

would cost about \$66,000 per 15th stage HPC disk. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$2,904,000.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. FAA-2010-1095; Directorate Identifier 2009-NE-40-AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by January 3, 2011.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) PW4074 and PW4077 turbofan engines with 15th stage high-pressure compressor (HPC) disks, part number (P/N) 55H615, installed. These engines are installed on, but not limited to, Boeing 777-200 series and 777-300 series airplanes.

Unsafe Condition

(d) This AD results from multiple shop findings of cracked 15th stage HPC disks. We are issuing this AD to prevent cracks from propagating into the bolt holes of the 15th stage HPC disk, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) For 15th stage HPC disks that have 9,865 or fewer cycles since new (CSN) on the effective date of this AD, remove the disk from service before accumulating 12,000 CSN.

(g) For 15th stage HPC disks that have accumulated more than 9,865 CSN on the effective date of this AD, do the following:

(1) Remove the disk from service at the next piece-part exposure above 12,000 CSN, not to exceed 2,135 cycles-in-service (CIS) after the effective date of this AD.

(2) For 15th stage HPC disks that are installed in the engine and exceed 12,000 CSN, perform a borescope inspection (BSI) or eddy current inspection (ECI):

- (i) Within 2,400 cycles-since-last fluorescent penetrant inspection or ECI, or
- (ii) Within 1,200 cycles-since-last BSI, or
- (iii) Within 55 cycles-in-service (CIS) after the effective date of this AD, whichever is latest.

(3) If you see a suspected crack using a BSI from paragraph (g)(2) of this AD, but can't visually confirm a crack, perform an ECI within 5 CIS after the BSI.

(4) If you find a crack using any inspection, remove the disk from service before further flight.

(h) Use paragraph 1.A. or 1.B. of the Accomplishment Instructions "For Engines Installed on the Aircraft" or 1.A. or 1.B. of the Accomplishment Instructions "For Engines Removed from the Aircraft," of PW Service Bulletin PW4G-112-72-309, Revision 1, dated July 1, 2010 to perform the inspections.

Alternative Methods of Compliance

(i) 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.

Related Information

(j) Contact James Gray, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.e.gray@faa.gov; telephone (781) 238-7742; fax (781) 238-7199, for more information about this AD.

(k) Pratt & Whitney Service Bulletin PW4G-112-72-309 Revision 1, dated July 1, 2010, pertains to the subject of this AD. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565-7700; fax (860) 565-1605, for a copy of this service information.

Issued in Burlington, Massachusetts, on October 26, 2010.

Karen M. Grant,

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

[FR Doc. 2010-27607 Filed 11-1-10; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 4

RIN 3038-AD11

Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing rules to implement new statutory provisions enacted by Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules apply to futures commission merchants, designated clearing organizations and commodity pool operators. The proposed rules implement the new statutory framework that requires agencies to replace any reference to or

reliance on credit ratings in their regulations with an appropriate alternative standard.

DATES: Submit comments on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD11 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established in CFTC Regulation 145.9.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Adrienne Joves, Counsel, Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5420. E-mail: ajoves@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street

Reform and Consumer Protection Act ("Dodd-Frank Act").² Title VII of the Dodd-Frank Act³ amended the Commodity Exchange Act ("CEA")⁴ to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

In addition, Title IX of the Dodd-Frank Act addresses credit ratings agencies. In pertinent part, Title IX requires Federal agencies to review, modify and report on their regulations that require the use of an assessment of the creditworthiness of a security or money market instrument and that rely on or reference credit ratings.⁵ Section 939A of the Dodd-Frank Act directs that the Commission:

(1) Review Commission regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument;

(2) Remove any reference to or reliance on credit ratings in such regulations and substitute an appropriate standard of credit-worthiness;

(3) Seek to establish, to the extent possible, uniform standards of credit-worthiness; and

(4) Report to Congress after the completion of the rulemaking process.⁶

The Dodd-Frank Act contains a statutory deadline of July 21, 2011, for completing the required review of Commission regulations for any such reference to or reliance on credit ratings.⁷

The Commission has completed the required review of its regulations⁸ and

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

³ Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

⁴ 7 U.S.C. 1 *et seq.*

⁵ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, § 939A (2010).

⁶ *Id.*

⁷ *Id.* at § 939A(a).

⁸ *Supra* note 4.

has identified two categories of regulations that contain any reliance on credit ratings: (1) Those that rely on ratings to limit how Commission registrants might invest or deposit customer funds; and (2) those that require disclosing a credit rating to describe an investment's characteristics. However, not every instance identified by this review specifically references or relies on credit ratings to assess the credit-worthiness of a security or a money market instrument. Nonetheless, in keeping with its efforts to fully comply with both the spirit and letter of the Dodd-Frank Act, the Commission is proposing to amend all of its identified regulations that rely on credit ratings regarding financial instruments.

