs to the Reporting Rules

The CEA, as amended by the Commodity Futures Modernization Act of 2000 (CFMA),<sup>15</sup> gives the Commission the statutory authority to subject DTEFs and transactions on DTEFs to the reporting rules.<sup>16</sup> First, as noted above, section 4c(b) of the Act, regardless of the venue of trading, gives the Commission plenary authority to regulate transactions that involve commodity options. Second, sections 4a and 4i of the Act explicitly reference transactions executed on or subject to the rules of DTEFs. Finally, section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and certain Commission registrants trading on registered entities and boards of trade. A registered entity is defined by CEA section 1a(29) to include DTEFs.<sup>17</sup> A board of trade is defined by section 1a(2) of the Act to include "any organized exchange or other trading facility."<sup>18</sup>

#### B. Proposed Rules

##### 1. Current Commission Rule 37.2

The current language of Commission rule 37.2, which is designed to exempt DTEFs from the bulk of Commission regulations otherwise pertinent to trading facilities, reserves the applicability of parts 15 to 21 to DTEFs, but does so through incorporation by reference and without substantial clarity.<sup>19</sup> Specifically, rule 37.2 provides that DTEFs are not, as applicable to the market, exempt from parts 15 to 21, and further provides that parts 15 to 21, when applicable to

DTEFs, shall be viewed as though they were set forth in rule 37.2 and included specific reference to DTEFs.

As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the Commission is now proposing to define DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21 of the Commission's regulations. The proposed amendments are not in any way designed to alter the existing reporting obligations of DTEFs or their market participants.

##### 2. The Replacement of Terms

The current provisions of parts 15 to 21, with the exception of Commission rule 15.05, focus only on contract markets.<sup>20</sup> The Commission is proposing to define the new term reporting market in Commission rule 15.00(m) to include DTEFs in addition to designated contract markets. In order to directly effectuate the applicability of rules 15.00 to 15.04 and parts 16 through 21 of the Commission's regulations to DTEFs, the Commission is next proposing to replace certain references to contract markets in those rules and parts with references to reporting markets.<sup>21</sup>

##### 3. Operational Flexibility and the Definition of Reporting Market

In comparison with designated contract markets, DTEFs are required to comply with a less comprehensive set of Core Principles.<sup>22</sup> Thus, in certain respects, DTEFs have greater operational flexibility than designated contract markets. For example, pursuant to section 5(d)(11) of the Act, transactions on designated contract markets, with the exception of security futures products, must be cleared through Commission

registered derivatives clearing organizations.<sup>23</sup> In contrast, pursuant to section 5a(c)(4) of the Act, transactions on DTEFs may be cleared through clearing organizations other than Commission registered clearing organizations.<sup>24</sup>

Despite this potential for greater operational flexibility, DTEFs must comply with statutory safeguards that restrict the contracts that they may list and the manner in which certain market participants may exercise trading privileges.<sup>25</sup> For example, a DTEF may permit trading access to all eligible contract participants, as that term is defined by section 1a(13) of the Act,<sup>26</sup> and all retail traders that trade through FCMs having at least \$20 million in net capital, but only in futures and option contracts that are based on commodities that have no cash market, are security futures products, or are highly unlikely to be susceptible to the threat of manipulation.<sup>27</sup> As an additional example, a DTEF may list any futures or option contract on any underlying commodity, except one based on the agricultural commodities enumerated in section 1a(4) of the Act,<sup>28</sup> but only if trading access is limited to eligible commercial entities, as that term is defined by section 1a(11) of the Act.<sup>29</sup>

As proposed, rule 15.00(m) would define a reporting market to mean a designated contract market and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a DTEF. The determination requirement in the proposed definition of reporting market is designed to reconcile the Commission's responsibility to adequately surveil transactions on DTEFs with the Congressional directive to permit DTEFs to operate, in certain respects, more flexibly than designated contract markets. Accordingly, in determining that a DTEF is not a reporting market, and thereby rendering some or all of the provisions of the reporting rules inapplicable to the facility or a specific contract listed by the facility, the Commission would consider on a case by case basis, several non-exhaustive

<sup>20</sup> Commission rule 15.05 relates to the appointment of an agent for service of process for foreign persons. 17 CFR 15.05. Rule 15.05 is self-effectuating and permits the Commission to expeditiously communicate with foreign persons and entities that trade on the domestic commodity exchanges. See 45 FR 30426 (May 8, 1980). The rule was amended in 2001 to explicitly apply to designated contract markets and registered derivatives transaction execution facilities. See 66 FR 42256 (August 10, 2001).

<sup>21</sup> Specifically, the Commission is proposing to replace the term contract market with the term reporting market in the rule 15.00 definition of a reportable position, in rules 15.01(a), 16.06, 18.05, and 21.01, and throughout the provisions of rules 16.00, 16.01, 16.07, 17.00, 17.04, 18.00, 21.02, and 21.03. In addition, the Commission is proposing to replace the term contract market with the term reporting market in the heading of part 16, part 17, and the heading of sections 21.02 and 21.03. Other proposed amendments reconciling existing rules with the proposed replacement of terms are discussed in Section VI of this notice of rulemaking.

<sup>22</sup> Compare 7 U.S.C. 7(d) (Core Principles for designated contract markets) with 7a(d) (Core Principles for DTEFs).

<sup>23</sup> See 7 U.S.C. 7(d)(11) and guidance on Core Principle 11 in Appendix B to 17 CFR part 38.

<sup>24</sup> See 7 U.S.C. 7a(c)(4) and guidance on Registration Criterion 4 in Appendix A to 17 CFR part 37.

<sup>25</sup> See U.S.C. 7a(b).

<sup>26</sup> 7 U.S.C. 1a(13).

<sup>27</sup> See 7 U.S.C. 7a(b). Pursuant to section 5a(b)(2)(E) of the Act, the Commission may also make contract suitability determinations on an individualized basis. 7 U.S.C. 7a(b)(2)(E).

<sup>28</sup> 7 U.S.C. 1a(4).

<sup>29</sup> 7 U.S.C. 1a(11) and 7a(b)(2)(F).

<sup>13</sup> *Id.* The contract reporting level for 2-Year T-Notes is currently 1,000 contracts. 17 CFR 15.03.

<sup>14</sup> The deliverable supply for the March 2005 3-Year T-Notes had a value of approximately \$95 billion.

<sup>15</sup> CFMA, Appendix E of Pub. L. 106-554, 114 Stat. 2763.

<sup>16</sup> Although the Commission has received indications of interest from potential DTEF applicants, no board of trade has registered with the Commission as a DTEF, and there are no presently pending applications for such registration.

<sup>17</sup> 7 U.S.C. 1a(29).

<sup>18</sup> 7 U.S.C. 1a(2).

<sup>19</sup> 17 CFR 37.2.

factors.<sup>30</sup> These factors include a DTEF's surveillance capabilities, the characteristics of commodities underlying specific DTEF transactions, the surveillance history of trading with precedential value, potential defects in the pricing of DTEF transactions, the value of market data to market participants, the value of market data to commercial entities, and the impact that market disruptions may have on Commission registrants and other registered entities.

#### 4. Market Data

Commission rule 16.01 requires that contract markets submit directly to the Commission data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, prices, and critical dates on a daily basis.<sup>31</sup> As with the other provisions of the reporting rules, and with the exception of the public dissemination requirement of rule 16.01 that is discussed below, the proposed amendments to rule 16.01 would require DTEFs to submit market data to the Commission unless determined otherwise by the Commission.

