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Jean A. Webb,

Secretary to the Commission.

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17 CFR Part 33

Deletion of Option Regulation Requiring That Futures Commission Merchants Give Notification of Disciplinary Actions to Their Designated Self-Regulatory Organizations; Regulation 33.4(b)(6)

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending 17 CFR Part 33 to delete Regulation 33.4(b)(6), under which a board of trade must adopt rules that require each member futures commission merchant ("FCM") that engages in the offer or sale of Part 33 option contracts to give notice to the FCM's designated self-regulatory organization ("DSRO") of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another self-regulatory organization ("SRO"). The purpose of this deletion is to eliminate unnecessary recordkeeping requirements affecting FCMs.

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney, Commodity Futures Trading Commission, Division of Trading and Markets, Three Lafayette Centre, 1155 21 Street NW., Washington, DC 20581. Telephone (202) 418-5490.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation 33.4(b)(6) is part of a group of regulations that date from the Commission's three-year pilot program, instituted by the Commission on November 3, 1981, for the trading on domestic exchanges of options on non-agricultural futures contracts. The establishment of the pilot program was the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment. Subsequently, the Commission adopted a pilot program that expanded the trading of options to non-agricultural physical commodities. 47 FR 65996 (December 22, 1982). On January 23, 1984, the Commission adopted a separate three-

year pilot program that expanded the trading of options on futures contracts to domestic agricultural commodities. 49 FR 2752. Overall, the Commission found that each pilot program had been a success.¹

Part 33 of the Commission's regulations governs domestic exchange-traded commodity option transactions. Regulation 33.4, in conjunction with the requirements of Section 5 of the Commodity Exchange Act ("Act"), sets forth the requirements which a board of trade must meet in order to be designated as a contract market for the trading of option contracts. Part 33, including Regulation 33.4, was adopted concurrently with the initial implementation of the first pilot program in 1981. Under Regulation 33.4(b)(6), a board of trade must adopt rules that require each member FCM which engages in the offer or sale of Part 33 option contracts to give notice to the FCM's DSRO of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another SRO.

By letter dated September 11, 1992, the Chicago Board of Trade ("CBT") petitioned the Commission for deletion of Regulation 33.4(b)(6). In support of its petition, the CBT explained that, along with other futures exchanges, it has joined the National Futures Association ("NFA") in implementing a centralized repository for the entry of information on exchange disciplinary actions the ("NFA Clearinghouse").² The CBT stated that it believes that because the NFA Clearinghouse includes data on Commission, NFA and exchange disciplinary actions, the reporting requirements imposed on FCMs by Regulation 33.4(b)(6) are now duplicative and should be abolished.³

The NFA Clearinghouse went into effect in late January 1991. At that time,

several exchanges began to file their disciplinary action data electronically into the NFA Clearinghouse database through what the NFA refers to as the exchange disciplinary action portion for the NFA Clearinghouse. The NFA Clearinghouse, which the exchanges have entered into voluntarily, permits the Commission and the exchanges to enter and review disciplinary action data, including disciplinary actions taken against an FCM or any of its associated persons by the Commission or by another SRO, via computer terminals at their respective locations.⁴

II. Proposed Rule

On January 19, 1993, the Commission's proposal to delete Regulation 33.4(b)(6) was published in the Federal Register (58 FR 4948). This proposal was made in response to the CBT's September 11, 1992 petition for deletion of Regulation 33.4(b)(6). The Commission stated that the NFA Clearinghouse appeared to satisfy the objective of Regulation 33.4(b)(6) by providing a repository for, among other things, exchange disciplinary actions. In making the proposal to delete Regulation 33.4(b)(6), the Commission stated that before it approved final deletion of the regulation, it intended to examine exchange and NFA refinements to the operation of the NFA Clearinghouse to determine whether the system would serve the purpose of Regulation 33.4(b)(6).

III. Comments Received

The Commission received one comment letter, from the NFA, that supported the proposed deletion of Regulation 33.4(b)(6). The NFA commented that it believes that Regulation 33.4(b)(6) places an unnecessary regulatory burden upon FCMs because the Commission, members of the public, and any DSRO may already obtain disciplinary information, without an FCM's specific disclosure, by accessing the NFA Clearinghouse.

IV. Final Rule

Commission staff has been monitoring each exchange's use of the NFA Clearinghouse. Since August 1991, the majority of the exchanges have been

¹ By February 9, 1987, the Commission had made the programs permanent. Option trading on non-agricultural futures was made permanent effective August 1, 1986. 51 FR 17464 (May 13, 1986); 51 FR 27529 (August 1, 1986). Option trading on agricultural futures and options on non-agricultural physicals were made permanent effective February 9, 1987. 52 FR 777 (January 9, 1987).

² For background on the NFA Clearinghouse, see generally 58 FR 4949 (January 19, 1993).

³ It should be noted that on September 4, 1992, the Commission proposed the deletion of two other provisions in Regulation 33.4: Regulation 33.4(b)(4)(iii) and Regulation 33.4(b)(8). 57 FR 40626. On December 14, 1992, the deletion of these two regulations became final. See 57 FR 58976. Under these regulations, boards of trade designated as contract markets for options were required to adopt rules requiring member FCMs that engaged in the offer or sale of commodity options regulated under Part 33 to send copies of customer complaints, the record of the final disposition thereof, and copies of all promotional material to the member's DSRO.

