

(Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.<sup>2</sup> These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule the Commission will publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

<sup>2</sup> Reports for clothes washers are due March 1.

The annual submissions of data for clothes washers have been made and have been analyzed by the Commission. The Commission has found that a significant number of the upper and lower limits of the ranges have changed by more than 15%. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published on June 13, 1996, 61 FR 29939.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after August 12, 1997. In addition, as of this effective date, the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers must be based on the 1997 Representative Average Unit Costs of Energy for electricity (8.31 cents per kilowatt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996, 61 FR 29939, and by the Commission on February 5, 1997, 62 FR 5316.

#### List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

#### PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

#### Appendix F to Part 305—Clothes Washers

##### Range Information

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact.		
Top Loading .....	570 .....	578
Front Loading .....	(*) .....	(*)

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard.		
Top Loading .....	312 .....	1306
Front Loading .....	241 .....	278

(\*) No data submitted.

By direction of the Commission.

**Donald S. Clark,**

Secretary.

[FR Doc. 97-12578 Filed 5-13-97; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 5 and 31

#### Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

**AGENCY:** Commodity Futures Trading Commission

**ACTION:** Final schedule of fees.

**SUMMARY:** The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), audits of leverage transaction merchants (17 CFR part 31, appendix B) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1, appendix B). The following fee schedule for fiscal year 1997 reflects the average annual actual costs to the Commission of providing those services during fiscal years 1994, 1995 and 1996. Accordingly, the Commission will charge the following fees: Applications for contract market designation for a futures contract will be maintained at \$8,300; contract market designation for an option contract will be reduced from \$1,800 to \$1,700; contract markets that simultaneously submit designation applications for a futures and an option on that futures contract will be reduced from a combined fee of \$9,200 for both to \$9,000 for both; and leverage commodity registration will be maintained at \$4,500. In addition, the Commission is publishing the schedule of fees for registered futures association and exchange rule enforcement and financial reviews.

**DATES:** *Effective:* Contract Market Designation and Leverage Commodity Registration May 14, 1997.

Registered Futures Association and Exchange Rule Enforcement and Financial Reviews are due July 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gerald P. Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number 202-418-5160.

**SUPPLEMENTARY INFORMATION:** The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts these fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the fiscal year 1997 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

## Background Information

### I. Computation of Fees

The Commission has established fees for certain activities and functions performed by the Commission.<sup>1</sup> In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs (direct costs), and benefits and administrative costs (overhead costs).

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor that is made up of two components—benefits and general and administrative costs. Benefits, which include retirement, insurance and leave, are based on a government-wide standard established by the Office of Management and Budget in Circular A-76. General and administrative costs include the Commission's costs for space, equipment, utilities, etc. These general and administrative costs are derived by computing the percentage of

Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for prior fiscal years were 95% in 1994, 92% in 1995 and 98% in 1996.

Once the total personnel costs for each fee item (contract market designation, rule enforcement review, etc.) have been determined for each year the overhead factor is applied and the costs for fiscal years 1994, 1995 and 1996 are averaged. This results in a calculation of the average annual cost over the three-year period.

### II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three-year moving average of the actual costs expended and the number of contracts reviewed during that period of time. The fee charged was reviewed again in fiscal year 1985 and every year thereafter to determine the fee for the current year. In fiscal year 1985 the overwhelming majority of designation applications was for futures contracts as opposed to option contracts. Therefore, the proposed fee covered both futures and option designation applications. In fiscal 1992 the Commission reviewed its data on the actual costs for reviewing designation applications for both futures and option contracts and determined that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an option contract. It also determined that, when designation applications for both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of the option contract designation application was even lower than the individual cost of reviewing the futures contract plus the option contract.

The Commission staff reviewed the actual costs of processing applications for contract market designation for a futures contract for fiscal years 1994, 1995 and 1996 and found that the average cost over the three year period was \$8,368. The review of actual cost of processing applications for contract market designation for an option contract for fiscal years 1994, 1995 and 1996 revealed that the average costs over the same three year period was \$1,795. Accordingly, the Commission has determined that the fee for applications for contract market

designation for a futures contract will be maintained at \$8,300 and the fee for applications for contract market designation as an option contract will be reduced to \$1,700 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets simultaneously submitting designation applications for a futures contract and an option contract on that futures contract will be reduced to \$9,000.

On March 7, 1997, the Commission published final rules in the **Federal Register**, 62 FR 10434, which revised the procedures for review and approval of applications for Contract Market Designation. The effect of these rules on the assessment of fees for designation will be realized in future years.

### III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in fiscal years 1994, 1995 or 1996. Accordingly, the Commission will maintain the present fee of \$4,500 for leverage commodity registration.

### IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Under the formula adopted in 1993 (58 FR 42643, August 11, 1993, which appears in 17 CFR part 1, appendix B), the Commission calculates the rule enforcement and financial review fees based on its actual costs, as well as actual exchange trading volume. The formula for calculating the rule enforcement and financial review fee is  $0.5a + 0.5vt$  = current fee. In the formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years and "t" equals the average annual cost for all exchanges.

