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17 CFR Ch. I (4-1-06 Edition)

and included specific references to commodity option transactions. Nothing contained in this section shall be construed to confer designation as a contract market absent issuance of an order of the Commission so designating an applicant board of trade.

(b) The provisions of this part apply to commodity option transactions except for transactions which are governed by part 32 of this chapter.

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

[46 FR 54529, Nov. 3, 1981, as amended at 46 FR 63036, Dec. 30, 1981; 47 FR 57016, Dec. 22, 1982; 59 FR 5526, Feb. 7, 1994]

§ 33.3 Unlawful commodity option transactions.

(a) It shall be unlawful for any person to offer to enter into, enter into, confirm the execution of, or maintain a position in, any commodity option transaction subject to the provisions of this part unless the commodity option involved is traded (1) on or subject to the rules of a contract market which has been designated to trade commodity options pursuant to this part and (2) by or through a member thereof in accordance with the provisions of this part.

(b) It shall be unlawful for:

(1) Any person to solicit or accept orders from an option customer (other than in a clerical capacity) for any commodity option transaction, or to supervise any person or persons so engaged, unless such person is:

(i) Registered as a futures commission merchant under the Act, and either:

(A) Is a member of the contract market on which the option is traded, or

(B) Is a member of a futures association registered under section 17 of the Act which has adopted rules which the Commission has approved under section 17(j) of the Act and, in addition to the requirements of that section, has determined to provide for the regulation of the commodity option related activity of its member futures commission merchants in a manner equivalent to that required of contract markets under these regulations; or

(ii) Registered as an introducing broker under the Act, and either:

(A) Is a member of a futures association registered under section 17 of the Act which has adopted rules which the Commission has approved under section 17(j) of the Act, or is a member of a contract market which has adopted rules which the Commission has approved under section 5a(a)(12) of the Act, and which, in addition to the requirements of those sections, has determined to provide for the regulation of the commodity option related activity of its member introducing brokers in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(B) Is operating pursuant to a guarantee agreement, and the futures commission merchant which has signed such agreement is a member of a self-regulatory organization that has adopted rules which the Commission has approved that provide for the regulation of the commodity option related activity of the introducing broker in a manner equivalent to that required of contract markets with respect to their member futures commission merchants under these regulations; or

(iii) An individual registered as an associated person of a specified person registered as a futures commission merchant or as an introducing broker under the Act who meets the requirements of paragraphs (b)(1)(i) or (b)(1)(ii), respectively, of this section, and such registration shall not have expired, been suspended (and the period of suspension has not expired) or been revoked.

(2) Any person registered or required to be registered as a futures commission merchant or as an introducing broker under the Act to permit another person to become or remain associated with such person as a partner, officer, employee, agent or representative (or in any status or position involving similar functions) in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction, or the supervision of any person or persons so engaged, if such person knows or should have known that such other

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person is or was not registered as required by this part or that such registration has expired, been suspended (and the period of suspension has not expired) or been revoked.

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

[46 FR 54529, Nov. 3, 1981, as amended at 46 FR 63036, Dec. 30, 1981; 47 FR 57016, Dec. 22, 1982; 48 FR 35301, Aug. 3, 1983; 59 FR 5526, Feb. 7, 1994]

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or for options on physicals in any commodity regulated under the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), the regulations in this part, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

(1) Applies for designation as a contract market for the purpose of trading “put” and/or “call” options which:

(i) Are not capable of being transferred, assigned or otherwise disposed of other than on or subject to the rules of the board of trade; and

(ii) With respect to options on futures contracts, may be exercised only by the establishment, by book entry, in the clearing organization of positions in the underlying futures contract.

(2) [Reserved]

(3) If designation for the trading of options on futures contracts is sought, is designated as a contract market for the underlying contract of sale for future delivery which is the subject of the option for which designation is sought, and submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for the specified futures contract underlying the option for which the designation is sought, and the applicant complies with the conditions and requirements for designation as a contract

market for such contract for future delivery as set forth in sections 5 and 5a(a) of the Act and as set forth in these regulations.

(4) In the case of a contract market which is requesting designation for the trading of options on physicals for which it is designated as a contract market for contracts of sale for future delivery or for options on futures contracts, submits, if so requested by the Commission, the information called for by § 1.50 of this chapter (relating to continued compliance with the conditions and requirements for designation as a contract market) for that specified futures contract and/or options on that futures contract, and the applicant complies with the conditions and requirements for designation as a contract market for such contract for future delivery as set forth in sections 5 and 5a(a) of the Act and as set forth in these regulations.

(5) Demonstrates that:

(i) The commodity option for which it is requesting designation is likely to serve a legitimate economic purpose;

(ii)–(iii) [Reserved]

(iv) If designation for the trading of options on physicals is sought and thereafter for the purpose of demonstrating continued compliance with the Act and these regulations:

(A) The cash market for the underlying physical exhibits sufficient liquidity such that the grantor and purchaser of the option have the opportunity to purchase or sell the underlying physical at its economic value in normal cash marketing channels;

(B) There exists an accurate and widely-disseminated price series for the underlying physical which is deliverable on the option contract;

(C) Trading of such options will not be disruptive of trading in the cash market for the underlying physical or of any futures contract; and

(D) The individual terms and conditions of the option contract conform to practices in the underlying cash market or are otherwise justified, including a demonstration that the terms and conditions of the option contract provide for a deliverable supply which is not conducive to price manipulation