As mentioned above, in addition to submitting data directly to the Commission, rule 16.01 requires contract markets to publicly disseminate data on trading volume, open interest, futures delivery notices, exchanges of futures, option deltas, and prices on a daily basis. Unlike designated contract markets, however, DTEFs are statutorily obligated to publicly disseminate information on settlement prices, volume, open interest, and opening and closing ranges on a daily basis when the Commission determines that a DTEF contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract.<sup>32</sup>

The language triggering the public dissemination requirement for DTEFs is similar to the language triggering the same requirement for exempt boards of trade<sup>33</sup> and exempt commercial

markets.<sup>34</sup> The Commission therefore believes that DTEFs should not of necessity be subject to the same public dissemination requirement as designated contract markets.<sup>35</sup> The proposed amendments to rule 16.01 would require both designated contract markets and DTEFs to record and submit market data to the Commission, but would only obligate designated contract markets to comply with the rule's public dissemination requirement. As a result, the public dissemination requirement for DTEF contracts would be implemented under the rubric of DTEF Core Principle 5, including any Commission regulation adopted thereunder and subsequent Commission statements providing additional guidance and establishing acceptable practices for the manner of compliance with that core principle.<sup>36</sup> Proposed paragraph (e) of Commission rule 16.01 emphasizes this result.

#### IV. Block Trade Volume and the Publication of Market Data

On December 21, 2000, the President signed into law the CFMA, extensively revising the Act, and facilitating the availability of transactions, such as block trades, that are subject to the rules of an exchange, but lawfully negotiated and executed away from the centralized marketplace.<sup>37</sup> Block trades are typically subject to exchange rules that establish minimum size thresholds,

<sup>34</sup> 7 U.S.C. 2(h)(4)(D). Aside from the requirement to comply with minimal notice and reporting obligations, exempt boards of trade and exempt commercial markets are generally not subject to Commission oversight. See 17 CFR part 36.

<sup>35</sup> The Commission recently proposed to apply to DTEFs and exempt boards of trade the same standard that currently applies to exempt commercial markets for determining whether a contract performs a significant price discovery function for transactions in the cash market for an underlying commodity. 70 FR 39672, 39674 (July 11, 2005). Specifically, in making such a determination with respect to DTEFs and exempt boards of trades, the Commission has proposed to consider (1) whether cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or (2) whether market prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions. *Id.*

<sup>36</sup> See Commission rule 37.6(d)(4) and guidance on DTEF Core Principle 5 in Appendix B to part 37 of the Commission's regulations. 17 CFR 37.6(d)(4) and Appendix B to 17 CFR part 37.

<sup>37</sup> For example, the CFMA specifically permitted designated contract markets to establish trading rules that authorize the exchange of futures for swaps, or allow a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of a designated contract market or derivatives clearing organization. See 7 U.S.C. 7(b)(3).

participant eligibility requirements, pricing limits, and trade reporting parameters.<sup>38</sup> It is generally believed that market participants execute large orders through block trades in order to achieve greater price and execution certainty than otherwise attainable in the centralized marketplace.

In order to recognize the growing importance and use of off-centralized market transactions, the Commission adopted final rules in December of 2004 that required designated contract markets to separately identify, report, and publish the volume generated from trades involving the exchange of futures for a commodity or for a derivatives position.<sup>39</sup> To more comprehensively recognize the growing use and importance of off-centralized market transactions, the Commission is now similarly proposing to amend rule 16.01 to require designated contract markets to record and make readily available to the news media and the general public, as part of the total mix of market data publicly disseminated pursuant to rule 16.01, the volume generated from trades that are block trades.

Commission rule 1.38(b) currently requires designated contract markets to separately identify and mark all off-centralized market transactions, including block trades.<sup>40</sup> In addition, several designated contract markets disseminate public reports that separately account for the volume generated from block trades.<sup>41</sup> The proposed amendments to rule 16.01 seek to codify this industry practice, and require all designated contract markets to record the volume generated from block trades for each contract, and make that information readily available to the news media and the general public as a part of the total mix of market data publicly disseminated on a daily basis.<sup>42</sup>

<sup>38</sup> See 69 FR 39880, 39882 (July 1, 2004).

<sup>39</sup> 69 FR 76392, 76394 (December 21, 2004).

<sup>40</sup> 17 CFR 1.38(b).

<sup>41</sup> For example, the Chicago Board of Trade publicly disseminates daily block trade volume data for eligible contracts in a category of volume termed Wholesale Trades. See CBOT Delayed Charts, available at <http://cbot.com/cbot/pub/page/0,3181,801,00.html>. The Chicago Mercantile Exchange also disseminates daily volume data through its Web site that separately accounts for the volume generated from block trades.

<sup>42</sup> As previously discussed, DTEFs, unlike designated contract markets, are statutorily obligated to publicly disseminate volume data on a daily basis when the Commission determines that a DTEF contract performs a significant price discovery function for transactions in the cash market for the commodity underlying the contract. Under the proposed rules, the public dissemination requirement for DTEF contracts, including the reporting of particularized block trade volume data, would be implemented under the rubric of DTEF Core Principle 5.

<sup>30</sup> When the Commission adopted rule 37.2 in August of 2001, it specifically determined to defer the extension of routine large trader reporting requirements to DTEF transactions involving Treasury instruments. See 66 FR 42256, 42261 (August 10, 2001). When the Commission adopted rule 41.25 in November of 2001, it specifically determined to require part 16 reports from all DTEFs listing security futures products. See 66 FR 55078 (November 1, 2001). Under the proposed rules, the Commission would, without exception, deem such DTEFs to be part 16 reporting markets for security futures products.

<sup>31</sup> 17 CFR 16.01.

<sup>32</sup> Compare 7 U.S.C. 7(d)(8) (designated contract market Core Principle 8), with 7 U.S.C. 7a(d)(5) (DTEF Core Principle 5).

<sup>33</sup> 7 U.S.C. 7a-3(d).

Given the current stage of technological development, the Commission believes that designated contract markets must generally satisfy their obligation to make market data readily available to the news media and the general public through the Internet and on Web pages that are conveniently accessed and easily navigable. In order to further emphasize the obligation to disseminate market data in a manner that is both useful and accessible, proposed rule 16.01(e) would introduce two additional requirements. First, proposed rule 16.01(e) would specifically require the integrated publication of volume data. The Commission believes that the integrated publication of volume data, along with the public dissemination of block trade volume data, will enhance the ability of market participants and the general public to effectively analyze the determinants of market prices, the depth of market liquidity, and the utility of contracts as hedging and pricing tools. Second, proposed rule 16.01(e) would require designated contract markets to present market data in a format that would readily enable members of the news media and the general public to consider such data. This presentation requirement would ensure that designated contract markets are fully aware of their present obligation to publicly disseminate market data in a user friendly format.

With regard to the publication of volume data, the Commission notes that the proposed amendments to rule 16.01 would require the publication of data on the total volume of trading, the volume generated by exchanges of futures, and the volume generated from block trades, for each contract. The Commission herein solicits comment on whether using a catch-all category to identify trading volume generated from all off-centralized market trades that are not exchanges of futures is preferable to identifying the volume generated from specific off-centralized market transactions such as block trades. The Commission also solicits comment on whether, in the alternative, any further refinement of volume data, beyond the proposed breakdown into the categories listed above, is desirable, or necessary, for the proper analysis of market prices and liquidity.

