

FDC Date	State	City	Airport	FDC No.	Subject
04/04/02	NY	ALBANY	ALBANY INTL	2/2737	COPTER ILS RWY 1, ORIG.
04/04/02	NY	ALBANY	ALBANY INTL	2/2738	ILS RWY 1, AMDT 9.
04/04/02	NC	ERWIN	HARNETT COUNTY	2/2740	VOR/DME RWY 5, AMDT 2.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2746	ILS RWY 4 (CAT I, II), AMDT 17.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2747	ILS RWY 22, AMDT 5.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2748	ILS RWY 28, AMDT 28.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2749	VOR/DME OR GPS RWY 4, AMDT 1A.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2750	VOR RWY 4, AMDT 9.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2751	NDB OR GPS RWY 28, AMDT 20B.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2752	RNAV (GPS) RWY 22, ORIG-A.
04/04/02	NY	ROCHESTER	GREATER ROCHESTER INTL.	2/2753	GPS RWY 10, ORIG.
04/05/02	HI	LIHUE	LIHUE	2/2772	VOR/DME OR TACAN OR GPS RWY 21, AMDT 3A.
04/05/02	LA	LAKE CHARLES	LAKE CHARLES REGIONAL.	2/2786	VOR-A, AMDT 13.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2787	VOR/DME-A, AMDT 1.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2788	NDB RWY 15, AMDT 1B.
04/05/02	LA	SULPHUR	SOUTHLAND FIELD	2/2789	LOC RWY 15, AMDT 1B.
04/08/02	FL	BROOKSVILLE	HERNANDO COUNTY	2/2825	ILS RWY 9, AMDT 2.
04/08/02	TX	MIDLAND	MIDLAND INTL	2/2839	VOR/DME RNAV RWY 16R, AMDT 3.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD ..	2/2910	NDB RWY 35R, AMDT 5B.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD ..	2/2917	ILS RWY 35 (CAT I, II), AMDT 8C.
04/10/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD ..	2/2919	RNAV (GPS) RWY 35R, ORIG.
04/11/02	OK	OKLAHOMA CITY	WILL ROGERS WORLD ..	2/2921	LOC BC RWY 35L, AMDT 10C.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-8091; 34-45769; File No. S7-11-02]

RIN 3235-A140

Amendment to Definition of "Equity Security"

AGENCY: Securities and Exchange Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Commodity Futures Modernization Act of 2000 amended the definition of "security" in the Securities Act of 1933 and the definitions of "security" and "equity security" in the Securities Exchange Act of 1934 to include a security future. We are amending the definitions of "equity

security" in the rules under the Securities Act and the Exchange Act to conform them to the statutory definitions with respect to security futures.

DATES: *Effective Date:* These rules are effective June 7, 2002.

Comment Date: Comments on the amended rules must be received on or before May 23, 2002.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Alternatively, you may submit your comments electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7-11-02; please include this file number in the subject line if you use e-mail. We will make all comment letters available for public inspection and copying in our public reference room at the same address. We will post electronically submitted comment letters on the

Commission's Internet website (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 942-2910, or in writing, at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0312.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 405² under the Securities Act of 1933³ and Rule 3a11-1⁴ under the Securities Exchange Act of 1934.⁵

I. Discussion

One of the purposes of the Commodity Futures Modernization Act

¹ We do not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. You should only submit information you wish to make publicly available.

² 17 CFR 230.405.

³ 15 U.S.C. 77a *et seq.*

⁴ 17 CFR 240.3a11-1.

⁵ 15 U.S.C. 78a *et seq.*

of 2000⁶ is to provide a regulatory framework for the trading of futures contracts on equity securities.⁷ The CFMA permits national securities exchanges registered under Section 6 of the Exchange Act⁸ and national securities associations registered under Section 15A(a) of the Exchange Act⁹ to list futures on individual securities and on narrow-based security indices ("security futures").¹⁰ Among other things, the CFMA:

- Amended the definition of "security" in Section 2(a)(1)¹¹ of the Securities Act and Section 3(a)(10)¹² of the Exchange Act to include security futures;
 - Amended the definition of "equity security" in Section 3(a)(11)¹³ of the Exchange Act to include security futures;
 - Exempted certain security futures from the registration requirements of the Securities Act¹⁴;
 - Exempted security futures from the provisions of Section 12(a)¹⁵ of the Exchange Act;
 - Amended Section 12(g)¹⁶ of the Exchange Act to clarify that security futures are not equity securities of the issuer of the underlying securities; and
 - Amended Section 16 of the Exchange Act to cover ownership of, and transactions in, security futures.¹⁷
- No futures contracts on single stocks or on narrow-based security indices are

currently traded on national securities exchanges or associations.

