(h) On RB211–535E4–B engines:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 4 of this AD.

(2) If the initial inspection is complete prior to 18,800 CSN, then the next inspection may be postponed until 20,000 CSN.

TABLE 4—RB211–535E4–B

Engine location	Initial inspection within (CSN)	Type action	In accordance with MSB	Repeat inspection within (CSLI)
(i) On-wing	20,000	(A) Root Probe inspect, OR	RB.211–72–C879 Revision 6, 3.A.(1) through 3.A.(7), dated December 14, 2007.	1,200
		(B) Wave Probe inspect	RB.211–72–C879 Revision 6, 3.B.(1) through 3.B.(7), dated December 14, 2007.	1,000
(ii) In shop	20,000	Root Probe inspect. Relubricate if blade life is more than 19,650 cycles.	RB.211–72–C879 Revision 6, 3.C.(1) through 3.C.(4), dated December 14, 2007.	1,200

(i) For fan blades operated to any combination of RB211–535E4 Flight Profile A, –535E4 Flight Profile B, –535E4–B, –535E4–B and –535E4–C engines:

(1) Calculate an equivalent CSN as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 6, dated December 14, 2007.

(2) For fan blades that are currently flying in Profile A, inspect using paragraph (f) and Table 2 of this AD using equivalent CSN.

(3) For fan blades that are currently flying in Profile B, inspect using paragraph (g) and Table 3 of this AD using equivalent CSN.

(4) For fan blades that are currently flying in an RB211–535E4–B engine, inspect using paragraph (h) and Table 4 of this AD using equivalent CSN.

Optional Terminating Action

(j) Application of Metco 58 blade root coating using RR SB No. RB.211–72–C946, Revision 2, dated September 26, 2002, constitutes terminating action to the repetitive inspection requirements specified in paragraphs (f), (g), (h), and (i) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Previous Credit

(l) Inspections and relubrication done before the effective date of this AD that use AD 2003–12–15 (Amendment 39–13200, 68 FR 37735, June 25, 2003), RR MSB No. RB.211–72–C879, Revision 3, dated October 9, 2002, MSB No. RB.211–72–C879, Revision 4, dated April 2, 2004, or MSB No. RB.211–72–C879, Revision 5, dated March 8, 2007, comply with the requirements specified in this AD.

Related Information

(m) United Kingdom Civil Aviation Authority airworthiness directive AD 002–01–2000, dated October 9, 2002, also addresses the subject of this AD.

(n) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: ian.dargin@faa.gov; telephone:* (781) 238–7178; *fax:* (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(o) You must use Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–C879, Revision 6, dated December 14, 2007 to perform the inspections and relubrication required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; *telephone:* 011–44–1332–242424; *fax:* 011–44–1332–249936, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 23, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–25891 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Interpretative Statement Regarding Funds Related to Cleared-Only Contracts Determined To Be Included in a Customer's Net Equity

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative Statement; correction.

SUMMARY: This interpretation by the Commodity Futures Trading Commission (''Commission'') is issued to clarify the appropriate treatment under the commodity broker provisions of the Bankruptcy Code and Part 190 of the Commission's Regulations of claims arising from contracts (''cleared-only contracts'') that, although not executed or traded on a Designated Contract Market or a Derivatives Transaction Execution Facility, are subsequently submitted for clearing through a Futures Commission Merchant (''FCM'') to a Derivatives Clearing Organization (''DCO''). The Commission first published this interpretation in the **Federal Register** of October 2, 2008 (73 FR 57235). A statement of concurrence on a different matter was printed at the end of the interpretation, in error. The Commission is republishing the interpretation to clarify that the statement of concurrence is not related to the interpretation.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, *rwasserman@cftc.gov,* (202) 418–5092, or Amanda Olear, Attorney-Advisor, Division of Clearing and Intermediary Oversight, *aolear@cftc.gov,* (202) 418–5283, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Section 20 of the Commodity Exchange Act [1] (Act) empowers the Commission to provide how the net equity of a customer is to be determined:

> The Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property; * * * and (5) how the net equity of a customer is to be determined.

Subchapter IV of Chapter 7 of the Bankruptcy Code, governing commodity brokers, has the same effect, explicitly basing the definition of ''net equity'' on

[1] 7 U.S.C. 24.

''such rules and regulations as the Commission promulgates under the Act.'' [2]

The Commission has exercised this power in promulgating Part 190 of its regulations.[3] In particular, the term ''net equity'' is defined by Commission Regulation 190.07 [4] as:

> The total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor.

Therefore, the determination of whether claims relating to cleared-only contracts in section 4d accounts are properly includable within the meaning of ''net equity'' is dependent upon whether an entity holding such claims is properly considered a ''customer.'' This, in turn, as discussed below, requires an analysis of whether such claims are derived from ''commodity contracts.''