In addition, as proposed, the amendments to rule 16.01 would require designated contract markets to publicly disseminate separate block trade volume data, but would not require the submission of such data to the Commission. The Commission has assessed the cost to the Commission of integrating separate block trade volume

data into its information systems, and has determined that cost to be considerable. The Commission will therefore independently derive or compile such data as necessary to fulfill its market and financial surveillance responsibilities.

## V. Self-Cleared Contracts

### A. Market Structure

In February of 2004, the Commission designated HedgeStreet, Inc. (HedgeStreet or Exchange) as a contract market pursuant to sections 5 and 6(a) of the Act.<sup>43</sup> In its application for designation, HedgeStreet presented a market structure that was substantially different from other active designated contract markets. For example, the market structure presented by HedgeStreet did not permit intermediaries to handle the orders or funds of traders in connection with the purchase or sale of listed contracts.<sup>44</sup> Consequently, the Exchange sought to directly hold, at all times, sufficient trader funds to cover the maximum possible loss that could be sustained by market participants.<sup>45</sup> The Exchange also offered products with appeal to members of the general public. For example, HedgeStreet sought to offer, and currently does offer, European style binary options on various commodities that pay a fixed \$10.00 if in the money upon expiration.<sup>46</sup>

The market structure initially established by HedgeStreet does not, in certain respects, comport well with the obligations imposed by the Commission's reporting rules. Presently, the reporting rules are designed to collect information from heavily intermediated markets that permit un-intermediated trading and clearing access only to well capitalized members.<sup>47</sup> In anticipation of the adoption of comparable market structures by other exchanges, the Commission is herein proposing an alternative reporting approach that

<sup>43</sup> 7 U.S.C. 7 and 8(a); Order of Designation as a Contract Market (February 18, 2004).

<sup>44</sup> See Order of Registration as a Derivatives Clearing Organization (February 18, 2004); see also Staff Designation Memorandum from the Division of Market Oversight (Staff Memorandum) at 47 (February 10, 2004).

<sup>45</sup> *Id.*

<sup>46</sup> Staff Memorandum at 29. In September of 2005, HedgeStreet submitted to the Commission new and amended rules to support a request to offer larger size contracts that could be intermediated and cleared by members of The Clearing Corporation. Letter and related submissions from Stephanie Ford, Vice-President, HedgeStreet, Inc. to Jean A. Webb, Secretary of the Commission (September 6, 2005)(on file with the Commission), available at <http://www.cftc.gov/dea/dependingindustryfilings.htm>.

<sup>47</sup> See 17 CFR parts 16 to 18.

would apply to markets that do not permit intermediaries to handle the funds of traders in connection with the sale or purchase of specific contracts. For ease of reference, the term exclusively self-cleared contracts is used herein, and defined by proposed Commission rule 15.00(f), to refer to such contracts.<sup>48</sup>

### B. Proposed Rules

#### 1. Background on Commission Rules 17.00 and 17.01

The Commission employs a comprehensive reporting system to enforce speculative position limits and assess the activities and potential market power of traders. Pursuant to Commission rule 17.00, FCMs, foreign brokers, and clearing members file daily reports with the Commission particularizing futures and option positions when such positions are at or above the contract reporting levels delineated in rule 15.03.<sup>49</sup> If, at the close of the market on any business day, an FCM, foreign broker, or clearing member carries a position at or above the Commission's reporting level in any single futures month or option expiration, the firm reports the entire position on the same exchange in all futures and option expiration months in that commodity, regardless of size.<sup>50</sup> Since traders frequently hold positions through multiple brokers and have financial interests in multiple accounts, the Commission, pursuant to rule 17.01, routinely collects information that enables its surveillance staff to aggregate related accounts.<sup>51</sup> Specifically, FCMs, foreign brokers, and clearing members file Forms 102 to identify the name, address, and occupation of the person or persons who own each new account that acquires a reportable position.<sup>52</sup>

#### 2. Exclusively Self-cleared Contracts

An FCM, by definition, is a person that accepts the property of customers to "margin, guarantee, or secure" customer trades.<sup>53</sup> Likewise, a foreign broker is a person located outside the United States or its territories "who carries an account" for any other person.<sup>54</sup> With respect to transactions in exclusively

<sup>48</sup> The term exclusively self-cleared contract is devised for use in parts 15 through 21 only and is not meant to give meaning to the terms intermediary or intermediation (or any variant of those terms) in any way as used by the Commission, in the Act, or in Commission regulations promulgated under the Act.

<sup>49</sup> See 17 CFR 15.00, 15.03 and 17.00.

<sup>50</sup> 17 CFR 17.00(a).

<sup>51</sup> 17 CFR 17.01.

<sup>52</sup> See *id.*

<sup>53</sup> 7 U.S.C. 1a(20).

<sup>54</sup> 17 CFR 15.00(a)(1).

self-cleared contracts, there are no intermediaries who handle customer funds, and therefore, there are no FCMs or foreign brokers with reporting obligations under part 17 of the Commission's regulations.

In contrast, the term clearing member is defined by Commission rule 1.3(c) to include "any person who is a member of, or enjoys the privileges of clearing trades in his own name through, the clearing organization of a contract market."<sup>55</sup> As such, all traders of exclusively self-cleared contracts squarely fit within the regulatory definition of a clearing member, and thereby have reporting obligations under part 17 of the Commission's regulations.

Pursuant to rule 17.00, clearing members, including all traders who are clearing members, must file daily reports with the Commission particularizing futures and option positions when such positions are at or above the contract reporting levels set by rule 15.03. Pursuant to rule 17.01, clearing members, including all traders who are clearing members, must file Forms 102 with the Commission to identify the name, address, and occupation of the person or persons who own each new account that acquires a reportable position. With respect to exclusively self-cleared contracts, all traders, by virtue of their status as clearing members, have to submit large trader position and identifying data to the Commission in compliance with rules 17.00 and 17.01 on a daily basis.

The reporting rules, however, are not designed to impose routine position and identifying reporting obligations on traders.<sup>56</sup> In 1981, the Commission explicitly disposed of routine trader reporting obligations in order to "substantially decrease certain paperwork burdens on large traders and on the Commission itself."<sup>57</sup> Instead, the Commission looked to intermediaries and well capitalized clearing members to "facilitate the Commission's market surveillance efforts" in the absence of routine trader reporting.<sup>58</sup> Since 1981, the design of the reporting rules has been to place the burden of reporting particularized position and identifying data on a routine basis in the first instance on market intermediaries and well

capitalized persons that clear customer or proprietary positions.<sup>59</sup>

In accordance with the system of reporting fashioned by the reporting rules, the Commission believes that routine reporting obligations should not be placed on persons trading in exclusively self-cleared contracts. Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. With respect to exclusively self-cleared contracts, and in particular with respect to retail oriented exclusively self-cleared contracts, traders in general would not have the resources or regulatory experience to comply with large trader reporting obligations as a matter of routine.

In order to not place any daily reporting burden on traders of exclusively self-cleared contracts, the Commission is herein proposing rules that would effectively place the exchange listing exclusively self-cleared contracts in the regulatory position of its clearing members with respect to compliance with part 17 of the Commission's regulations.<sup>60</sup> As discussed above, all traders in exclusively self-cleared contracts are effectively clearing members. Under the proposed rules, reporting markets, a term which includes designated contract markets and DTEFs, with respect to exclusively self-cleared contracts, would be obligated to submit reportable position data under rule 17.00, and reportable identifying data under rule 17.01, on behalf of all clearing members.<sup>61</sup>

The Commission believes that this is a desirable result since reporting markets, by virtue of their regulated status, substantial resources, systems of regulatory compliance, and lines of communication with the Commission are in better position to routinely submit position and identifying data to the Commission.<sup>62</sup> As proposed by rules

17.00(i) and 17.01(h), reporting markets listing exclusively self-cleared contracts would be required, unless determined otherwise by the Commission, to provide the data required by rule 17.00(a) through (h) and 17.01(a) through (g) to the Commission on behalf of all traders of these contracts. Traders, nevertheless, would still be required to submit position and identifying data upon special call under part 18 of the Commission's regulations.