We are amending the definitions of "equity security" in Securities Act Rule 405 and Exchange Act Rule 3a11-1 to include security futures, consistent with the statutory treatment of security futures.¹⁸ We adopted Rule 3a11-1 in 1965 to clarify that the term "equity security," as used in Sections 12(g) and 16 of the Exchange Act as well as Exchange Act Rule 12h-1,¹⁹ includes a wider range of equity interests than are specifically listed in the Exchange Act definition.²⁰ In 1982, in connection with our adoption of the integrated disclosure system, we amended the definition of "equity security" in Rule 405 to conform it to the definition in Rule 3a11-1.²¹ The Rule 405 revision was made on the ground that there was no basis for defining "equity security" differently for purposes of our Securities Act rules than for our Exchange Act rules.²² We are amending the definitions of "equity security" in Rules 405 and 3a11-1 in the same fashion. Both rules would therefore remain identical.

Because certain security futures are statutorily exempt from registration under the Securities Act and the Exchange Act, and are expressly included in Section 16 of the Exchange Act, we do not believe that the conforming changes will have any substantive impact. Rather, we believe that the changes will prevent any ambiguity from arising as a result of differences between the statutes and rules.

As amended, the definition of "equity security" in both Securities Act Rule 405 and Exchange Act Rule 3a11-1 will read as follows (new language underscored):

"[a]ny stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; *any security future on*

any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so."

II. Administrative Procedure Act Considerations

Pursuant to Section 553(b) of the Administrative Procedure Act,²³ the Commission for good cause finds that prior notice and public comment is unnecessary because, with respect to security futures, these amendments only conform the definitions of the term "equity security" in Commission rules to the statutory definition of the term, which was amended by the CFMA. We therefore do not believe that the conforming changes will impact the public or industry. The changes will prevent any ambiguity from arising as a result of differences between the statutes and rules. Because the Commission has found good cause that notice and comment are unnecessary, a regulatory flexibility analysis is not required.²⁴

III. Request for Comment

We request comment on the changes we are adopting in this release. The term "equity security" is used in a variety of places in the federal securities laws. Although we believe that the inclusion of security futures in the Rule 405 and Rule 3a11-1 definitions will not have any substantive effect, we solicit comment as to whether it could have an effect that we have not considered. Commenters should provide empirical data on any anticipated effects.

IV. Effects on Competition

Section 23(a)(2) of the Exchange Act requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Furthermore, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We are simply conforming the definition of "equity security" in our rules to the statutory changes with respect to security futures.

⁶ Pub. L. No. 106-554 Stat. 2763 (2000).

⁷ H.R. Rep. No. 106-711 (II), at 2 (2000).

⁸ 15 U.S.C. 78(f).

⁹ 15 U.S.C. 78o-3(a).

¹⁰ The terms "security future" and "narrow-based security index" are defined in Section 3(a)(55) of the Exchange Act [15 U.S.C. 78c(a)(55)].

¹¹ 15 U.S.C. 77b(a)(1).

¹² 15 U.S.C. 78c(a)(10).

¹³ 15 U.S.C. 78c(a)(11).

¹⁴ The security futures exemption is contained in Section 3(a)(14) of the Securities Act [15 U.S.C. 77c(a)(14)]. Section 3(a)(14) exempts any security futures product that is: (A) cleared by a clearing agency registered under Section 17A of the Exchange Act or exempt from registration under subsection (b)(7) of Section 17A; and (B) traded on a national securities exchange or a national securities association registered pursuant to Section 15A(a) of the Exchange Act.