Cleared-Only Transactions as Commodity Contracts

Commission Regulation 190.01(k) defines ''customer'' through incorporation by reference of the definition of the term appearing in section 761(9) of the Bankruptcy Code, which provides, in relevant part:

> (9) ''Customer'' means—
> (A) With respect to a futures commission merchant—
> (i) Entity for or with whom such futures commission merchant deals and holds a claim against such futures commission merchant on account of a *commodity contract* made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity; or
> (ii) Entity that holds a claim against such futures commission merchant arising out of—
> (I) The making, liquidation, or change in the value of a *commodity contract* of a kind specified in clause (i) of this subparagraph;
> (II) A deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a *commodity contract;* or
> (III) The making or taking of delivery on such a *commodity contract* [.] [5]

Therefore, for an entity to be considered a ''customer'' of an FCM, such entity's claim must arise out of a ''commodity contract.'' [6]

A ''commodity contract,'' as the term appears within the context of section 761(9), is defined in section 761(4) of the Bankruptcy Code, which states, in pertinent part:

> (4) ''*Commodity Contract*'' means—
> (A) With respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade[.] [7]

This definition contains two elements: (1) The nature of the contract; and (2) the nature of the venue whose rules govern the contract.

With regard to the first element, over-the-counter contracts that are cleared-only contracts are contracts for the purchase or sale of a commodity for future delivery within the meaning of this section of the Bankruptcy Code. When cleared, they are subject to performance bond requirements, daily variation settlement, the potential for offset, and final settlement procedures that are substantially similar, and often identical, to those applicable to exchange-traded products at the same clearinghouse. *Cf.* 11 U.S.C. 761(4)(F). Although the creation and trading of these products is outside the Commission's jurisdiction, the clearing of these products by FCMs and DCOs is within the Commission's jurisdiction.

With regard to the second element, section 761(7) of the Bankruptcy Code states that a '' 'contract market' means a registered entity,'' and section 761(8), in turn, provides that a '' 'registered entity' * * * ha[s] the meaning[ ] assigned to [that] term[ ] in the [Commodity Exchange] Act.'' [8] Section 1a(29)(C) of the Act defines the term ''registered entity'' as including ''a derivatives clearing organization registered under section 5b'' of the Act.[9]

Thus, when a contract is cleared through a DCO, such a contract would be considered a ''commodity contract'' under section 761(4) of the Bankruptcy Code.[10] Therefore, an entity with a claim based on a cleared-only contract would be a ''customer'' within the meaning of section 761 of the Bankruptcy Code. Further, because Part 190 of the Commission's Regulations defines ''customer'' as having the meaning set forth in section 761, such entity with a claim based on a cleared-only contract would also be a ''customer'' for the purposes of Part 190 of the Commission's Regulations. Based on the foregoing, such claims arising out of cleared-only contracts are properly included within the meaning of ''net equity'' for the purposes of Subchapter IV of the Bankruptcy Code and Part 190 of the Commission's Regulations.

Portfolio Performance Bond as Net Equity

There is an alternative path to reach the same conclusion. In cases where cleared-only contracts are held in a commodity futures account at an FCM and margined as a portfolio with exchange-traded futures (*i.e.*, where the Commission has issued an order pursuant to section 4d(a)(2) of the Commodity Exchange Act), assets margining that portfolio are likely to be includable within ''net equity'' even if cleared-only contracts were found not to be ''commodity contracts'' within the meaning of the Bankruptcy Code and Part 190 of the Commission's Regulations.

Where the assets in an entity's account margin (*i.e.*, collateralize) both cleared-only contracts and exchange-traded futures, the entirety of those assets serves as performance bond for each of the exchange-traded futures and the cleared-only contracts. Therefore, (a) a claim for those assets constitutes a claim ''on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity;'' [11] (b) the entity qualifies as a ''customer'' within the meaning of the Bankruptcy Code as a result of that claim; and (c) those margin assets are properly included within that entity's net equity.

The dynamics of futures trading render it unwise to distinguish between an account that *currently* is portfolio margined and one that was at one time or is intended to be so in the future. Indeed, Subchapter IV of the Bankruptcy Code includes as customers entities with certain claims arising out of property that is not currently margining a commodity contract. Specifically, section 761(9)(A)(ii) provides that an entity can qualify as a ''customer'' based on claims arising out of any of the following: (I) The ''liquidation, or change in the value of a commodity contract;'' (II) a deposit of property ''for the purpose of making or margining * * * a commodity contract;'' or (III) ''the making or taking of delivery of a commodity contract.''

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[2] 11 U.S.C. 761(17).

[3] 17 CFR Part 190.

[4] 17 CFR 190.07.

[5] 11 U.S.C. 761(9) (emphasis added).

[6] A similar analysis would apply to a customer of a clearing organization (*i.e.*, a clearing member).

[7] 11 U.S.C. 761(4).

[8] 11 U.S.C. 761(7) and (8).

[9] 7 U.S.C. 1a(29)(C).

[10] *Cf.* H.R. Rep. No. 109–31(I) (2005) (emphasizing distinction between definitions for purposes of Bankruptcy Code and for purposes of other statutes).