Accordingly, the Commission proposes amending Rules 1.49⁹ and 4.24¹⁰ to remove any references or reliance on credit ratings and replace them with alternative standards. Elsewhere in today's **Federal Register**, the Commission is also publishing notice of its proposal to amend Commission regulations 1.25 and 30.7, which in part proposes removing all references to or reliance on credit ratings in those regulations. Finally, the Commission is also publishing in today's **Federal Register** notice of its proposal to amend Part 40 of its regulations. This proposal includes removing Appendix A to Part 40,¹¹ which contained one reference to credit ratings.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Discussion

A. Removing Reliance on or Reference to Credit Ratings To Limit How Registrants Might Deposit Customer Funds

As noted above, after completing the required review of Commission regulations for references to or reliance on credit ratings, two instances were identified where credit ratings were used to help limit how registrants might handle customer funds. Commission regulations 1.49 and 30.7, which were written to mirror one another,¹² both include a reference to credit ratings. The Commission is proposing to remove those references to credit ratings from both 30.7 and 1.49. The Commission's proposal to remove the reference to credit ratings from regulation 30.7 is

⁹ 17 CFR 1.49 (2009).

¹⁰ 17 CFR 4.24(h)(1)(i) (2009).

¹¹ 17 CFR app. pt. 40 guideline no. 1 (2009).

¹² See 68 FR 5549 (Feb. 4, 2003).

¹ 17 CFR 145.9.

being published elsewhere in today's **Federal Register**.

1. Commission Regulation 1.49

Commission Regulation 1.49¹³ places qualifications on the types of depositories where futures commission merchants (FCMs) and designated clearing organizations (DCOs) might place customer funds. Similar to 30.7, 1.49 currently requires that an acceptable foreign depository must either: (1) Have in excess of \$1 billion of regulatory capital; or (2) issue commercial paper or a long-term debt instrument that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization (NRSRO).

In keeping with the Dodd-Frank Act, the Commission proposes to remove all ratings requirements from Regulation 1.49. This proposal is based on the Commission's views regarding the uncertain reliability of ratings as currently administered. Recent events in the financial markets have revealed significant weaknesses in the ratings industry and its ability to reliably gauge the safety of debt instruments. Further, Congress and other Federal financial regulators have considered eliminating or restricting rating requirements with some frequency during the past two years.¹⁴

Finally, noting that the requirements regarding the placement of customer funds in foreign depositories in the two regulations were originally written to mirror one another,¹⁵ this proposal to remove the reference to credit ratings in Commission regulation 1.49 is done in concert with proposals found elsewhere in today's **Federal Register** regarding Commission regulation 30.7. That proposal considers the reference to credit ratings in Commission regulation 30.7 to be no more useful or necessary to gauge the safety of a depository institution than similar references found in Commission regulation 1.25. To explain its proposal to remove references to credit ratings in Commission regulation 1.25, the Commission notes the poor past performance of credit ratings in gauging the safety of certain types of investments, and its view that credit ratings are not necessary to gauge the future ability of certain types of investments to preserve customer funds. As a result, this proposal serves to align Commission regulation 1.49 with

proposed Commission regulations 1.25 and 30.7, and to greater simplify the regulatory treatment of investment of customer funds.

Request for Comment

The Commission requests comment on whether relying on a minimum capital requirement of \$1 billion dollars in regulatory capital is an adequate alternative standard to current Commission regulation 1.49. The Commission also requests comment on whether there is another standard or measure of solvency and credit-worthiness that might be used as an appropriate, additional test of a bank's safety. Specifically, the Commission seeks comment on whether a leverage ratio or a capital adequacy ratio requirement consistent with or similar to those in the Basel III accords¹⁶ would be an appropriate additional safeguard for a bank or trust company located outside the United States.

The Commission welcomes any other comments on this proposal.

B. Removing Reliance on Credit Ratings To Help Disclose the Characteristics of an Investment

After completing the required review of Commission regulations for references to or reliance on credit ratings, two instances were identified where credit ratings were used to help disclose the characteristics of an investment. Commission regulation 4.24¹⁷ and Appendix A to Part 40¹⁸ both include a reference to credit ratings. As a result, while the references to credit ratings are not specifically related to the credit-worthiness of securities or money market instruments, in keeping with the spirit of the Dodd-Frank Act the Commission is proposing to remove the references to credit ratings from 4.24. Elsewhere in today's **Federal Register** the Commission is proposing amendments to Part 40 of the Commission's regulations, including the removal of Appendix A to Part 40.

