

level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### 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 AD will not have federalism implications under Executive Order 13132. This AD will 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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 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 (AD):

**2006-20-14 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39-14878. Docket No. FAA-2007-26797; Directorate Identifier 2006-NM-195-AD.

#### Effective Date

(a) This AD becomes effective January 16, 2007, to all persons except those persons to whom it was made immediately effective by AD 2006-20-14, issued on October 10, 2006, which contained the requirements of this amendment.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 STD, -200 LR, and -200 SU airplanes, and Model ERJ 190-100 STD, -100 LR, and -100 IGW airplanes; certificated in any category; as identified in EMBRAER Service Bulletins SB No. 170-52-0029 and SB No. 190-52-0011, both dated August 21, 2006.

#### Unsafe Condition

(d) This AD results from a report indicating that this equipment is defective. We are issuing this AD to prevent failure of this equipment, which could jeopardize flight safety.

#### 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.

#### Transfer of Airplane and Requirement To Inform New Operator of This AD

(f) When an operator of an affected airplane sells or otherwise transfers the airplane to another operator, the new operator must be informed of this AD in a manner consistent with the procedures found in 49 CFR part 15.

#### Replacement

(g) Within 60 days after the effective date of this AD, modify the flight deck door electronic equipment in accordance with a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA. Doing all actions in the Accomplishment Instructions of the applicable EMBRAER service bulletin identified in Table 1 of this AD is one approved method; except where the applicable service bulletin specifies to send

the removed flight deck door electronic equipment to the manufacturer in paragraph 3.C., that action is not necessary.

TABLE 1.—SERVICE BULLETINS

For model—	EMBRAER service bulletin—
(1) ERJ 170 airplanes .....	170-52-0029, dated August 21, 2006.
(2) ERJ 190 airplanes .....	190-52-0011, dated August 21, 2006.

#### Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane any cockpit door control panel identified in paragraph 1.A. of the applicable service bulletin in Table 1 of this AD.

#### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on December 21, 2006.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7-147 Filed 1-9-07; 8:45 am]

**BILLING CODE 4910-13-P**

### COMMODITY FUTURES TRADING COMMISSION

#### 17 CFR Part 1

**RIN 3038-AC27**

#### Limitations on Withdrawals of Equity Capital

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is amending its regulations to provide that the Commission may, by written order, temporarily prohibit a futures commission merchant ("FCM") from carrying out equity withdrawal transactions that would reduce excess adjusted net capital by 30 percent or more. The proposed orders would be based on the Commission's determination that such withdrawal

transactions could be detrimental to the financial integrity of FCMs or could adversely affect their ability to meet customer obligations. The proposed amendments also would provide that an FCM may file with the Commission a petition for rescission of an order temporarily prohibiting equity withdrawals from the FCM.

**DATES:** Effective March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Smith, Deputy Director and Chief Accountant, at (202) 418-5430, or Thelma Diaz, Special Counsel, at (202) 418-5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: [tsmith@cftc.gov](mailto:tsmith@cftc.gov) or [tdiaz@cftc.gov](mailto:tdiaz@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Commission issued a release with proposed amendments to Part 1 of the Commission's regulations in September of 2006, as published for notice and comment in the **Federal Register** (the "Proposing Release").<sup>1</sup> The Commission received comment letters from the Joint Audit Committee ("JAC")<sup>2</sup> and two designated contracts markets, the Chicago Mercantile Exchange, Inc. and the Minneapolis Grain Exchange.<sup>3</sup> All of the commenters endorsed the proposed amendments to Regulation 1.17(g), which would provide for Commission orders that temporarily restrict equity capital withdrawals from FCMs if the Commission finds that such withdrawals may be detrimental to the financial integrity of the FCM or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets. The Proposing Release also included other proposed amendments to Regulations 1.12 and 1.17, which would update these regulations by adding references to "limited liability companies" and "limited liability company members."<sup>4</sup> For the reasons

discussed below, the Commission is adopting each of these amendments as proposed in the Proposing Release.

