

Commission is also considering a rethinking of the no-action relief provided to an FCM by the Division with respect to the short options value charge,²⁸ and the appropriateness of a concentration charge. Separately, the Commission has discussed with the Joint Audit Committee the data necessary to evaluate any proposals for a "risk-based" standard as a component of the minimum adjusted net capital requirements. Although the Commission has no specific proposals in any of these areas at this time, it nonetheless invites commenters to address these matters if they so choose.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and independent IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.²⁹

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.³⁰ The proposed amendment to Rule 1.17(h)(2)(vii) would generally reduce the burden associated with the procedure to obtain approval for permissive prepayment of subordinated debt. Accordingly, that amendment should impose no additional

requirements on an independent IB. In addition, the proposed amendment to the minimum adjusted net capital requirement for an IB would conform the Commission's requirement to that of the NFA and therefore there should be no impact on an IB's financial operations. Thus, if adopted, these proposals would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (PRA) 44 U.S.C. 3501 et seq., 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. While the amendments proposed herein have no burden,³¹ Rules 1.12, 1.17 and 1.58 are parts of groups of rules with the following burdens.

The burden associated with the collection required by Rules 1.12 and 1.17 (3038-0024), including these proposed amendments, is as follows:

Average Burden Hours Per Response: 1.50.

Number of FCM Respondents: 165.00.

Number of IB Respondents: 62.00.

Frequency of Response: 1.00.

The burden associated with the collection required by Rule 1.58 (3038-0026), including these proposed amendments, is as follows:

A. Reporting

Average Burden Hours Per Response: 0.04.

Number of Respondents: 100.00.

Frequency of Response: 50.00.

B. Recordkeeping

Average Burden Hours Per Response: 1.00.

Number of Respondents: 300.00.

Frequency of Response: 1.00.

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street, N.W., Washington, DC 20581, (202) 418-5170.

³¹ The proposed increase in the dollar amount of minimum adjusted net capital for an FCM and an IB would necessitate only a change in line item 23E of the Statement of the Computation of Minimum Capital Requirements on Form 1-FR-FCM and in line item 15 of that Statement on Form 1-FR-IB.

List of Subjects in 17 CFR Part 1

Commodity futures, minimum financial requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.12 is amended by removing the word "or" at the end of paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(4), and by adding a new paragraph (b)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(3) 150 percent of the amount of adjusted net capital required by a registered futures association of which it is a member; or

* * * * *

3. Section 1.17 is amended as follows:

3.1. By revising paragraph (a)(1);

3.2. By removing the word "or" at the end of paragraph (e)(1)(ii), by redesignating paragraph (e)(1)(iii) as (e)(1)(iv), and by adding a new paragraph (e)(1)(iii);

3.3. By removing the word "or" at the end of paragraph (h)(2)(vi)(C)(2), by redesignating paragraph (h)(2)(vi)(C)(3) as paragraph (h)(2)(vi)(C)(4), and by adding a new paragraph (h)(2)(vi)(C)(3);

3.4. By removing the word "or" at the end of paragraph (h)(2)(vii)(A)(2), by redesignating paragraph (h)(2)(vii)(A)(3) as paragraph (h)(2)(vii)(A)(4) and, as redesignated, revising it, and by adding a new paragraph (h)(2)(vii)(A)(3);

3.5. By removing the word "or" at the end of paragraph (h)(2)(vii)(B)(2), by redesignating paragraph (h)(2)(vii)(B)(3) as paragraph (h)(2)(vii)(B)(4) and, as redesignated, revising it, and by adding new paragraphs (h)(2)(vii)(B)(3) and (h)(2)(vii)(C);

3.6. By removing the word "or" at the end of paragraph (h)(2)(viii)(A)(2), by redesignating paragraph (h)(2)(viii)(A)(3) as paragraph

Santiago, Chile 1990. The general international standard in this connection, as recommended by Working Party No. 3 of the Technical Committee of IOSCO, would also apply the debt-equity requirement to all of a firm's capital. Although the Commission originally proposed a debt-equity requirement for an FCM that would have been similar to that of a broker-dealer under SEC rules (see 42 FR 27166, 27177 (May 26, 1977)), in response to comments that "it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by regulations", the Commission revised the required debt-equity total to which the 30 percent equity capital requirement applies to mean total capital less the excess of the FCM's adjusted net capital, i.e., only the required minimum adjusted net capital. See 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

²⁸ Commission Rule 1.17(c)(5)(iii), 17 CFR 1.17(c)(5)(iii) (1995); CFTC Interpretative Letter 95-65, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,495 (July 26, 1995).

²⁹ See 47 FR 18618, 18619 (Apr. 30, 1982).

³⁰ See 48 FR 35248, 35275-78 (Aug. 3, 1983).