

Commodity Futures Trading Commission

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option customers for the purchase of dealer-option contracts.

(ix) The premiums and fees paid to and due to the grantor for the purchase of dealer-option contracts.

(2) Upon call by the Commission, each grantor shall furnish to the Commission for the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information which is specified in such call:

(i) Premium levels.

(ii) For any accounts, including accounts owned or controlled by the grantor, in which open option contracts are carried on the records of such option grantor:

(A) The name(s) and address(es) of the account owner(s);

(B) The principal business or occupation and industry of the account owner(s), other than the account of an FCM selling such grantor's options to the public;

(C) The kind of account, other than the account of an FCM selling such grantor's options to the public;

(D) Identification of those accounts, other than the account of an FCM selling such grantor's options to the public, that trade such options for other than speculative purposes;

(E) The number of open option contracts in the account;

(F) The number of option contracts exercised.

(i)(1) For purposes of paragraphs (a), (f), (g) and (h) of this section, accounts classified as being "traded for other than speculative purposes" shall be limited to accounts of producers, processors, commercial users or merchants which handle the commodity which is the subject of the commodity-option transaction, or the products or byproducts thereof, as part of their business.

(2) The term "option contract" as used in paragraphs (f), (g) and (h) of this section shall refer to either a call

or a put on a specified weight of the underlying commodity.

(The information collection requirements contained in § 32.12 were approved by the Office of Management and Budget under control number 3038-0001; in paragraph (a) under control number 3038-0003)

[43 FR 23707, June 1, 1978, as amended at 43 FR 52469, Nov. 13, 1978; 43 FR 54226, Nov. 21, 1978; 46 FR 63036, Dec. 30, 1981]

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling or selling inputs used in the production of, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, or a bank routinely engaged in the financing of such businesses, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) [Reserved]

(4) To the extent that the customer makes payment of the purchase price to the agricultural trade option merchant prior to option expiration or exercise, that amount:

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(i) May only be used by the agricultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used shall be treated as belonging to the customer until option expiration or exercise as provided under and in accordance with § 32.6.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount to be delivered. Provided, however, that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, a signed copy of which shall be provided to the customer, or if the contract is verbal, it shall be confirmed in a writing which includes all terms and conditions, signed by the agricultural trade option merchant, and provided to the customer within 48 hours.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in bold-face type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in community trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

APPROPRIATENESS OF OPTION CONTRACTS

Option contracts may result in the total loss of any funds you pay to the issuer of

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your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under different market conditions. You should also be aware that this option is not issued by, guaranteed by, or traded on or subject to the rules of a futures exchange. You may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

COSTS AND FEES ASSOCIATED WITH AN OPTION CONTRACT

Before entering into an option contract, you should understand all of the costs associated with it. These include the option premium, commissions, fees, costs associated with delivery if the option requires settlement by delivery upon its exercise and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract.

KNOW AND UNDERSTAND THE TERMS OF THE OPTION CONTRACT

Before entering into an option contract, you should know and understand all of the option contract's terms. All of the option contract's terms should be included in the written contract, or for a verbal agreement, in a written confirmation. You should receive a signed copy of either the written contract or of the written confirmation. Your option contract should include contract terms setting:

(A) The total quantity of commodity underlying the option contract;

(B) The strike price(s) of the option contract;

(C) The procedure for exercise of the option contract, including when you can exercise and the latest time and date for exercise;

(D) Whether the option can be offset or canceled prior to expiration;

(E) Whether settlement of the option is for cash or by delivery of the commodity;

(F) If settlement is by delivery, the delivery location or locations, the quality or grade of commodity to be delivered and how adjustments to price for deviations from stated quality or grade are determined;

(G) If settlement is by cash, the method for determining the cash-settlement price; and

(H) The cost and method of payment.

BUSINESS USE OF TRADE OPTIONS

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the

contracts must therefore relate to your activity or commitments in the underlying cash market. Any amendments allowed to the option contract or its cancellation or offset prior to its expiration date must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer also enters into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

DISPUTE RESOLUTION

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5250.

ACKNOWLEDGMENT OF RECEIPT

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

(Date)

Signature of Customer

(8) An agricultural trade option merchant may not require a customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter by an agreement or understanding to submit a claim or grievance to a specified settlement proce-

dures prior to the time a claim or grievance arises. An agricultural trade option merchant, when notifying a customer of its intent to submit a claim or grievance to arbitration under a pre-existing agreement, must advise the customer in writing that the customer within forty-five days may elect to seek reparations under Section 14 of the Act and part 12 of this chapter.

(b) *Report of account information.* Agricultural trade option merchants must provide to customers with open positions the following information:

(1) Within two business days of the offset, cancellation or settlement of the option for cash, or of the amendment of the expiration of the option, a statement of profit or loss on the transaction and on the account;

(2) In response to a customer's request, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer within one business day if responding orally and within two business days if responding in writing;

(3) Written, verbal or electronic notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to agricultural trade option transactions, covering transactions, and all written or electronic customer solicitation materials. Agricultural trade option merchants shall maintain such books and records as specified in §1.31 of this chapter, and report to the Commission as provided for in this paragraph (c) and paragraph (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Agricultural trade option merchants must file annual reports with the Commission at its Washington, DC, headquarters within ninety days after the close of the agricultural trade option merchant's fiscal year, in the form and manner specified by the

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Commission, which shall contain the following information:

(1) By commodity and put, call or combined option

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the options exercised during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options, including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, mon-

itoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in §3.13(d)(1)(i) of this chapter, and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements, such report to be made to the Commission by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in §3.13(d)(1)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 of this chapter and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than \$10 million or the party's obligations on the option are guaranteed by a person which has a net worth of \$10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option.

(2) Provided, however, that § 32.9 continues to apply to such option transactions.

[64 FR 68017, Dec. 6, 1999]

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

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SOURCE: 46 FR 54529, Nov. 3, 1981, unless otherwise noted.

§ 33.1 Definitions.

As used in this part:

(a) *Purchase price* means the total amount paid or to be paid, directly or indirectly, by a person to acquire a commodity option.

(b) *Promotional material* includes: (1) Any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, or other electronic medium, which is disseminated or directed to an option customer or prospective option customer concerning a commodity option transaction; (2) any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to an option customer or prospective option customer; and (3) any other written material disseminated or directed to an option customer or prospective option customer for the purpose of soliciting an option transaction, including any disclosure statement required by § 33.7.

§ 33.2 Applicability of Act and rules; scope of part 33.

(a) Except as otherwise specified in this part and unless the context otherwise requires:

(1) Each board of trade designated, or applying for designation, by the Commission as a contract market for the purpose of trading commodity options pursuant to this part shall be deemed for such purpose to be a "board of trade," "exchange," and a "contract market" and, with respect to commodity option transactions conducted pursuant to such designation, shall comply with and be subject to all of the provisions of the Act relating to boards of trade, exchanges, or contract markets as though such provisions were set forth herein; and

(2) The provisions of sections 1a, 2(a)(1), 2(a)(8)(B), 4, 4a, 4c(a), 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4m, 4n, 5, 5a(a), 5b, 6, 6a, 6b, 6c, 7, 8(a)-(e), 8a, 8b, 8c, and 16 of the Act shall apply to commodity option transactions that are subject to the requirements of this part as though such provisions were set forth herein