**II. Background**

Commission Regulation 1.17(e) prohibits all equity withdrawal transactions that would reduce the adjusted net capital of FCMs or introducing brokers ("IBs") beyond the amounts permitted by the regulation.<sup>5</sup> The transactions affected by the regulation include any withdrawals made by the action of a stockholder or partner or by redemption or repurchase of shares of stock by "consolidated entities",<sup>6</sup> dividend payments or similar advances or loans made to stockholders, partners, sole proprietors, or employees. When determining the effect of the proposed equity withdrawal transaction on the firm's capital, the firm also must take into account other pending equity withdrawal transactions and scheduled liability payments that will reduce its capital within six months after the subject equity withdrawal transaction.<sup>7</sup> The proposed equity withdrawal transaction is prohibited if, when added together with such other planned capital reductions, it would result in capital levels that are less than required by Regulation 1.17(e).

The purpose of these equity withdrawal restrictions is to help preserve and enhance the required compliance by FCMs and IBs with the minimum financial requirements set forth in the Commission's regulations.<sup>8</sup>

2004 related to the management of LLCs, in order to determine persons with appropriate signature authority to file financial reports for the FCM or IB.

<sup>5</sup> Commission regulations cited in this release may be found at 17 CFR Ch. I (2006). Generally speaking, Regulation 1.17(e) prohibits equity withdrawal transactions if such withdrawals would reduce the firm's adjusted net capital to less than 120 percent of its minimum adjusted net capital requirement under Regulation 1.17(a)(1). Such transactions also are prohibited if they would result in less than the minimum amount of equity required under Regulation 1.17(d), which provides that FCMs and IBs must maintain a debt-equity ratio of at least 30 percent equity.

<sup>6</sup> Commission Regulation 1.17(f) requires, and in other circumstances permits, FCMs and IBs to consolidate the assets and liabilities of their subsidiaries and/or affiliates in a single computation of adjusted net capital for the FCM or IB and its consolidated entities.

<sup>7</sup> Regulation 1.17(e) specifically requires the firm to combine the amount of the subject equity withdrawal transaction with any of the following that are scheduled to occur within six months after the subject withdrawal: any other proposed equity withdrawal; any payments under satisfactory subordination agreements under Regulation 1.17(h); and any payments of the liabilities identified in Regulation 1.17(c)(4)(vi).

<sup>8</sup> Section 4f(b) of the Commodity Exchange Act ("Act") authorizes the Commission, by regulation, to impose minimum financial and related reporting requirements on FCMs and IBs. The Act is codified

As the Commission has explained elsewhere, the Commission's minimum financial requirements protect customers and other market participants by requiring FCMs and IBs to maintain minimum levels of liquid assets in excess of their liabilities to finance their business activities.<sup>9</sup> Moreover, pursuant to Section 4d of the Act,<sup>10</sup> FCMs are required to segregate from their own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to customers from their open futures and option positions. Part 30 of the Commission's regulations also calls for FCMs to set aside funds, called the "foreign futures and foreign options secured amount", to help protect the funds of U.S. customers trading on non-U.S. futures markets.<sup>11</sup> In the event of a shortfall in the Section 4d segregated funds or the Part 30 secured funds that an FCM must hold, the Commission's minimum net capital requirements provide protection to customers by requiring each FCM to maintain a minimum level of assets that are readily available to be contributed in the event of a shortfall in the customer funds. The minimum capital requirements also protect customers and market participants by ensuring that an FCM remains solvent while waiting for margin calls to be met.

As an additional measure to ensure capital compliance by FCMs, Commission Regulation 1.12(g)(2) requires each FCM to provide notice to the Commission of certain equity withdrawal transactions.<sup>12</sup> In particular, Regulation 1.12(g)(2) requires each FCM to provide notice at least two business days prior to an action to withdraw equity from the FCM, or a subsidiary or affiliate consolidated pursuant to Regulation 1.17(f), if the equity withdrawal transaction would cause, on a net basis, a reduction in the FCM's excess adjusted net capital of 30 percent or more. In response to the receipt of such a notice, Regulation 1.12(g)(3) provides that the Director of the Commission's Division of Clearing and Intermediary Oversight ("Division"), or the Director's designee, may require that the FCM provide, within three business

at 7 U.S.C. 1 *et seq.* (2000), and Section 4f(b) of the Act is codified at 7 U.S.C. 6f(b).

<sup>9</sup> 68 FR 40835, 40836 (July 9, 2003) (Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers).

<sup>10</sup> Section 4d of the Act is codified at 7 U.S.C. 6d (2000).