### 3. Clearing Member Reports

Pursuant to Commission rule 16.00, exchanges must submit confidential information to the Commission on the aggregate positions and trading activity of each clearing member. The exchanges, on a daily basis, report each clearing member's open long and short positions, purchases and sales, exchanges of futures, and futures delivery notices.<sup>63</sup> The data is reported separately by proprietary and customer accounts by futures month and, for options, by puts and calls by expiration date and strike price.<sup>64</sup>

As proposed, all traders holding positions in exclusively self-cleared contracts on reporting markets would squarely fit within the regulatory definition of a clearing member. Hence, reporting markets listing such contracts would be required by rule 16.00 to submit position data for every single trader on a daily basis, regardless of the position size of a trader. The Commission believes that the submission of voluminous disaggregated clearing member data pursuant to rule 16.00(a), with respect to exclusively self-cleared contracts, could place an undue burden on reporting markets, and would not generally further the Commission's market or financial surveillance efforts.

The Commission's staff uses clearing member data submitted by the exchanges to identify large cleared positions, to audit large trader reports filed by intermediaries and clearing members, and to identify account aggregation issues. Under the proposed alternative reporting scheme, clearing member reports for exclusively self-cleared contracts typically would not serve an audit function since clearing member and large trader reports would be submitted by the same person. Furthermore, under the proposed alternative reporting approach, reporting markets would be submitting disaggregated large trader reports in the

substantial proportion of a contract's trading volume.

<sup>55</sup> 17 CFR 1.3(h). The Commission herein is proposing to amend the regulatory definition of a clearing member in rule 1.3 to explicitly extend to members of DTEFs.

<sup>56</sup> See 17 CFR parts 16 to 18.

<sup>57</sup> 46 FR 59960 (December 8, 1981).

<sup>58</sup> *Id.*

<sup>59</sup> See *id.*

<sup>60</sup> The Commission, through an order, has employed this approach for HedgeStreet. See Order of Designation as a Contract Market, paragraph 5 (February 18, 2004).

<sup>61</sup> The proposed reporting scheme for exclusively self-cleared contracts is narrowly tailored to be contract specific. In other words, a reporting market may list both exclusively self-cleared and other contracts. The alternative reporting approach, however, would apply only to exclusively self-cleared contracts.

<sup>62</sup> The Commission may, at some future date, consider amending the reporting obligations of clearing members with respect to contracts with low notional values that are not exclusively self-cleared. The Commission would consider amending these reporting obligations when retail market participants that self-clear are responsible for a

<sup>64</sup> *Id.*

place of traders pursuant to Commission rules 17.00 and 17.01. Clearing member reports would therefore be generally unnecessary for the purpose of identifying large cleared positions. Lastly, clearing member reports would not normally assist in the identification of account aggregation issues. For exclusively self-cleared contracts, account aggregation issues may be analyzed by directly issuing appropriately worded special calls to traders for further position and identifying data pursuant to part 18 of the Commission's regulations. Based upon the foregoing reasons, proposed rule 16.00(c) provides that no clearing member reports need be submitted to the Commission for exclusively self-cleared contracts, unless the Commission determines otherwise.

## VI. Conforming, Clarifying and Technical Amendments

The Commission has identified a number of other provisions and sets of provisions that should be revised to reconcile them with the substantive rules proposed herein, to update and better organize the layout of the reporting rules, or to correct certain non-substantive errors. These proposed amendments are categorized below by their respective parts.

### A. Part 1 of the Commission's Regulations

Commission rule 1.3(c) defines clearing member in terms of a member of a contract market. Commission rule 1.3(d) defines a clearing organization in terms of an entity associated with a contract market. In conformity with the intent of this proposed rulemaking, the Commission is proposing to amend rules 1.3(c) and 1.3(d) to make specific reference to DTEFs.

### B. Part 15 of the Commission's Regulations

The Commission is proposing to further amend rule 15.00, the definitional section for parts 15 through 21 of the Commission's regulations, to present the definitions contained in that section alphabetically. The Commission is proposing to enumerate the contract reporting levels and categories delineated in rule 15.03, for certain reporting levels and categories, in alphabetical order. The Commission is proposing to amend paragraph (a) of rule 15.05 to clarify that the provisions of that rule currently apply to all regulated transactions executed on or subject to the rules of DTEFs.<sup>65</sup> Since the thrust of rule 15.05 relates to the

appointment of an agent for service of process on foreign brokers and foreign customers, the term foreign broker in proposed rule 15.00(g) has been defined to explicitly extend to transactions on DTEFs.

Commission rule 15.01 provides a list of the persons that may be required to report pursuant to parts 15 through 21 of the Commission's regulations. Proposed paragraph (a) of rule 15.01 clarifies that both designated contract markets, and when applicable DTEFs, are required to provide reports to the Commission pursuant to part 16, and that pursuant to this proposed rulemaking, reporting markets may be required to provide reports under part 17 if they list exclusively self-cleared contracts. Proposed paragraph (b) of rule 15.01 clarifies that part 17 applies to all clearing members and that part 21 may require reports from introducing brokers and traders in addition to FCMs, clearing members, and foreign brokers. Proposed paragraph (b) of rule 15.01 also deletes the reference to part 20 since that part is reserved and contains no operative provisions.

### C. Part 16 of the Commission's Regulations

The current heading for part 16 only references contract markets. As proposed, the heading for part 16 would specifically refer to reporting markets. Current rule 16.07(b) incorrectly references rule 16.00(d)(1) as a provision that gives the Commission the authority to approve the form and manner of filing reports with the Commission. The correct reference, as provided in proposed rule 16.07(b), is Commission rule 16.01(d)(1). Paragraph (a) of current rule 16.01 refers to the total quantity of futures exchanged for commodities or for derivatives positions. Since exchanges of futures generate trading volume, proposed rule 16.01(a)(5) now refers to the total volume of futures exchanged for commodities or for derivatives positions instead of the total quantity of such transactions.

### D. Part 17 of the Commission's Regulations

The Commission is proposing to conform the capitalization format of rule 17.00(b)(2) and 17.00(g)(2)(iv) with the format used in the other paragraphs of that rule, and to capitalize the word form when used to refer to Form 102 throughout the provisions of rules 17.01, 17.02, and 17.03. Proposed rule 17.01(f) clarifies that Form 102 is alternatively referred to as a report. Proposed rules 17.01(a), 17.01(b), and 17.01(d) provide the appropriate

italicization format for each rule's introductory phrase. The proposed heading to part 17 and proposed rule 17.02 reflect the possibility that under the alternative reporting approach for exclusively self-cleared contracts, reporting markets may be required to file reports with the Commission on behalf of their clearing members. Proposed rule 17.01(a) also replaces the second instance of the term identifier with the term designator. Lastly, the Commission is proposing to amend the introductory text of rule 17.03 to correctly refer to paragraph (d) of that section.

