

since recognized the need for more frequent filing of financial information by FCMs due to the substantial increase in the volume of business conducted in the futures and options markets and the high volatility of the markets in which FCMs operate. The NFA and CME currently require FCMs for which they are DSRO to file financial reports on a monthly basis.¹⁹ Because the Commission receives copies of all financial reports filed at the SRO level, for most FCMs the Commission already receives monthly financial reports.

The Commission believes it is appropriate to amend its rules to require FCMs to report their financial condition monthly. Monthly filing would permit closer financial surveillance for any remaining entities that file quarterly, and would be consistent with the rules of the SROs that have already caused monthly reporting to be widely required. More frequent reporting allows SROs and the Commission to identify adverse financial trends sooner than is possible with quarterly filing. In addition, since most FCMs currently file monthly financial reports with their DSRO, a Commission regulation requiring FCMs to file monthly financial reports with the Commission and with the applicable DSRO should pose minimal additional burden on FCMs. Furthermore, an FCM's preparation of a monthly financial report would satisfy its requirement to prepare a monthly net capital computation under Rule 1.18.²⁰

C. Requirements for Oath or Affirmation Filed With Form 1-FR

The Commission also is proposing to ease Form 1-FR filing requirements for FCMs and IBs by expanding the list of persons from whom the Commission would accept the oath or affirmation that is required by Rule 1.10(d)(4).²¹ Pursuant to this rule, the individual providing the oath or affirmation attests to the truth and accuracy of the information provided in the Form 1-FR, to the best knowledge and belief of the individual. The oath or affirmation must be provided by one of the following individuals: If the FCM or IB is a sole

proprietorship, the sole proprietor; if the FCM or IB is a partnership, a general partner; or if the FCM or IB is a corporation, the chief executive officer or chief financial officer.²²

The list of individuals that appears in Rule 1.10(d) also appears in other Commission regulations that designate permitted signatories for required filings by commodity pool operators ("CPOs") and commodity trading advisers ("CTAs"). The Commission recently has issued a release that proposes to revise these rules for CPOs and CTAs, as the "existing list may be unnecessarily restrictive in that it leaves no room for other organizational structures under which CPOs and CTAs operate—e.g., limited liability companies."²³ The list in Rule 1.10(d)(4) similarly does not address all organizational structures under which FCMs and IBs operate. The Commission is therefore proposing to amend the rule to provide that the oath or affirmation may be made by either (i) a representative duly authorized to bind the FCM or IB, or, (ii) if the FCM or IB also is registered with the SEC as a securities broker or dealer, a representative authorized to file the FOCUS Report for the broker or dealer under SEC Rule 17a-5 (17 CFR 240.17a-5).

D. Extensions of Time To File Unaudited and Audited Financial Reports

Commission Rule 1.10(f)(1) provides that if an FCM or IB determines that it cannot file its unaudited Form 1-FR prior to the due date, it may file an application with the Commission for an extension of time to a specified date, which may not be more than 90 days after the original due date. The FCM or IB also is required to file a copy of the application for extension with its DSRO.

In addition to unaudited filings, Commission Rule 1.10 also requires that FCMs and IBs file audited financial statements and schedules on an annual basis. To request an extension of time for filing the annual audited financial report, the FCM or IB may file an application with the Commission pursuant to Commission Rule 1.16(f). Notice of the application must be filed by the FCM or IB with its DSRO.

Several exchanges have adopted rules or procedures to process requests from

their member FCMs for extensions of time to file unaudited financial statements. In addition, in 1993 the SEC amended its rules to provide authority to the designated examining authority ("DEA") of a broker or dealer to grant or deny a request for extension of time to file its unaudited FOCUS Report.²⁴ This has resulted in some requests for filing extensions being reviewed and acted upon by the Commission, DSRO staff and DEA staff.

The Commission proposes to provide greater clarity and uniformity to this area by amending Rules 1.10(f) and 1.16(f). The amended rules would provide that the DSRO of an FCM or IB may approve an application for an extension of time to file an unaudited or audited financial report, provided that the FCM or IB files with the Commission a copy of its DSRO's written approval or denial of the request to extend the time for filing the Form 1-FR. A registrant must file a copy of its application, and a copy of any notices it receives from the designated self regulatory organization to approve or deny its application, with the regional office of the Commission where the FCM or IB is required to file its unaudited or audited financial statements.

The Commission also is proposing that if the FCM or IB also is registered as a securities broker or dealer with the SEC (a "dual registrant") and has filed with its DEA a request for an extension of time to file its unaudited monthly FOCUS Report or audited annual financial statements, no separate application to its applicable DSRO would be required, but the dual registrant would be required to file with its DSRO and the Commission a copy of the application made to the FCM's or IB's DEA. Immediately upon the DEA's approval or denial of the request to extend the time for filing the unaudited monthly FOCUS Reports or audited annual financial statements, the dual registrant would be required to file a copy of such approval or denial with the Commission and its DSRO.

E. Change in Fiscal Year End

Commission Rule 1.10(e) provides that an FCM or IB must continue to use its elected fiscal year, unless a change is approved upon written application to the Commission and a notice of the change is filed with the FCM's or IB's DSRO. The Commission generally has approved such applications provided that the applicant files certified financial statements within 15 months of the as of date of its last certified

¹⁹ Section 1(b) of NFA Rulebook and CME Rule 970C.1.

²⁰ Rule 1.18(b) requires an FCM to prepare and to maintain a formal computation of its net capital as of the close of business each month. The formal net capital computation must be completed within 17 business days of the end of the month.

²¹ Not all IBs file a Form 1-FR-IB. An IB that operates pursuant to an FCM guarantee agreement that satisfies the requirements of Rule 1.10(h) is exempt from filing the form, which otherwise would be required from the IB pursuant to Rule 1.10(b)(2)(i). Generally, at least two-thirds of registered IBs operate pursuant to a guarantee agreement.

²² Rule 1.10(d)(4) also provides that in the case of a Form 1-FR filed with the Commission via electronic transmission, such transmission must be accompanied by the Commission-assigned Personal Identification Number of the authorized signer and such Personal Identification Number will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation.

²³ 68 FR 12622 (March 17, 2003).

²⁴ 58 FR 45838 (August 31, 1993).