[11] Section 761(9)(A) of the Bankruptcy Code provides that an entity holding such a claim is a ''customer.'' 11 U.S.C. 761(9)(A).

Accordingly, there is no requirement that the customer's assets be margining commodity contracts on the day that the bankruptcy petition is filed. Therefore, all assets contained in such an account are properly included within the customer's net equity.

Account Classes

Part 190 of the Commission's Regulations divides accounts into several classes, specifically: Futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, and delivery accounts.[12]

In October 2004, the Commission issued an interpretation regarding the appropriate account class for funds attributable to contracts traded on non-domestic boards of trade, and the assets margining such contracts, that are included in accounts segregated in accordance with Section 4d of the Act pursuant to Commission Order.[13] In that context, the Commission concluded that the claim is properly against the Section 4d account class because customers whose assets are deposited in such an account pursuant to Commission Order should benefit from that pool of assets. The same rationale supports the Commission's conclusion that a claim arising out of a cleared-only contract, or the property margining such a contract, would be includable in the futures account class where, pursuant to Commission Order, the contract or property is included in an account segregated in accordance with Section 4d of the Act.

* * * * *

Issued in Washington, DC, on September 26, 2008, by the Commodity Futures Trading Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–26199 Filed 11–3–08; 8:45 am]

BILLING CODE 6351–01–P

[12] *See* 17 CFR 190.01.

[13] *See* Interpretative Statement Regarding Funds Determined To Be Held in the Futures Account Type of Customer Account Class, 69 FR 69510 (Nov. 30, 2004).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 270

[Release Nos. 33–8981; 34–58874; IC–28476 File No. S7–25–07]

RIN 3235–AJ81

Mandatory Electronic Submission of Applications for Orders Under the Investment Company Act and Filings Made Pursuant to Regulation E

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting several amendments to rules regarding our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Specifically, we are amending our rules to make mandatory the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act of 1940 (''Investment Company Act'') as well as Regulation E filings of small business investment companies and business development companies. We also are amending the electronic filing rules to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act. Finally, we are amending Rule 0–2 under the Investment Company Act, eliminating the requirement that certain documents accompanying an application be notarized and the requirement that applicants submit a draft notice as an exhibit to an application.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rules, please contact one of the following members of our staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506: in the Office of Legal and Disclosure, Ruth Armfield Sanders, Senior Special Counsel (EDGAR), at (202) 551–6989; in the Office of Investment Company Regulation, Michael W. Mundt, Assistant Director, at (202) 551–6821; or, in the Office of Insurance Products, Keith Carpenter, Senior Special Counsel, at (202) 551–6766; for technical questions relating to the EDGAR system, in the Office of Information Technology, Richard D. Heroux, EDGAR Program Manager, at (202) 551–8168.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to Rules 101 and 201 of Regulation S–T [1] relating to electronic filing on the EDGAR system and to Rule 0–2 [2] under the Investment Company Act.[3]

I. Background

In the last several years, we initiated a series of amendments to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff.[4] In April 2000, we adopted rule and form amendments in connection with the modernization of EDGAR.[5] In the Modernization Proposing Release, we noted that, as the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. We also stated that we were contemplating future rulemaking to require more of our filings to be filed on EDGAR. In May 2002, we adopted rules requiring foreign private issuers and foreign governments to file most of their documents electronically.[6] In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) [7] of the Securities Exchange Act of 1934 (''Exchange Act'').[8] In July 2005, we adopted rules requiring certain open-end management investment companies and insurance companies separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts) and mandating that fidelity bonds filed under section 17(g) [9] and sales literature filed with us under section 24(b) [10] be

[1] 17 CFR 232.101 and 232.201.

[2] 17 CFR 270.0–2.

[3] We proposed these amendments in November 2007. *See* Rulemaking for EDGAR System; Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Release No. 33–8859 (Nov. 1, 2007) [72 FR 63513 (Nov. 9, 2007)] (''Proposing Release'').

[4] We recently announced the successor to the EDGAR Database. The new system is called IDEA, short for Interactive Data Electronic Applications, and will at first supplement and then eventually replace the EDGAR system. *See* ''SEC Announces Successor to EDGAR Database; ''IDEA'' Will Make Company and Fund Information Interactive,'' Press Release No. 2008–179, Aug. 19, 2008.

[5] *See* Rulemaking for EDGAR System, Release No. 33–7855 (Apr. 27, 2000) [65 FR 24788] (the ''Modernization Adopting Release''). *See also* Release No. 33–7803 (Mar. 3, 2000) [65 FR 11507] (''Modernization Proposing Release'').

[6] *See* Mandated EDGAR Filing for Foreign Issuers, Release No. 33–8099 (May 14, 2002) [67 FR 36678].

[7] 15 U.S.C. 78p(a).

[8] *See* Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788] (the ''EDGAR Section 16 Release'').

[9] 15 U.S.C. 80a–17(g).

[10] 15 U.S.C. 80a–24(b).