### E. Part 19 of the Commission's Regulations

As a result of the proposed alphabetization of rule 15.00, the Commission is proposing to amend paragraph (a) of rule 19.00 to correctly refer to the re-ordered sections defining the term reportable position in rule 15.00. The proposed amendment to rule 19.00(b) correctly refers to rule 19.01 instead of rule 19.10, which is inoperative and reserved. Lastly, paragraph (a) of rule 19.01 capitalizes the word form when used to refer to Form 204.

### F. Part 21 of the Commission's Regulations

A proposed amendment to rule 21.01, which was last updated in 1983, extends the rule's requirement that each FCM and introducing broker file with the Commission upon special call the names and addresses of all persons who exercise trading control over a customer's account in commodity futures to all persons who also exercise trading control over a customer's account in commodity options. A proposed amendment to paragraph (d) of rule 21.03 replaces the phrase "by telex or a similarly expeditious means of communication" with the phrase "by e-mail or a similarly expeditious means of communication".

## VII. Related Matters

### A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of the proposed regulations outweigh their costs. Rather, section 15(a) requires the Commission to "consider the cost and benefits" of the subject rules.

<sup>65</sup> See note 20, *supra*.

Section 15(a) further specifies that the costs and benefits of the proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

Collectively, the proposed rules tend to reduce the aggregate burden associated with the reporting obligations of parts 15 through 21 of the Commissions regulations. The proposed contract reporting level of 750 contracts for 3-Year T-Notes, for example, is significantly higher than the default reporting level that would be applicable in the absence of Commission rulemaking or regulatory relief. Contract reporting levels trigger reporting obligations that permit the Commission to be aware of significant positions that may affect the integrity and efficiency of the marketplace. The information collected develops the Commission's understanding of the marketplace, and gives the Commission the opportunity to prevent the occurrence, and contain the effects, of financial disturbances. Based upon the staff's surveillance experience with 2-Year T-Notes, the liquidity of the securities underlying treasury futures and option contracts, and the securities available for delivery against 3-Year T-Notes, the Commission believes that a 3-Year T-Notes reporting level of 750 contracts will allow it to adequately protect market participants and the integrity of the marketplace, while limiting the regulatory burden of reporting.

With respect to transactions executed on or subject to the rules of DTEFs, the proposed rules merely clarify the existing reporting obligations of exchanges, intermediaries, and traders and are not intended to in any way alter their existing reporting obligations. The current language of Commission rule 37.2 reserves the applicability of parts 15 to 21 to DTEFs, but does so through incorporation by reference and without clarity. As part of the Commission's continuing effort to better implement the amendments introduced to the Act by the CFMA, the Commission has proposed amendments that define

DTEFs directly into rules 15.00 to 15.04 and parts 16 through 21 without generally altering the present reporting obligations of DTEFs or their market participants. The Commission believes that the proposed amendments serve the public's interest by enhancing regulatory clarity.

The proposed amendments to rule 16.01 relating to block trades and contract volume recognize the growing importance and use of off-centralized market transactions in general, and block trades in particular. The proposed rules require all reporting markets to record the volume generated from block trades for each contract, and require designated contract markets to make that information readily available to the news media and the general public as a part of the total mix of market data publicly disseminated on a daily basis. In order to emphasize the obligation to disseminate market data in a manner that is both useful and accessible, the proposed rules would also require designated contract markets to publish integrated volume data, and present all market data in a format that would readily enable members of the news media and the general public to consider such data. The Commission believes that the format requirement would ensure that designated contract markets are fully aware of their present obligation to publicly disseminate market data in a user friendly manner. In addition, the integrated publication of volume data, along with the public dissemination of block trade volume data, would benefit market participants and the general public by facilitating their ability to effectively analyze the key determinants of market prices and market depth.

Pursuant to paragraphs (a) and (b) of rule 16.01, designated contract markets are presently required to publicly disseminate certain market data, including the volume generated from trades involving the exchange of futures for a commodity or for a derivatives position, on a daily basis. Commission rule 1.38(b) also requires designated contract markets to separately identify and mark all block trades. In addition, several designated contract markets publicly disseminate integrated volume data that separately accounts for contract volume generated from block trades. In light of this, the cost of compliance with the proposed amendments to rule 16.01 is likely to be minimal.

Finally, the Commission has proposed rules that concern exclusively self-cleared contracts. The proposed rules protect market participants and strengthen the financial integrity of the

futures marketplace by shifting the reporting responsibilities of traders, who are also clearing members, onto regulated markets that are able to comply with routine reporting obligations. The reporting rules are presently designed to collect information from heavily intermediated markets that permit un-intermediated trading and clearing access only to well capitalized members. Intermediaries and clearing members typically are Commission registrants with vigorous internal controls, substantial resources, and extensive experience with regulatory compliance. Traders of exclusively self-cleared contracts, and in particular traders of retail oriented exclusively self-cleared contracts, would not in general have the resources or regulatory experience to comply with large trader reporting obligations as a matter of routine. In the absence of rulemaking or Commission relief, reporting obligations for exclusively self-cleared contracts would be placed on individual traders that do not have the ability to comply with those requirements. The Commission's proposed rulemaking addresses this deficiency and ensures that the Commission will receive the trading data it needs in a timely manner to protect market participants, the public, and the integrity of the futures marketplace.

After considering these factors, the Commission has determined to propose the revisions to parts 15, 16, 17, 18, 19, and 21 as set forth below. The Commission specifically invites public comment on its application of the criteria contained in section 15(a) of the Act for consideration. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed rule with their comment letters.

#### *B. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that exchanges, futures commission merchants and large traders are not "small entities" for the purposes of the RFA.<sup>66</sup> The requirements related to the proposed amendments fall mainly on exchanges and FCMs. Similarly, foreign brokers and traders report only if carrying or holding large positions. In addition, these proposed amendments, collectively, tend to relieve regulatory burdens. Accordingly, the Chairman, on behalf of the Commission, hereby

<sup>66</sup> 47 FR 18618 (April 30, 1982).

certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

### C. The Paperwork Reduction Act

When publicizing proposed rules, the Paperwork Reduction Act (PRA)<sup>67</sup> imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these proposed rules solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The Commission has submitted the proposed rules and its associated information collection requirements to the Office of Management and Budget (OMB). The proposed rules are a part of two approved collections of information. The estimated burden associated with large trader reporting obligations (OMB Control No. 3038-0009) is as follows:

*Average Burden Hour Per Response:* .29.

*Number of Respondents:* 2,946.

*Frequency of Response:* Daily.

The estimated burden associated with the reporting obligations of the exchanges (OMB Control No. 3038-0012) is as follows:

*Average Burden Hour Per Response:* .5.

*Number of Respondents:* 12.

*Frequency of Response:* Daily.

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202.395.7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW.,

Washington, DC 20581, 202.418.5160. Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, 202.395.7340.

### List of Subjects

#### 17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 17

Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 18

Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 19

Brokers, Commodity futures, Reporting and recordkeeping requirements.

#### 17 CFR Part 21

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4a, 4c, 4g, 4i, 5, 5a and 8a of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Revise paragraphs (c) and (d) of § 1.3 to read as follows:

#### § 1.3 Definitions.

\* \* \* \* \*

(c) *Clearing member.* This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market or registered derivatives transaction execution facility.

(d) *Clearing organization.* This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market or registered derivatives transaction execution facility.

\* \* \* \* \*

### PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19 and 21, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000); 5 U.S.C. 552 and 552(b).

4. Revise § 15.00 to read as follows:

#### § 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

As used in parts 15 to 21 of this chapter:

(a) *Cash or Spot*, when used in connection with any commodity, means the actual commodity as distinguished from a futures or option contract in such commodity.