1. Commission Regulation 4.24

Commission Regulation 4.24 requires commodity pool operators (CPOs) to disclose the characteristics of the commodity and other interests that the pool will trade including, if applicable, their investment rating. In keeping with its stated goal of complying fully with the spirit and letter of the Dodd-Frank

Act, the Commission proposes removing the references to ratings Commission regulation 4.24 and replacing that reference with the phrase "credit-worthiness." While CPOs may still choose to reference an investment rating to describe the credit-worthiness of an investment in its disclosures, the Commission notes that the CPO as appropriate should make an independent assessment of the credit-worthiness of those investments.

Request for Comment

The Commission requests comment on what effect removing credit ratings as one characteristic included in Commission regulation 4.24 might have on the ability of investors and others to understand the disclosures of commodity pool operators (CPOs) regarding the characteristics of a commodity pool. The Commission also requests comment on the ability of CPOs to make independent assessments of the credit-worthiness of their pool's investments.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹⁹ requires Federal agencies, in promulgating rules, to consider the impact of those rules on small businesses. The rule amendments proposed herein will affect FCMs, DCOs and CPOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.²⁰ The Commission has previously determined that registered FCMs,²¹ DCOs²² and CPOs²³ are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)²⁴ imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed rule amendments do not require a new collection of information on the part of any entities subject to the

¹³ 17 CFR 1.49(d)(3)(i)(B) (2009).

¹⁴ See 74 FR 63832 (Dec. 4, 2009) (discussing the efforts of the Securities Exchange Commission). See also 75 FR 52283 (Aug. 25, 2010) (discussing the efforts of the Federal banking agencies.)

¹⁵ See *supra* note 11.

¹⁶ See Press Release, Basel Committee on Banking Supervision, Group of Governors and Heads of Supervision Announces Higher Global Minimum Capital Standards (Sept. 12, 2010) (<http://bis.org/press/p100912.pdf>).

¹⁷ 17 CFR 4.24(h)(1)(i) (2009).

¹⁸ 17 CFR app. pt. 40 guideline no. 1 (2009).

¹⁹ 5 U.S.C. 601 *et seq.*

²⁰ 47 FR 18618 (Apr. 30, 1982).

²¹ *Id.* at 18619.

²² 66 FR 45604, 45609 (Aug. 29, 2001).

²³ 47 FR 18618–21 (Apr. 30, 1982).

²⁴ 44 U.S.C. 3501 *et seq.*

proposed rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these proposed rule amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Costs and Benefits of the Proposed Rules

Section 15(a) of the CEA ²⁵ requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

Summary of proposed requirements. Proposed rule 1.49 would facilitate greater protection of customer funds. The proposed amendments align proposed regulation 1.49 with proposals made elsewhere in today's **Federal Register** regarding Commission regulations 1.25 and 30.7. Like those proposals, the proposed amendments to Commission regulation 1.49 are made with the primary purpose of safeguarding the funds of customers.

Proposed amendments to Commission regulation 4.24 would lessen reliance on credit ratings and will reduce risk in the financial system by placing more responsibility on CPOs to fully understand the credit-worthiness of their investments.

Costs. With respect to costs, the Commission has determined that its proposals present minimal costs while providing the great benefits of safeguarding customer funds and decreasing the risks associated with CPOs not evaluating the credit-

worthiness of their investments. There may be some minimal costs associated with transferring customer funds, if necessary, to more sound foreign depository institutions and with CPOs improving their ability to make independent assessments regarding the credit-worthiness of their investments.

Benefits. With respect to benefits, the Commission has determined that the proposed rules will help safeguard customer funds and will result in CPOs improving their understanding of the credit-worthiness of their investments. The proposed rules help protect market participants and the public by safeguarding customer funds and highlighting the accountability CPOs have for understanding the credit-worthiness of their investments. The proposed rules will not hinder the efficiency or competitiveness of futures markets, and may improve the financial integrity of the markets by helping to safeguard customer funds and encourage CPOs to better understand the credit-worthiness of their investments. The proposed rules will not have any effect on price discovery, and may help improve sound risk management practices.

Public Comment. The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the Proposal with their comment letters.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection.

17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Disclosure, Principals, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commodity Futures Trading Commission proposed to amend 17 CFR parts 1 and 4 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) and the Commodity Futures

Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Section 1.49 is amended by revising paragraph (d)(3) to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

* * * * *

(d) * * *

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company that has in excess of \$1 billion of regulatory capital; or

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

2. Section 4.24 is amended by revising paragraph (h)(1)(i) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(h) * * *

(1) * * *

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and by credit worthiness, as applicable;

* * * * *

By the Commodity Futures Trading Commission.