To determine the fee, first the staff calculates actual costs for the last three fiscal years. The average annual costs for that time period for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY 1994-1996 average annual costs for review services
Chicago Board of Trade ...	\$264,818.49
Chicago Mercantile Exchange .....	230,131.08
New York Mercantile/COMEX Exchange .....	216,924.81
Coffee, Sugar and Cocoa Exchange .....	91,248.09
New York Cotton/New York Futures Exchange	86,629.94
Kansas City Board of Trade .....	17,754.39

<sup>1</sup> See section 237 of the Futures Trading Act of 1982 (7 U.S.C. 16a) and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Exchange	FY 1994–1996 average annual costs for review services
Minneapolis Grain Ex- change .....	29,728.52
Philadelphia Board of Trade .....	2,893.69
Total .....	940,159.01

Second, the staff calculates the trading volume for the past three fiscal years to determine the cumulative volume for each exchange and its percentage of total volume across all exchanges during that same period. The trading volume figures for that period are as follows:

Exchange	FY 1994–1996 cumulative volume (of contracts)	Percent- age of total vol- ume across all ex- changes
Chicago Board of Trade .....	657,641,820	43.5642
Chicago Mer- cantile Ex- change .....	561,261,279	37.1797
New York Mer- cantile/ COMEX Ex- change .....	228,952,651	15.1665
Coffee, Sugar and Cocoa Ex- change .....	35,326,602	2.3401
New York Cot- ton/New York Futures Ex- change .....	17,810,325	1.1798
Kansas City Board of Trade .....	5,665,084	0.3753
Minneapolis Grain Ex- change .....	2,810,771	0.1862
Philadelphia Board of Trade .....	123,281	0.0082
Total .....	1,509,591,813	100.00

Finally, the staff calculates the current fees by applying the appropriate exchange data to the formula. The following is an example of how the rule enforcement and financial review fees for exchanges are calculated.

*Example:* The Minneapolis Grain Exchange (MGE) average annual cost is \$29,728.52 and its percentage of total volume over the last three years is 0.1862. The annual average total cost for all exchanges during that same

time period is \$940,159.01. As a result, the MGE fee for fiscal 1997 is:  
 $(.5)(\$29,728.52) + (.5)(.001862)(\$940,159.01) =$   
 current fee or  
 $\$14,864.26 + \$856.85 = \$15,721.11$

As stated in 1993 when the formula was adopted, if the calculated fee using this formula is higher than actual costs, the exchange pays actual costs. If the calculated fee using the formula is less than actual costs then the exchange pays the calculated fee. No exchange will pay more than actual costs. Also, if an exchange has no volume over the three-year period it pays a flat 50% of actual costs.

The National Futures Association (NFA) is a registered futures association which is responsible for regulating the practices of its members. In its oversight role, the Commission performs rule enforcement and financial reviews of the NFA. The Commission's average annual cost for reviewing the National Futures Association during fiscal years 1994 through 1996 is \$308,107.27. The National Futures Association will continue to be charged 100% of its actual costs.

Based upon this formula the fees for all of the exchanges and the NFA for fiscal 1997 are as follows:

Exchange	FY 1997 fee
Chicago Board of Trade ...	\$264,818.49
Chicago Mercantile Ex- change .....	230,161.08
New York Mercantile/ COMEX Exchange .....	178,257.22
Coffee Sugar and Cocoa Exchange .....	56,393.14
New York Cotton/New York Futures Exchange..	48,744.34
Kansas City Board of Trade .....	10,604.16
Minneapolis Grain Ex- change .....	15,721.11
Philadelphia Board of Trade .....	1,484.42
NFA .....	308,107.27
Total .....	1,114,291.23

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission.

Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairperson, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

\* \* \* \* \*

Issued in Washington, DC on May 8, 1997,  
by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33-7419 and 34-38581; File  
No. S7-23-96]

RIN 3235-AG82

### Expansion of Short-Form Registration To Include Companies With Non- Voting Common Equity

**AGENCY:** Securities and Exchange  
Commission.

**ACTION:** Final rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today is adopting amendments to Forms S-3, F-2 and F-3 under the Securities Act of 1933 ("Securities Act") to include non-voting as well as voting common equity in the computation of the \$75 million aggregate market value of common equity held by non-affiliates of the registrant. The Commission also is adopting conforming amendments to include non-voting as well as voting common equity in calculating the float used in determining small business issuer status and in stating the amount of the public float on Forms 10-K and 10-KSB under the Securities Exchange Act of 1934 ("Exchange Act").

**EFFECTIVE DATE:** The rule revisions are effective June 13, 1997.

**FOR FURTHER INFORMATION CONTACT:**  
Mary J. Kosterlitz, Special Counsel,  
(202) 942-2900, Office of Chief Counsel,  
Division of Corporation Finance,  
Securities and Exchange Commission,  
450 Fifth Street, N.W., Mail Stop 3-3,  
Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** On August 30, 1996, the Commission published for comment proposed amendments to