(b) *Compatible data processing media* means data processing media approved by the Commission or its designee. The Commission hereby delegates, until the Commission orders otherwise, the authority to approve data processing media for data submissions to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(c) *Customer* means “customer” (as defined in § 1.3(k)) and “option customer” (as defined in § 1.3(jj)).

(d) *Customer trading program* means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading

<sup>67</sup> Public Law 104-13 (May 13, 1995).

done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

(e) *Discretionary account* means a commodity futures or commodity option trading account for which buying or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

(f) *Exclusively self-cleared contract* means a contract that in connection with its purchase or sale intermediaries are not permitted to handle customer funds.

(g) *Foreign broker* means any person located outside the United States or its territories that carries an account in commodity futures or commodity options on any designated contract market or registered derivatives transaction execution facility for any other person.

(h) *Foreign trader* means any trader (as defined in paragraph (o) of this section) who resides or is domiciled outside of the United States, its territories or possessions.

(i) *Guided account program* means any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity or a particular commodity option that is advised or recommended to the participant in the program.

(j) *Managed Account Program* means a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice or recommendations.

(k) *Open contracts* means "open contracts" (as defined in § 1.3(f)) and commodity option positions held by any person on or subject to the rules of a designated contract market or registered derivatives transaction execution facility which have not expired, been exercised, or offset.

(l) *Reportable position* means:

(1) For reports specified in parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter, any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in § 15.03 of this part in either:

(i) Any one future of any commodity on any one reporting market, excluding future contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market; or

(ii) Long or short put or call options that exercise into the same future of any commodity, or long or short put or call options for options on physicals that have identical expirations and exercise into the same physical, on any one reporting market.

(2) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any combined futures and futures-equivalent option open contract position as defined in part 150 of this chapter in any one month or in all months combined, either net long or net short in any commodity on any one reporting market, excluding futures positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and reporting market.

(m) *Reporting market* means a designated contract market and, unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a registered derivatives transaction execution facility.

(n) *Special account* means any commodity futures or option account in which there is a reportable position.

(o) *Trader* means a person who, for his own account or for an account which he controls, makes transactions in commodity futures or options, or has such transactions made.

5. Revise paragraphs (a) and (b) in § 15.01 to read as follows:

**§ 15.01 Persons required to report.**

\* \* \* \* \*

(a) Reporting markets—as specified in part 16, 17, and 21 of this chapter.

(b) Futures commission merchants, clearing members, foreign brokers, introducing brokers, and traders—as specified in parts 17 and 21 of this chapter.

\* \* \* \* \*

6. Revise paragraph (b) in § 15.03 to read as follows:

**§ 15.03 Reporting levels.**

\* \* \* \* \*

(b) The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
<b>Agricultural:</b>	
Cocoa .....	100
Coffee .....	50
Corn .....	250
Cotton .....	100
Feeder Cattle .....	50
Frozen Concentrated Orange Juice .....	50
Lean Hogs .....	100
Live Cattle .....	100
Milk, Class III .....	50
Oats .....	60
Rough Rice .....	50
Soybeans .....	150
Soybean Meal .....	200
Soybean Oil .....	200
Sugar No. 11 .....	500
Sugar No. 14 .....	100
Wheat .....	150
<b>Broad-Based Security Indexes:</b>	
Municipal Bond Index .....	300
S&P 500 Stock Price Index .....	1,000
Other Broad-Based Securities Indexes .....	200
<b>Financial:</b>	
30-Day Fed Funds .....	600
3-Month (13-Week) U.S. Treasury Bills .....	150
2-Year U.S. Treasury Notes .....	1,000
3-Year U.S. Treasury Notes .....	750
5-Year U.S. Treasury Notes .....	2,000
10-Year U.S. Treasury Notes .....	2,000
30-Year U.S. Treasury Bonds .....	1,500
1-Month LIBOR Rates .....	600
3-Month Eurodollar Time Deposit Rates .....	3,000
3-Month Euroyen .....	100
2-Year German Federal Government Debt .....	500
5-Year German Federal Government Debt .....	800
10-Year German Federal Government Debt .....	1,000
Goldman Sachs Commodity Index .....	100
Major Foreign Currencies .....	400
Other Foreign Currencies .....	100
U.S. Dollar Index .....	50
<b>Natural Resources:</b>	
Copper .....	100
Crude Oil, Sweet .....	350
Crude Oil, Sweet—No. 2 Heating Oil Crack Spread .....	250
Crude Oil, Sweet—Unleaded Gasoline Crack Spread .....	150
Gold .....	200
Natural Gas .....	200
No. 2 Heating Oil .....	250
Platinum .....	50
Silver Bullion .....	150
Unleaded Gasoline .....	150
Unleaded Gasoline—No. 2 Heating Oil Spread Swap .....	150
<b>Security Futures Products:</b>	
Individual Equity Security .....	1,000
Narrow-Based Security Index .....	200

Commodity	Number of contracts
Hedge Street Products .....	<sup>1</sup> 125,000
TRAKRS .....	<sup>1</sup> 50,000
All Other Commodities .....	25

<sup>1</sup>For purposes of part 17, positions in HedgeStreet Products and TRAKRS should be reported by rounding down to the nearest 1,000 contracts and dividing by 1,000.

7. Revise paragraphs (a) and (h) in § 15.05 to read as follows:

**§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.**

(a) For purposes of this section, the term “futures contract” means any contract for the purchase or sale of any commodity for future delivery traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term “option contract” means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act pursuant to section 5a(g) of the Act, traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility; the term “customer” means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term “communication” means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

\* \* \* \* \*

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market or registered derivatives transaction execution facility on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

\* \* \* \* \*

**PART 16—REPORTS BY REPORTING MARKETS**

8. Revise the heading of part 16 as set forth above.

9. The authority citation for part 16 is revised to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6g, 6i, 7, 7a and 12a, unless otherwise noted.

10. In § 16.00, revise paragraphs (a) introductory text, (a)(1), (a)(5), and (b) introductory text; and add paragraph (c) to read as follows:

**§ 16.00 Clearing member reports.**

(a) *Information to be provided.* Each reporting market shall submit to the Commission, in accordance with paragraph (b) of this section, a report for each business day, showing for each clearing member, by proprietary and customer account, the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The total of all long open contracts and the total of all short open contracts carried at the end of the day covered by the report, excluding from open futures contracts the number of contracts against which delivery notices have been stopped or against which delivery notices have been issued by the clearing organization of the reporting market;

\* \* \* \* \*

(5) For futures, the quantity of the commodity for which delivery notices have been issued by the clearing organization of the reporting market and the quantity for which notices have been stopped during the day covered by the report.

(b) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit the information required by paragraph (a) of this section as follows:

\* \* \* \* \*

(c) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, paragraph (a) of this section shall not apply to transactions involving exclusively self-cleared contracts.

\* \* \* \* \*

11. In § 16.01 revise paragraphs (a), (b), (c), and (d) introductory text and add paragraph (e) to read as follows:

**§ 16.01 Trading volume, open contracts, prices, and critical dates.**

(a) *Trading volume and open contracts.* Each reporting market shall record for each business day the following information separately for futures by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) The option delta, where a delta system is used;

(2) The total gross open contracts, excluding from futures those contracts against which notices have been stopped;

(3) For futures, open contracts against which delivery notices have been stopped on that business day;

(4) The total volume of trading, excluding transfer trades or office trades;

(5) The total volume of futures exchanged for commodities or for derivatives positions which are included in the total volume of trading;

(6) The total volume of block trades which are included in the total volume of trading.

