

§ 32.12 Exemption from suspension of commodity option transactions.

(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 granted by a person domiciled in the United States who, on May 1, 1978, was both in the business of granting options on a physical commodity and in the business of buying, selling, producing, or otherwise utilizing that commodity, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) The grantor has a net worth of at least \$1,000,000;

(2) Under the express contractual terms of each option offered by the grantor (or under such terms and conditions as are found satisfactory to the Commission which would provide option customers substantially equivalent financial protection), the grantor is liable jointly and severally with any person that sells its options to an option customer for all damages sustained by any option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person or firm who sold the option to the option customer or by any agent or employee of that person;

(3) The grantor segregates daily, exclusively for the benefit of option customers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(4) The grantor provides an identification number for each transaction;

(5) The grantor provides to the futures commission merchant selling the option a confirmation of all orders for such transactions executed, including striking price and premium and a transaction identification number;

(6) Each person who is offering and selling the option to an option customer (i) is fully in compliance with

each and every requirement of this part 32, (ii) includes in the confirmation statement required by § 32.5(d) to be furnished to option customers the transaction identification number provided by the grantor, (iii) makes such reports to the Commission as are provided for in paragraphs (f) and (h) of this section and as the Commission may otherwise require by rule or regulation or order, and (iv) keeps a record in permanent form which shows, for each commodity option account carried by such person

(A) The principal occupation or business of the option customer owning the account,

(B) The name and address of any other person having a financial interest in such account,

(C) The name, address and principal business or occupation of any other person exercising any trading control with respect to such account, and

(D) An indicator of whether the account is traded for speculative purposes or for other than speculative purposes;

(7) Neither the grantor nor the person who is offering and selling the option to any option customer nor any officer or director or principal shareholder or partner or controlling person of either:

(i) Has within ten years been convicted of any felony or misdemeanor involving the purchase or sale of any commodity or security, or any option on any commodity or security, or

(ii) Is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as a commodity pool operator, futures commission merchant, or floor broker, or as an affiliated person or employee of any of the foregoing, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of commodities or securities or options on commodities or securities; or

(iii) Is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, associated person of a

futures commission merchant or floor broker, or suspending or expelling such person from membership on any contract market;

(8) Before any grantor of any option shall commence to offer and sell options under authority of this paragraph the grantor shall (i) notify the Commission in writing of the name of each person selling its options and that it meets each and every requirement set forth in this paragraph, (ii) provide evidence of compliance with each provision of this section by affidavit executed upon actual knowledge by the proprietor of a sole proprietorship grantor, a general partner of a partnership grantor, or the chief executive officer or chief financial officer of a corporate grantor, and (iii) submit to the Commission its most recent annual financial statements for a fiscal year subsequent to May 31, 1977, certified by an independent certified public accountant in accordance with generally accepted accounting principles;

(b)(1) The grantor of any option publicly offered pursuant to paragraph (a) of this section shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions and make such reports to the Commission as provided for in paragraphs (g) and (h) of this section and as the Commission may otherwise require by rule or regulation or order.

(2) It shall be unlawful for any grantor to sell an option through any person that acquires the option with a view to resale to an option customer (i) if the identity of that person has not previously been reported in writing to the Commission; (ii) if the grantor knows or has reason to know that the person is disqualified pursuant to paragraph (a)(7) of this section; or (iii) if the grantor knows or has reason to know that the person or firm is not complying with the requirements of this part 32 in any respect.

(3) It shall be unlawful for any futures commission merchant to offer or sell an option acquired from a grantor to any other futures commission merchant.

(4) The grantor of any option offered and sold to an option customer pursuant to paragraph (a) shall be liable

jointly and severally with any person that sells its options to option customers for all damages sustained by the option customer in connection with the offer and sale of an option as the result of any unlawful act or omission or any breach of contract by any person who sold the option to the option customer or by any agent or employee of that person except to the extent that the Commission may find other terms and conditions satisfactory to provide option customers substantially equivalent financial protection pursuant to paragraph (a)(2). Upon timely application the grantor may intervene in any reparation proceeding brought by an option customer pursuant to section 14 of the Commodity Exchange Act based upon any act or omission for which the grantor may be liable.

(c) Upon written application the Commission may for good cause shown in any particular case waive the requirements of any provision of paragraph (a) or (b) of this section subject to such other terms and conditions as the Commission may find appropriate in the public interest and for the protection of option customers.

(d) [Reserved]

(e) In the event that any provision of this section or the application thereof to any person or circumstance should be held invalid, the validity of §32.11 to those or other persons or circumstances shall not be affected thereby.