⁴ Currently, the exchanges are required to submit hardcopy notices of disciplinary actions to the Commission pursuant to Regulation 9.11. Ultimately, however, it is anticipated that data will be entered into the NFA Clearinghouse in lieu of filing hardcopy notices. Until the Commission permits such data entry directly into the NFA Clearinghouse, in lieu of such filings, exchanges must continue to file hardcopy notices with the Commission within the 30-day requirement of Regulation 9.11.

electronically filing their respective disciplinary actions into the NFA Clearinghouse in an accurate and timely manner, including disciplinary actions taken against an FCM or any of its associated persons by the Commission or by another SRO, thus satisfying the purpose of Regulation 33.4(b)(6). Typically, exchanges enter directly or with the assistance of NFA, disciplinary action data into the NFA Clearinghouse in an accurate and timely manner.⁵

The disciplinary action data that the exchanges have agreed to enter into the NFA Clearinghouse by the NFA and that are being entered include: (1) The respondent's name; (2) the rule number violated and a description of the rule; (3) which of the ten uniform categories of rule violations adopted by the Joint Compliance Committee ("JCC"),⁶ applies to the disciplinary action; ⁷ (4) the date of the violation; (5) the effective date of the disciplinary action; (6) the sanction or penalty imposed on the named respondent; (7) the name of the exchange committee that imposed the sanction; and (8) whether the offense cited is one that renders the named respondent ineligible from serving on an exchange disciplinary committee, oversight panel, arbitration panel or governing board under the requirements of Commission Regulation 1.63.⁸

⁵ The Commission's deletion of the reporting requirement is based, in part, on the existence of the NFA Clearinghouse which provides an adequate substitute mechanism by which SROs may obtain disciplinary information. Should there be any material changes in the operation of the NFA Clearinghouse, the Commission would necessarily evaluate the need for any supplementary reporting requirements.

⁶ The JCC was formed in May 1989 and consists of senior compliance officials from each exchange and the NFA. Commission staff is present at each meeting as observers. The JCC was established to aid the development of improved compliance systems through joint exchange efforts and information sharing among the self-regulators. In addition, the JCC has undertaken efforts to enhance exchange compliance with Commission regulations by developing uniform standards and definitions where appropriate.

⁷ The ten uniform categories of rule violations adopted by the JCC include: trade practice, sales practice, speculative position limits, financial, financial and position reporting, floor recordkeeping, office recordkeeping, registration, decorum and attire, and general conduct.

⁸ Commission Regulation 1.63 prohibits an individual from serving on exchange disciplinary committees, oversight panels, arbitration panels or governing boards who, among other things, was found within the prior three years by a final decision of a SRO, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense or who currently is subject to an agreement with the Commission or any SRO not to apply for registration with the Commission or membership in any SRO. For a complete listing of the conditions under Commission Regulation 1.63 that prohibit an individual from serving on such exchange committees, panels, or boards, see 55 FR 7884 (March 6, 1990).

In addition, on March 15, 1995, the Commission advised the JCC that the Clearinghouse must include exchange membership denial actions and requested that the exchange enter into the Clearinghouse all membership denial actions from January 1990 to the present to bring the Clearinghouse up-to-date. Currently, the exchanges are entering such data into the Clearinghouse.

V. Conclusion

The Commission believes that, consistent with the other deletions made of Regulation 33.4(b)(4)(iii) and Regulation 33.4(b)(8), the requirements set forth in Regulation 33.4(b)(6) also should be deleted. The Commission also believes that the NFA Clearinghouse satisfies the objective of Regulation 33.4(b)(6) by providing an adequate repository for, among other things, exchange disciplinary actions. The Commission no longer believes that it is necessary for FCMs that engage in the offer or sale of Part 33 option contracts to give notice to the FCM's DSRO of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another SRO. Accordingly, the Commission amends 17 CFR Part 33 by deleting Regulation 33.4(b)(6).

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established that contract markets and FCMs are not "small entities" for purposes of the RFA. 47 FR 18618-18621 (April 30, 1982). This deletion to Part 33 will permit contract markets to delete rules affecting FCMs and thereby relieve them of that requirement.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). The OMB approved the collection of information associated with this rule on October 2, 1991 and assigned OMB control number 3038-0007 to the rule. While this rule has no

burden, the group of rules of which this is a part has the following burden:

Average burden hours per response.....50.32.
Number of respondents190,19.7.
Frequency of responseon occasion.

Copies of the OMB approved information collection package associated with this rule may be obtained from the Office of Management and Budget, Room 3220, NEOB Washington, DC, (202) 395-7340.

List of Subjects in 17 CFR Part 33

Regulation of domestic exchange-traded commodity option transactions.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, section 4(b) of the Act, the Commission proposes to amend Part 33 of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a-1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(6) is removed.

Issued in Washington, DC, January 23, 1996 by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[SD-001; FRL-5406-1]

Clean Air Act Final Full Approval of Operating Permits Program; State of South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is promulgating final full approval of the Operating Permits Program submitted by the State of South Dakota for the purpose of complying with Federal requirements for an approvable State Program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: February 28, 1996.

ADDRESSES: Copies of the State's submittal and other supporting