(b) *Prices.* Each reporting market shall record the following information separately for futures, by commodity and by future, and, for options, by underlying futures contract for options on futures contracts or by underlying physical for options on physicals, and by put, by call, by expiration date and by strike price:

(1) For the trading session and for the opening and closing periods of trading as determined by each reporting market:

(i) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the reporting market reasonably determines accurately reflect market conditions. If vacated or withdrawn, bids and offers shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(ii) If there are no transactions, bids, or offers during the opening or closing periods, the reporting market may record as appropriate:

(A) The first price (in lieu of opening price data) or the last price (in lieu of closing price data) occurring during the trading session, clearly indicating that such prices are the first and the last price; or

(B) Nominal opening or nominal closing prices which the reporting market reasonably determines accurately reflect market conditions, clearly indicating that such prices are nominal.

(2) The settlement price established by each reporting market or its clearing organization.

(3) *Additional information.* Each reporting market shall record the following information with respect to transactions in commodity futures and commodity options on that reporting market:

(i) The method used by the reporting market in determining nominal prices and settlement prices; and

(ii) If discretion is used by the reporting market in determining the opening and closing ranges or the settlement prices, an explanation that certain discretion may be employed by the reporting market and a description of the manner in which that discretion may be employed.

(c) *Critical dates.* Each reporting market shall report to the Commission for each futures contract the first notice date and the last trading date and for each option contract the expiration date in accordance with paragraph (d) of this section.

(d) *Form, manner and time of filing reports.* Unless otherwise approved by the Commission or its designee, reporting markets shall submit to the Commission the information specified in paragraphs (a)(1) through (a)(5), (b), and (c) of this section as follows:

\* \* \* \* \*

(e) *Publication of recorded information.* (1) Designated contract markets shall make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. The information in paragraphs (a)(4) through (a)(6) of this section shall be made readily available in a format that presents the information together.

(2) Designated contract markets shall make the information in paragraphs (b)(1) and (b)(2) of this section readily available to the news media and the general public, and the information in paragraph (b)(3) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains.

(3) Registered derivatives transaction execution facilities shall comply with the publication of trading information requirement of section 5a(d)(5) of the Act and any Commission regulation adopted thereunder.

\* \* \* \* \*

12. Revise § 16.06 to read as follows:

**§ 16.06 Errors or omissions.**

Unless otherwise approved by the Commission or its designee, reporting markets shall file corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00 and 16.01 in the format and using the coding structure and electronic data submission procedures approved in writing by the Commission or its designee.

13. In § 16.07, revise paragraphs (a) and (b) to read as follows:

**§ 16.07 Delegation of authority to the Director of the Division of Market Oversight and the Executive Director.**

\* \* \* \* \*

(a) Pursuant to §§ 16.00(b) and 16.01(d), as applicable, the authority to determine whether reporting markets must submit data in hard copy, and the time that such data may be submitted where the Director determines that a reporting market is unable to meet the requirements set forth in the regulations;

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), and 16.06, the authority to approve the format, coding structure and electronic data transmission procedures used by reporting markets.

**PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, MEMBERS OF REPORTING MARKETS, AND FOREIGN BROKERS**

14. Revise the heading of part 17 as set forth above.

15. The authority citation for part 17 is revised to read as follows:

**Authority:** 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7, 7a and 12a, unless otherwise noted.

16. In § 17.00, revise paragraphs (a)(1), (b)(2), and (g)(2)(iv); and add paragraph (i) to read as follows:

**§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.**

(a) \* \* \*

(1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting market, expiration and strike price in each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing

organization of a reporting market and the number stopped by the account. The report shall also show all positions in all futures months and option expirations of that same commodity on the same reporting market for which the special account is reportable.

\* \* \* \* \*

(b) \* \* \*

(2) *Accounts controlled by two or more persons*—Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(iv) *Report date.* The format is YYYYMMDD, where YYYY is the year, MM is the month, and DD is the day of the month.

\* \* \* \* \*

(i) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (h) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

\* \* \* \* \*

17. In § 17.01, revise the introductory text and paragraphs (a), (b) introductory text, (d), (f) and (g); and add paragraph (h) to read as follows:

**§ 17.01 Special account designation and identification.**

When a special account is reported for the first time, the futures commission merchant, clearing member, or foreign broker shall identify the account to the Commission on Form 102, in the form and manner specified in § 17.02, showing the information in paragraphs (a) through (f) of this section.

(a) *Special account designator.* A unique identifier for the account, provided, that the same designator is assigned for option and futures reporting, and the designator is not changed or assigned to another account without prior approval of the Commission or its designee.

(b) *Special account identification.* The name, address, business phone, and for individuals, the person's job title and employer for the following:

\* \* \* \* \*

(d) *Commercial use.* For futures or options, commodities in which positions or transactions in the account are associated with a commercial activity of the account owner in a related cash commodity or activity (*i.e.*,

those considered as hedging, risk-reducing, or otherwise off-setting with respect to the cash commodity or activity).

\* \* \* \* \*

(f) *Reporting firms.* The name and address of the futures commission merchant, clearing member, or foreign broker carrying the account, and the name, title and business phone of the authorized representative of the firm filing the Form 102 and the date of the Form 102. The authorized representative shall sign the Form 102 or satisfy such other requirements for authenticating the report as instructed in writing by the Commission or its designee.

(g) *Form 102 updates.* If, at the time an account is in special account status and a Form 102 filed by a futures commission merchant, clearing member, or foreign broker is then no longer accurate because there has been a change in the information required under paragraph (b) of this section since the previous filing, the futures commission merchant, clearing member, or foreign broker shall file an updated Form 102 with the Commission within three business days after such change occurs.

(h) *Exclusively self-cleared contracts.* Unless determined otherwise by the Commission, reporting markets that list exclusively self-cleared contracts shall meet the requirements of paragraphs (a) through (g) of this section, as they apply to trading in such contracts by all clearing members, on behalf of all clearing members.

18. Revise § 17.02 to read as follows:

**§ 17.02 Form, manner and time of filing reports.**

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by reporting markets, futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed as specified in paragraphs (a) and (b) of this section.

(a) *Section 17.00(a) reports.* Reports filed under § 17.00(a) shall be submitted through electronic data transmission procedures approved in writing by the Commission or its designee not later than 9 a.m. on the business day following that to which the information pertains. Unless otherwise specified by the Commission or its designee, the stated time is eastern time for information concerning markets located in that time zone, and central time for information concerning all other markets.

(b) *Section 17.01 reports.* For data submitted pursuant to § 17.01 on Form 102:

(1) On call by the Commission or its designee, identify the type of special account specified by items 1(a), 1(b), or 1(c) of Form 102, and the name and location of the person to be identified in item 1(d) on the Form 102, and submit such information by facsimile or telephone, in accordance with instructions by the Commission or its designee, on the same day that the special account in question is first reported to the Commission; and

(2) Submit a completed Form 102 within three business days of the first day that the special account in question is reported to the Commission in accordance with instructions by the Commission or its designee.

19. In § 17.03, revise the introductory text and paragraph (c) to read as follows:

**§ 17.03 Delegation of authority to the Director of the Division of Market Oversight and to the Executive Director.**

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) and (b) of this section to the Director of the Division of Market Oversight and the authority set forth in paragraphs (c) and (d) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director of the Division of Market Oversight or the Executive Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

\* \* \* \* \*

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the Form 102 to use a means of authenticating the report other than by signing the Form 102 and, if so, to determine the alternative means of authentication that shall be used.

