

VII. 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 Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.³⁶ The Commission has determined previously that FCMs are not small entities for the purpose of the RFA.³⁷ With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered "small entities" for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on IBs of any such rule at that time.³⁸ Several of the proposed amendments would apply to FCMs only and therefore would have no economic impact on IBs (proposed amendments to Regulations 1.12(b), 1.17(a), 1.17(c), 1.17(e) and 1.17(h)). The proposed amendments to Regulations 1.10, 1.16 and 1.18 would reduce reporting requirements applicable to IBs, because financial reports that the IB must now file with both the Commission and the NFA would be filed with the NFA only. Proposed amendments to Regulation 1.12, which would shorten reporting time frames to the same periods required by comparable SEC rules, should have no economic impact on an IB that is also registered as a securities broker or dealer with SEC. Moreover, the advances in technology since 1978 would reduce the effect, if any, of the proposed Rule 1.12 amendments on those IBs that are not registered with the SEC. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on the significance of the economic impact of the proposed rules, if any, on IBs.

B. Paperwork Reduction Act

The proposed rulemaking includes information collection requirements as a result of the proposed amendment to Regulation 1.10, which would require

FCMs to prepare and file unaudited financial reports on a monthly rather than a quarterly basis. The Paperwork Reduction Act of 1995 ("PRA")³⁹ 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. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") for its review.

Collection Of Information. (Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038-0024.)

FCMs currently prepare and file quarterly unaudited financial reports under Rule 1.10, and they also prepare and file monthly capital computations under Rule 1.18. Under the proposed amendment to Rule 1.10, FCMs would file unaudited financial reports on a monthly basis, which would also satisfy the existing monthly reporting requirement of Rule 1.18. The Commission has therefore determined that the proposed amendments to Rule 1.10 and Rule 1.18 would increase by 537 hours the total annual reporting burden associated with the above-referenced collection of information, which has been approved previously by OMB.

The estimated burden of the proposed amendments to Rule 1.10 and Rule 1.18 was calculated as follows:

The burden associated with Rule 1.10 is expected to be 5,577 hours as a result of the proposed amendment to Rule 1.10, which represents an increase of 3,687 hours:

Estimated number of respondents:

169.

Reports annually by each respondent:

12.

Total annual responses: 2,028.

Estimated average number of hours per response: 2.75.

Annual reporting burden: 5,577.

The existing burden associated with Commission Rule 1.18 is expected to decline to zero as a result of the proposed amendment to Rule 1.18, which represents a decrease of 3,150 hours.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418-5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the

satisfactory subordination agreements that were entered into prior to December 20, 1978.

³⁶ 47 FR 18618 (April 30, 1982).

³⁷ 47 FR at 18619.

³⁸ 47 FR at 18618, 18620.

³⁹ 44 U.S.C. 3507(d).