(f) Each person registered as a futures commission merchant which offers or sells options to option customers pursuant to paragraph (a) of this section shall file a report with the Commission on form CFTC-145 for any month during which such person entered into an option transaction with an option customer or acquired an option for its own account from a §32.12 grantor. Such reports shall be filed with the Commission office in New York, N.Y., by the tenth business day of the month following the month covered by the report and shall contain the following information by option grantor and option contract:

(1) For option-customer accounts:

(i) The number of open option contracts, end of month.

(ii) The number of open option contracts, end of month, held in accounts classified by the FCM as being traded for other than speculative purposes.

(iii) The number of option contracts entered into during the month.

(iv) The number of option contracts entered into during the month for accounts classified by the FCM as being traded for other than speculative purposes.

(v) The aggregate purchase price, as defined in §32.1(d), received and due from option customers for option contracts entered into during the month.

(vi) The total of premiums and fees paid to and due to the option grantor for option contracts entered into by option customers during the month.

(2) For proprietary accounts of such person, as defined in §1.3(y): (i) The number of open option contracts, end of month.

(ii) The number of option contracts entered into with the option grantor during the month.

(iii) The total of premiums and fees paid to and due to the option grantor for option contracts entered into during the month.

(g) The grantor of any option publicly offered or sold during any calendar month pursuant to paragraph (a) of this section shall file reports with the Commission at its office in New York, N.Y. with respect to all commodity-option transactions entered into by the grantor during such month. Such reports are due by the tenth business day of the month following the month covered by the reports and shall be filed on forms CFTC 146, 147, 148, 149, 150, 151, 152, 153 and 154.

(1) Such reports shall contain the following information with respect to all commodity options that were not publicly offered pursuant to paragraph (a) of this section:

(i) By commodity, call or put, and expiration month:

(A) The total quantity of the underlying commodity on which options were bought directly from or granted directly to accounts classified by the grantor as being traded for other than speculative purposes.

(B) The total quantity of the underlying commodity on which options, bought directly from or granted di-

rectly to accounts classified by the grantor as being traded for other than speculative purposes, were open as of the last business day of the month.

(ii) By commodity and call or put;

(A) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes were exercised during the month.

(B) The total quantity of the underlying commodity on which options bought directly from or granted directly to accounts classified as being traded for other than speculative purposes expired during the month.

(2) Such reports shall contain the following information with respect to all commodity options that were publicly offered pursuant to paragraph (a) of this section:

(i) By option contract and expiration date:

(A) The value of option contracts repurchased from option customers through FCM's during the month.

(B) The value of new sales to option customers through FCM's during the month.

(ii) By option contract, expiration date and strike price:

(A) The number of option contracts repurchased from and granted to option customers through FCM's during the month.

(B) The number of option contracts granted to option customers through FCM's which were open as of the last business day of the month.

(C) The bid and ask option premiums available to option customers through FCM's as of the last business day of the month.

(iii) By option contract:

(A) The number of option contracts previously bought by option customers through FCM's which were exercised during the month.

(B) The number of option contracts previously bought by option customers through FCM's which expired during the month.

(iv) By option contract and offering FCM:

(A) The value of premiums and fees received by and due to the grantor for option contracts sold through FCM's during the month.

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(B) The number of option contracts open as of the last business day of the month.

(C) The number of option contracts sold during the month.

(h) All information required upon special call as set forth in this paragraph (h) shall be prepared in such form and manner, and summarized in accordance with such instructions, and shall be transmitted at such time and to such office of the Commission, as may be specified in the call.

(1) Upon call by the Commission, each futures commission merchant shall furnish to the Commission for the grantor(s), the option contract(s), the expiration date(s), the strike price(s) and the transaction date(s) any of the following information that is specified in such call for any accounts, including proprietary accounts of such futures commission merchant, in which open dealer-option contracts are carried on the records of such futures commission merchant:

(i) The name(s) and address(es) of the account owner(s).

(ii) The principal business or occupation and industry of the account owner(s).

(iii) The kind of account.

(iv) The name(s), address(es) and principal business or occupation and industry of any other person(s) who controls the trading of the account.

(v) The name(s) and address(es) of any other person(s) having a financial interest in the account.

(vi) Identification of those accounts that trade dealer options for other than speculative purposes.

(vii) The number of open dealer-option contracts held or controlled by such traders.

(viii) The aggregate purchase price (as defined in §32.1(d)) received from 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 by-products 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)

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§ 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