Dated: October 27, 2010.

David A. Stawick,
Secretary.

Statement of Chairman Gary Gensler Removing Any Reference to or Reliance on Credit Ratings in Commission Regulations; Proposing Alternatives to the Use of Credit Ratings

October 26, 2010

I support the proposal to remove any reliance on credit ratings within the Commission's regulations. Under Title IX of the Dodd-Frank Act, Congress required that the Commission review references to credit ratings in our

²⁵ 7 U.S.C. 19(a).

existing regulations and to specifically remove them if they were regarding certain financial instruments. The Commission has completed the required review of its regulations and has identified seven instances of references to credit ratings, five of which were regarding those financial instruments. Today, we are proposing removing these five references and reliance to credit ratings. This rule addresses two of those references in Regulation 1.49, which limits the types of banks in which futures commission merchants and derivatives clearing organizations may place customer funds, and 4.24, which requires commodity pool operators to disclose to their customers where they are putting customer money. The other actions we are taking today regarding rule certifications in Part 40 and investment of customer funds in Regulation 1.25 and 30.7 will address the remaining instances of credit ratings.

[FR Doc. 2010-27555 Filed 11-1-10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 20

RIN 3038-AD17

Position Reports for Physical Commodity Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing reporting regulations that are reasonably necessary for implementing and enforcing aggregate position limits for certain physical commodity derivatives. As a result of recent legislative reforms, the Commission may adopt regulations establishing aggregate position limits for designated contract market ("DCM") physical commodity futures contracts and swaps that are economically equivalent to such contracts. The Commission currently receives, and uses for market surveillance purposes, including position limit enforcement, data on large positions in all physical commodity futures and option contracts traded on DCMs. However, there is no analogous reporting structure in place for economically equivalent swaps, which until recently were largely unregulated financial contracts. The Commission's proposal would require position reports on economically equivalent swaps from clearing

organizations, their members and swap dealers. Notably, the proposed regulations also include a sunset provision. The sunset provision would render the regulations ineffective upon the Commission's issuance of an order finding that operating swap data repositories ("SDRs") are capable of processing positional data in a manner that would enable the Commission to set and enforce aggregate position limits.

DATES: Comments must be received on or before December 2, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments.
- *Agency Web Site:* <http://www.cftc.gov>.
- *E-mail:* Swaps.Reporting@cftc.gov.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in CFTC regulation 145.9 (17 CFR 145.9). The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Acting Deputy Director, Market Surveillance, (202) 418-5452, ssherrod@cftc.gov, or Bruce Fekrat, Senior Special Counsel, Office of the Director, (202) 418-5578, bfekrat@cftc.gov, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre,

1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Economically Equivalent Swaps

A. Background

The Commodity Exchange Act ("CEA or Act") of 1936,¹ as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"),² includes provisions imposing clearing and trade execution requirements on standardized derivatives as well as comprehensive recordkeeping and reporting requirements that extend to all swaps, a defined term in CEA section 1a(47). New section 4a(a)(2) of the CEA, as introduced by section 737 of the Dodd-Frank Act, charges the Commission with promulgating regulations, as appropriate, to limit the amount of positions, other than *bona fide* hedge positions, that may be held by any person with respect to commodity futures and option contracts in exempt and agricultural commodities³ traded on or subject to the rules of a DCM within 180 and 270 days, respectively, of the legislation's enactment on July 21, 2010. New section 4a(a)(6)(A) of the Act requires Commission-set position limits to apply aggregately across DCMs to contracts that are based on the same commodity. The exempt and agricultural commodity futures and option contracts for which the Commission may consider position limits are listed in proposed regulation 20.2 ("20.2 listed futures contracts" or "20.2 contracts"). The list in proposed regulation 20.2, however, is non-exclusive and preliminary. Should the Commission propose regulations to establish position limits, it may decide not to propose position limits for all of the 20.2 listed futures contracts or, alternatively, may decide to propose

¹ 7 U.S.C. 1 *et seq.*

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, *Public Law* 111-203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

³ Section 1a(20) of the Act defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(19) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt or equity instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, CEA section 1a(9) enumerates a non-exclusive list of several agricultural-based commodities. The Commission will consider the issuance of a notice of rulemaking proposing a definition for the term "agricultural commodity" in October of 2010. Although broadly defined, exempt commodity futures contracts are often viewed as energy and metals products.