\* \* \* \* \*

20. In § 17.04, revise paragraphs (a), (b)(1)(i), and (b)(2) to read as follows:

**§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.**

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and

the total open short positions in each future of a commodity and, for commodity options transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity options expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with part 17 of these regulations and reporting requirements established by the reporting market.

(b) \* \* \*

(1) \* \* \*

(i) The positions represent transactions on a reporting market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

\* \* \* \* \*

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a reporting market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

\* \* \* \* \*

**PART 18—REPORTS BY TRADERS**

21. The authority citation for part 18 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b), unless otherwise noted.

22. In § 18.00 revise the introductory text to read as follows:

**§ 18.00 Information to be furnished by traders.**

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each reporting market:

\* \* \* \* \*

23. Revise § 18.05 to read as follows:

**§ 18.05 Maintenance of books and records.**

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all reporting markets, all positions and transactions in the commodity option, and all positions and transactions in the cash commodity, its products and byproducts and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable, and shall upon request furnish to the Commission any pertinent information concerning such positions, transactions or activities.

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

**PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(Z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON**

24. The authority citation for part 19 continues to read as follows:

**Authority:** 7 U.S.C. 6g(a), 6i and 12a(5), unless otherwise noted.

25. In § 19.00, revise paragraphs (a) and (b) introductory text to read as follows:

**§ 19.00 General provisions.**

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(l)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

(2) Merchants and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.00(l)(1)(i) of this chapter, or

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(l)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Market Oversight, or to such other person designated by the Director, authority to issue calls for series '04 reports.

(b) *Manner of reporting.* The manner of reporting the information required in § 19.01 is subject to the following:

\* \* \* \* \*

26. In § 19.01, revise paragraph (a) introductory text to read as follows:

**§ 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.**

(a) *Information required.* Persons required to file '04 reports under § 19.00(a)(1) or § 19.00(a)(3) of this chapter shall file CFTC Form 304 reports for cotton and Form 204 reports for other commodities showing the composition of the fixed price cash position of each commodity hedged including:

\* \* \* \* \*

**PART 21—SPECIAL CALLS**

27. The authority for part 21 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b), unless otherwise noted.

28. Revise § 21.01 to read as follows:

**§ 21.01 Special calls for information on controlled accounts from futures commission merchants and introducing brokers.**

Upon call by the Commission, each futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures or commodity options on any reporting market.

(Approved by the Office of Management and Budget under control number 3038-0009)

29. Revise the heading and introductory text of § 21.02 to read as follows:

**§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of reporting markets, introducing brokers, and foreign brokers.**

Upon special call by the Commission for information relating to futures or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a reporting market, introducing broker, or foreign broker, and, in addition, for option information, each reporting market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures or option positions, except for accounts carried on

a fully disclosed basis by another futures commission merchant, as may be specified in the call:

\* \* \* \* \*

30. Revise the heading and paragraphs (c), (d), (e) introductory text, and (f) of § 21.03 to read as follows:

**§ 21.03 Selected special calls—duties of foreign brokers, domestic and foreign traders, futures commission merchants, introducing brokers, and reporting markets.**

\* \* \* \* \*

(c) Upon a determination by the Commission that information concerning accounts may be relevant information in enabling the Commission to determine whether the threat of a market manipulation, corner, squeeze, or other market disorder exists on any reporting market, the Commission may issue a call for information from a futures commission merchant or customer pursuant to the provisions of this section.

(d) In the event the call is issued to a foreign broker or foreign trader, its agent, designated pursuant to § 15.05 of this chapter, shall, if directed, promptly transmit calls made by the Commission pursuant to this section by electronic mail or a similarly expeditious means of communication.

(e) The futures commission merchant, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, reporting market and delivery months or option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

\* \* \* \* \*

(f) If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call made pursuant to this section, the Commission in writing may inform the reporting market specified in the call and that reporting market shall prohibit the execution of, and no futures commission merchant, introducing broker, or foreign broker shall accept an order for, trades on the reporting market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

\* \* \* \* \*

Issued in Washington, DC, on December 7, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05-23977 Filed 12-14-05; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[REG-107722-00]

RIN-1545-AY22

#### Corporate Estimated Tax; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of public hearing.

**SUMMARY:** This document corrects the notice of public hearing (REG-107722-00) that was published in the **Federal Register** on Monday, December 12, 2005 (70 FR 73393), that relates to corporate estimated taxes.

**FOR FURTHER INFORMATION CONTACT:** Joseph P. Dewald, (202) 622-4910 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of public hearing (REG-107722-00) that is the subject of this correction is under section 6655 of the Internal Revenue Code.

##### Need for Correction

As published, REG-107722-00 contains an error that may prove to be misleading and is in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of public hearing (REG-107722-00) that was the subject of FR. Doc. 05-23872, is corrected as follows:

On page 73396, column 2, in the preamble, under the paragraph heading "Comments and Public Hearing", first full paragraph of the column, lines 1 and 2, the language "A public hearing has been scheduled for February 22, 2006, beginning at 10" is corrected to read "A public hearing has been scheduled for March 15, 2006, beginning at 10".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel. (Procedure and Administration).

[FR Doc. 05-24091 Filed 12-12-05; 3:14 pm]

BILLING CODE 4830-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 155 and 157

#### 46 CFR Part 162

[USCG-2004-18939]

RIN 1625-AA90

#### Pollution Prevention Equipment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking published in the **Federal Register** on November 3, 2005. The proposed rule would revise Coast Guard pollution prevention equipment regulations to make them consistent with new International Maritime Organization (IMO) guidelines and specifications issued under the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I.

**FOR FURTHER INFORMATION CONTACT:** For questions on this correction document, call LCDR George Grills, Systems Engineering Division (G-MSE-3), Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202-267-6640.

#### SUPPLEMENTARY INFORMATION:

##### Need for Correction

The NPRM, as published, contained a phrase in the preamble and regulatory text that was inserted by error. This phrase could confuse the reader and needs to be deleted.

##### Correction of Publication

Accordingly, the publication on November 3, 2005, of the NPRM [USCG-2004-18939], FR Doc. 05-21573, is corrected as follows:

1. On page 67068, in the first column, under the heading "Proposed Action", in the tenth line of the third bullet, following the word "drift", remove the phrase, "must be limited".

2. On page 67073, in the first column, in paragraph (e), following the word "drift" on the second line, remove the phrase "must be limited;" in the third line.

Dated: November 30, 2005.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, Office of the Judge Advocate General, U.S. Coast Guard.

[FR Doc. 05-24067 Filed 12-14-05; 8:45 am]

BILLING CODE 4910-15-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2005-ME-0003; A-1-FRL-8008-8]

#### Approval and Promulgation of Air Quality Implementation Plans; Maine; Architectural and Industrial Maintenance (AIM) Coatings Regulation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from architectural and industrial maintenance coatings. The intended effect of this action is to propose approval of these requirements. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before January 17, 2006.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01-OAR-2005-ME-0003 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, will be replaced by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov>.

On November 28, 2005, when that occurs, you will be redirected to that site to access the docket EPA-R01-OAR-2005-ME-0003 and submit comments. Follow the on-line instructions for submitting comments.

3. E-mail: [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov).

4. Fax: (617) 918-0661.

5. Mail: "RME ID Number R01-OAR-2005-ME-0003," David Conroy, Chief, Air Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Chief, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One