

disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital.

(iii) Notwithstanding paragraph (h)(1)(B)(ii) of this section, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a savings association that is part of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the association could reasonably expect to have refunded by its parent.

(2) Projected future taxable income. Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.

(3) *Unrealized holding gains and losses on available-for-sale debt securities.* The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

Dated: December 15, 2008.

**John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, December 19, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 16th day of December, 2008.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: December 15, 2008.

By the Office of Thrift Supervision.

**John Reich,**

*Director.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 140

**RIN 3038-AC68**

### Delegation of Authority and Change in Position Title

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is amending certain provisions of its part 140 regulations to add the Chief Economist and the Deputy Chief Economist of the Office of the Chief Economist as persons to whom certain authorities are delegated. The Commission is also amending part 140 to reflect a change in position title from "Regional Coordinators" to "Regional Administrators."

**DATES:** *Effective Date:* December 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Megan Sperling, Office of the General Counsel, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: 202-418-5150. E-mail: [msperling@cftc.gov](mailto:msperling@cftc.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background Information

On July 1, 2002, the Commission reassigned the responsibilities of the former Division of Trading and Markets and Division of Economic Analysis to the newly established Division of Clearing and Intermediary Oversight, Division of Market Oversight and Office

of the Chief Economist. On October 7, 2002, the Commission amended several of its rules in Chapter I of Title 17 of the Code of Federal Regulations to reflect the reassignment of responsibilities, including delegations of authority, resulting from the reorganization of its staff. The Commission failed to include certain delegations of authority to the Chief Economist of the Office of the Chief Economist.

The Commission is amending rules 140.72 and 140.73 in Chapter I of Title 17 of the Code of Federal Regulations to reflect delegated authority to the Chief Economist and the Deputy Chief Economist of the Office of the Chief Economist. Rule 140.72(a), which delegates authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization, is hereby amended to extend delegated authority to the Chief Economist and the Deputy Chief Economist of the Office of the Chief Economist. In addition, the Commission is revising Rule 140.72(a) to reflect the change in name of the position of "Regional Coordinator" to "Regional Administrator." Rule 140.73(a), which delegates authority to disclose information to the United States, States, foreign government agencies and foreign futures authorities, is amended to extend delegated authority to the Chief Economist and the Deputy Chief Economist of the Office of the Chief Economist. As amended, these rules reflect the assignment of delegation authority to the Office of the Chief Economist, and the technical correction of a position title.

#### II. Related Matters

##### A. No Notice Required Under 5 U.S.C. 553

The Commission has determined that these amendments are exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally requires notice of proposed rulemaking and provides other opportunities for public participation. According to the exemptive language of 5 U.S.C. 553, these amendments pertain to "rules of agency organization, procedure or practice," as to which there exists agency discretion not to provide notice. If made effective immediately, they will promote efficiency and facilitate the Commission's core mission without imposing a new burden. Thus, the Commission has determined to make the amendments to Rules 140.72 and 140.73 effective immediately. For the above reasons, the notice requirements under 5 U.S.C. 553 are inapplicable.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies with rulemaking authority to consider the impact those rules will have on small businesses. The RFA defines the term "rule" to mean "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title \* \* \* for which the agency provides an opportunity for notice and public comment." 5 U.S.C. 601(2). Since the rules are not being effected pursuant to section 553(b), they are not "rules" as defined in the RFA, and the analysis and certification process in that section do not apply.

### C. Paperwork Reduction Act

The amendments to Part 140 do not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

### D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing a new regulation. The Commission understands that, by its terms, section 15(a) 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. Nor does it require that each rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that 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. Accordingly, the Commission can, in its discretion, give greater weight to any one of the five enumerated areas of concern and can, 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 Commodity Exchange Act.

The Commission considered the costs and benefits of this rule package in light of the specific areas of concern identified in section 15 when it reorganized its staff in 2002. It has

additionally determined that the amendments will enhance the protection of market participants and further Commission programs and operations by delegating authority.

### List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ Accordingly, 17 CFR part 140 is amended as follows:

### PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 1. The authority citation for part 140 is revised to read as follows:

**Authority:** 7 U.S.C. 2 and 12a.

■ 2. In § 140.72, revise the first sentence of paragraph (a) to read as follows:

**§ 140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.**

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Clearing and Intermediary Oversight, each Deputy Director of the Division of Clearing and Intermediary Oversight, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Market Oversight, each Deputy Director of the Division of Market Oversight, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, each of the Regional Administrators, each of the Directors of the Market Surveillance Branches, the Chief Economist of the Office of the Chief Economist, the Deputy Chief Economist of the Office of the Chief Economist, the Director of the Office of International Affairs, and the Deputy Director of the Office of International Affairs, the authority to disclose to an official of any contract market, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning

any transaction or market operation, including the names of the parties thereto. \* \* \*

\* \* \* \* \*

■ 3. In § 140.73, revise the introductory text of paragraph (a) to read as follows:

**§ 140.73 Delegation of authority to disclose information to the United States, States, and foreign government agencies and foreign futures authorities.**

(a) Pursuant to sections 2(a)(11), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel or, in his or her absence, to each Deputy General Counsel, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Associate Director of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, the Director of the Division of Market Oversight or, in his or her absence, each Deputy Director of the Division of Market Oversight, the Director of the Market Surveillance Section, the Director of the Division of Clearing and Intermediary Oversight or, in his or her absence, each Deputy Director of the Division of Clearing and Intermediary Oversight, the Chief Economist of the Office of the Chief Economist, the Deputy Chief Economist of the Office of the Chief Economist, and the Director of the Office of International Affairs or, in his or her absence, the Deputy Director of the Office of International Affairs, the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

\* \* \* \* \*

Issued in Washington, DC, on December 16, 2008 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

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