<sup>11</sup> The term "foreign futures and foreign options secured amount" is defined in Regulation 1.3(rr).

<sup>12</sup> Regulation 1.12(g) applies only to FCMs and not IBs.

<sup>1</sup> See 71 FR 57451 (September 29, 2006).

<sup>2</sup> The JAC is a committee formed by U.S. commodity futures and options exchanges and the National Futures Association to coordinate audit and financial surveillance activities of FCMs.

<sup>3</sup> The comment letters are available for inspection and copying at the Commission's Washington office in its public reading room, Room 4072, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The telephone number for the public reading room is (202) 418-5025. The comment letters are also available on the Commission's public Web site, at [http://www.cftc.gov/foia/comment06/foi06-007\\_1.htm](http://www.cftc.gov/foia/comment06/foi06-007_1.htm).

<sup>4</sup> The Commission has revised other regulations to reflect the development of limited liability companies ("LLCs"). See, e.g. 69 FR 49784, 49793-4 (August 12, 2004). The amendments adopted in

days from the date of the request or such shorter period as the Director or designee may specify, such other information as the Director or designee determines to be necessary based upon market conditions, reports provided by the FCM, or other available information.<sup>13</sup>

When first proposing the notification provision eventually adopted as Regulation 1.12(g)(2), the Commission noted that it could serve as "early warning" of impending financial difficulties at an FCM or at its holding company.<sup>14</sup> The only consequence that the regulation expressly contemplates as a result of the warning is that the Commission may require additional information from the FCM, with the response to be provided in a period of three days or less, as directed by the Commission. At the time that Regulation 1.2(g)(2) was adopted, the Commission determined that it was not necessary to adopt additional limitations within the Commission's regulations on equity withdrawal transactions.<sup>15</sup>

However, the recent precipitous decline of a large FCM holding company has confirmed that expedited action may be necessary to protect FCM capital in the face of increasing financial pressures experienced by its parent and/or affiliated entities. In this recent example, the FCM registrant was part of a complex organizational group consisting of several layers of holding companies and their subsidiaries. In October of 2005, the parent company for the group announced that its chief executive officer had been placed on leave, and that its financial statements for the years 2002 through 2005 should not be relied upon. The next day, federal authorities charged the chief executive officer with securities fraud, and on the following day the holding

company declared that certain liquidity difficulties were causing it to impose a 15-day moratorium for the activities of a nonregulated subsidiary. According to prior financial filings of the holding company, this nonregulated subsidiary had been responsible for a material portion of the holding company's business.

In response to these foregoing events, the Securities and Exchange Commission ("SEC") issued an order to temporarily restrict withdrawals of capital from two other subsidiaries of the holding company, which were registered as securities broker-dealers.<sup>16</sup> In issuing the order, the SEC cited to its regulation, 17 CFR 240.15c3-1(e)(3)(i), which provides that the SEC may by order restrict, for a period up to twenty business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate, if (1) such withdrawal, advance or loan when aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period, exceeds 30 percent of the broker or dealer's excess net capital; and (2) the SEC, based on the facts and information available, concludes that the withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities that may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act.<sup>17</sup> As described by the SEC, § 240.15c3-1(e)(3)(i) enables the SEC and its staff to examine further the financial condition of the broker-dealer, so as to determine whether, and under what circumstances, to permit the withdrawal, entirely or partially, or to prohibit the withdrawal for additional periods by issuing subsequent orders, with terms that are no longer than twenty business days.<sup>18</sup>

### III. Amendments to Regulations 1.12 and 1.17

As proposed in the Proposing Release, the Commission is adding a new paragraph (g) to Regulation 1.17, which will enhance the Commission's ability, in the face of fast-developing events, to impose temporary restrictions on the flow of capital from an FCM to its holding company and other affiliated entities, as appropriate.<sup>19</sup> It is imperative that the Commission have the option to consider requiring such temporary delays of equity withdrawals whenever urgent circumstances so require. Under the amended regulation, the Commission may issue a written order to impose temporary restrictions on equity withdrawals for a period of up to twenty business days, and the Commission may continue to make the restrictions effective against the FCM by issuing subsequent orders, each with a term of no more than twenty business days. The order would restrict any withdrawal by the FCM of equity capital, or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the FCM, or from a subsidiary or affiliate of the FCM consolidated pursuant to § 1.17(f), would cause a net reduction in the FCM's excess adjusted net capital of 30 percent or more; and

(ii) The Commission has concluded, in light of available facts and circumstances, that such withdrawal, advance or loan may be detrimental to the financial integrity of the FCM, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.