¹⁵ 15 U.S.C. 781(a). Section 12(a) of the Exchange Act prohibits any broker or dealer from engaging in any transaction in a security on a national exchange, unless the security is registered under the Exchange Act.

¹⁶ 15 U.S.C. 781(g).

¹⁷ Exchange Act Section 16(f) [15 U.S.C. 78p(f)]. Section 16 applies to every person who is the beneficial owner of more than ten percent of any class of equity security registered under Section 12 of the Exchange Act, and each officer and director of the issuer of such security. Under Section 16, these persons must file reports disclosing their transactions in all equity securities of the issuer. We intend to issue a separate interpretive release that will set forth the Commission's views concerning the treatment of security futures under Section 16 and other provisions of the federal securities laws and the rules thereunder.

¹⁸ There is no definition of the term "equity security" in the Securities Act, and there is no corresponding definition of the term "security" in the Securities Act rules.

¹⁹ 17 CFR 240.12h-1.

²⁰ See Release No. 34-7581 (April 23, 1965). As adopted, Rule 3a11-1 defined "equity security" to include such items as limited partnership interests, interests in joint ventures, certificates of interests in business trusts, voting trust certificates, and American Depositary Receipts.

²¹ Release No. 33-6383 (March 3, 1982) [47 FR 11819].

²² Release No. 33-6333 (August 6, 1981) [46 FR 44194].

²³ 5 U.S.C. 553(b)(B).

²⁴ 5 U.S.C. 603(a), 604(a).

We think that the conformed definitions promote efficiency by conforming the treatment of security futures under the statutes and our rules. We do not expect the amendments to have any anti-competitive effects. We solicit comment on these matters with respect to the amended rules. Will the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act or the Exchange Act?

V. Cost-Benefit Analysis

The amendments we are adopting conform Rule 405 and Rule 3a11-1 to the revisions in the Securities Act and the Exchange Act, with respect to security futures. They do not alter the treatment of security futures under the Securities Act or the Exchange Act, or effect any change in the requirements imposed by the federal securities laws as they relate to security futures. The CFMA established the statutory framework for the treatment of security futures under the federal securities laws and the statutory amendments are self-effectuating. We do not believe that the amendments will have any effect on public companies or small entities. Any effect is the result of the CFMA amendments to both statutes. We request comment on whether the amendments would impose any additional burdens or costs on public companies or small entities outside of the costs or burdens imposed by the CFMA.

VI. Paperwork Reduction Act

Securities Act Rule 405 and Exchange Act Rule 3a11-1 do not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²⁵ We are amending Rule 405 and Rule 3a11-1 to include security futures in the definition of "equity security." The CFMA amended Exchange Act Section 16 to state that the section applies to ownership of, and transactions in, security futures products. The Exchange Act rules under Section 16 impose information collection requirements; however, the new requirements under Section 16 were prescribed by the CFMA and would be the same without the amendment to Rule 3a11-1. We therefore are not required to submit the amendments to the Office of Management and Budget for approval under the PRA.

VII. Statutory Basis, Text of Rule and Authority

The amendment to the Commission's rule is being adopted pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act and Sections 3(b) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Securities and Exchange Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. In § 230.405 the term "equity security" is revised to read as follows:

§ 230.405. Definitions of terms.

* * * * *

Equity security. The term *equity security* means any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q,

79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

4. The undesignated section heading, "Definition of 'Equity Security' As Used in Sections 12(g) and 16" preceding § 240.3a4-1 is removed and added to immediately precede § 240.3a11-1.

5. Section 240.3a11-1 is revised to read as follows:

§ 240.3a11-1. Definition of the term "equity security."

The term *equity security* is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

Dated: April 17, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-9854 Filed 4-22-02; 8:45 am]

BILLING CODE 8010-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-01-136]

RIN 2115-AA97

Security Zone; Lake Erie, Toledo, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: The Coast Guard published a temporary final rule on October 12, 2001, creating a security zone surrounding the waters off of Davis Besse Nuclear Power Plant near Toledo, Ohio. The original parameters of that zone blocked approximately 40 beachfront homes from beach access. In the interest of homeowners and recreational boaters within that zone, Captain of the Port (COTP) Toledo has

²⁵ 44 U.S.C. 3501 *et seq.*