During the periods that such orders are effective, Commission staff may evaluate the effect of the proposed withdrawals on the continuing adequacy of customer safeguards at the firm, including the continuing adequacy of the firm's liquid assets, in light of the most current information available from the FCM concerning its operations and those of its holding company and affiliates. These amendments to Regulation 1.17 may therefore serve to further enhance the security of customer funds and the overall financial integrity of the futures markets.<sup>20</sup>

<sup>19</sup> Paragraph (g) of Regulation 1.17 currently is reserved.

<sup>20</sup> In the years since the Commission last adopted rule amendments addressing equity withdrawal transactions, the amount of funds that FCMs are

<sup>13</sup> Regulation 1.12(g)(2) also provides that the Commission may require the FCM to cause a Material Affiliated Person, as that term is defined in Commission Regulation 1.14(a)(2), to respond to requests for information from the Division Director.

<sup>14</sup> The provisions of this regulation originally were included among several proposals made by the Commission in 1994 in response to the financial difficulties experienced by certain FCMs operating within holding company structures. These proposals were intended to provide the Commission with access to information concerning the activities of FCM affiliates whose activities were reasonably likely to have a material impact on the financial or operational condition of the FCM. The Commission subsequently determined, in response to the recommendations of several commenters, that the notice requirements in Regulation 1.12(g) should be applied broadly to all FCMs, and not just to those subject to reporting requirements with respect to their material affiliates. *See, generally*, 59 FR 9689, 9690-9691 (March 1, 1994) (Risk Assessment for Holding Company Systems).

<sup>15</sup> 61 FR 19177, 19180 (May 1, 1996).

<sup>16</sup> A copy of the SEC order, dated October 13, 2005, may be accessed electronically at <http://www.sec.gov/rules/other/34-52606.pdf>.

<sup>17</sup> This SEC regulation also provides that an order temporarily prohibiting the withdrawal of capital shall be rescinded if, sometime after a hearing that is to be held within two business days from the date of the request in writing by the broker or dealer, the SEC determines that the restriction on capital withdrawal should not remain in effect. *See* 17 CFR 240.15c3-1(e)(3)(ii).

<sup>18</sup> 55 FR 34027, 34030 (August 15, 1990) (proposing amendments to SEC Regulation 15c3-1 regarding withdrawals of equity capital).

The Commission also is amending Regulation 1.17(g)(2) to provide that an FCM may file a written petition with the Commission to request rescission of an order temporarily restricting equity withdrawals from the FCM. The Commission will notify the FCM in writing that its petition for rescission had been denied, or, if the Commission determined that the order should not remain in effect, the order would be rescinded. The petition filed by the FCM must specify the facts and circumstances supporting its request for rescission.

Finally, the Commission is also amending Commission Regulations 1.12(g)(2), 1.17(d)(1), and 1.17(e), as proposed in the Proposing Release. These regulations include references to FCMs and IBs that are organized as corporations, partnerships, or sole proprietorships, but currently lack a specific reference to firms organized as limited liability companies. By including applicable references for limited liability companies and their members, the amended regulations modernize the provisions of Regulations 1.12 and 1.17.

#### IV. Related Matters

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, when amending their rules, consider the impact of those amendments on small businesses. The Commission included in the Proposing Release a certification from the Chairman that these rules would not have a significant economic impact on a substantial number of small entities.<sup>21</sup> The Commission received no comments on the certification.

##### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>22</sup> 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. As noted in the Proposing Release,<sup>23</sup> these amended regulations do not require a new collection of information on the

required to hold as segregated funds has more than doubled. As of August 31, 1995, FCMs were required to hold approximately \$25 billion as segregated funds, and \$6 billion as secured funds. As of December 31, 2005, the amount that FCMs were required to hold as segregated funds had increased to over \$95 billion, and the amount required to be held as secured funds had grown to almost \$25 billion.

<sup>21</sup> 71 FR at 57452.

<sup>22</sup> 44 U.S.C. 3507(d).

<sup>23</sup> 71 FR at 57453.

part of the entities that are subject to the amended regulations.

##### C. Cost-Benefit Analysis

Section 15(a) of the Act 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 Commission could 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 regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. The amended Regulation 1.17(g) enables the Commission to issue orders temporarily restricting certain equity withdrawal transactions in circumstances that pose significant concerns for the financial condition of FCMs. The Commission has considered the costs and benefits of the amended regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* Under the amended Regulation 1.17(g), the Commission would be able, in exceptional circumstances, to temporarily delay certain withdrawals of FCM equity by their owners and other insiders, which would contribute to the benefit of ensuring that eligible FCMs can meet their financial obligations to customers and other market participants.

2. *Efficiency and competition.* The amended regulations should have no effect, from the standpoint of imposing costs or creating benefits, on the efficiency and competition of the futures markets.

3. *Financial integrity of futures markets and price discovery.* Amended Regulation 1.17(g) contributes to the financial integrity of futures markets by helping to confirm and preserve the capital of FCM registrants. The amended

regulations should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* In order to avoid application of amended Regulation 1.17(g), FCMs may enhance existing risk management practices relating to the risks that practices of FCM affiliates may pose to the ability of FCMs to meet their obligations to customers and other participants in the futures markets.

5. *Other public interest considerations.* The amendments to Regulations 1.12(g), 1.17(d)(1) and 1.17(e), which add references to limited liability company members and their capital contributions, help modernize the Commission's regulations by taking into consideration new forms of business organizations used by FCMs and IBs.

The Commission invited, but did not receive, public comment on its application of the cost-benefit provision.<sup>24</sup> After considering these factors, the Commission has determined to issue this final rule.

#### List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ Accordingly, 17 CFR Chapter I is hereby amended 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, 5, 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, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106-554, 114 Stat. 2763 (2000).

■ 2. Section 1.12 is amended by revising paragraph (g)(2) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or 17 CFR 240.15c3-1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of

<sup>24</sup> 71 FR at 5745.

the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however,* That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

\* \* \* \* \*

■ 3. Section 1.17 is amended by revising paragraph (d)(1) introductory text; adding paragraph (d)(1)(ii)(D); revising paragraph (e) introductory text; and adding paragraph (g), to read as follows:

**§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.**

\* \* \* \* \*

(d) \* \* \*

(1) Equity capital means a satisfactory subordination agreement entered into by a partner or stockholder or limited liability company member which has an initial term of at least 3 years and has a remaining term of not less than 12 months if:

\* \* \* \* \*

(ii) \* \* \*

(D) In the case of a limited liability company, the sum of its capital accounts of limited liability company members, and unrealized profit and loss.

\* \* \* \* \*

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity

capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, limited liability company member, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan:

\* \* \* \* \*

(g)(1) The Commission may by order restrict, for a period up to twenty business days, any withdrawal by a futures commission merchant of equity capital, or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan would cause, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or 17 CFR 240.15c3-1e), a net reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, and

(ii) The Commission, based on the facts and information available, concludes that any such withdrawal, advance or loan may be detrimental to the financial integrity of the futures commission merchant, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.

(2) The futures commission merchant may file with the Secretary of the Commission a written petition to request rescission of the order issued under paragraph (g)(1) of this section.

The petition filed by the futures commission merchant must specify the facts and circumstances supporting its request for rescission. The Commission shall respond in writing to deny the futures commission merchant's petition for rescission, or, if the Commission determines that the order issued under paragraph (g)(1) of this section should not remain in effect, the order shall be rescinded.

\* \* \* \* \*

Issued in Washington, DC, on January 5, 2007 by the Commission.

**Eileen Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. E7-173 Filed 1-9-07; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. RM06-4-001; Order No. 679-A]

#### Promoting Transmission Investment Through Pricing Reform

Issued December 22, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; order on rehearing.

**SUMMARY:** In this order on rehearing, the Federal Energy Regulatory Commission (Commission) reaffirms its determinations in part and grants rehearing in part of *Promoting Transmission Investment through Pricing Reform*, Order No. 679. Order No. 679 amended Commission regulations to establish incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.

**DATES:** *Effective Date:* This final rule and order on rehearing will be effective on February 9, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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