

approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices inferior to a better published price or the customer's order was executed as part of a block trade.

Rule 11Ac1-7(c) provides that the Commission may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any broker or dealer if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, or the removal of impediments to and perfection of the mechanism of a national market system. New paragraph (a)(71) to Rule 30-3 authorizes the Director to grant exemptions under this paragraph (c) of Rule 11Ac1-7.

The delegation of authority to the Director is intended to conserve Commission resources by permitting Division staff to grant exemptions, where appropriate and in a timely manner, from the provisions of Rules 11Ac1-1 and 11Ac1-7. The Commission anticipates that the delegation of authority will facilitate the timely implementation of the rules, particularly Rule 11Ac1-7. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. The Commission does not expect that exemptions from Rules 11Ac1-1 and 11Ac1-7 will be routinely issued.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedures Act,⁵ that these amendments relate solely to agency organization, procedure, or practice, and do not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Text of Amendment

In accordance with the preamble, the Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. Section 200.30-3 is amended in paragraph (a)(28) by revising the phrase "pursuant to paragraph (d)" to read "pursuant to paragraph (e)" and by adding paragraph (a)(71) to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(71) Pursuant to paragraph (c) of Rule 11Ac1-7 (17 CFR 240.11Ac1-7), to grant exemptions, conditionally or unconditionally, from any provision or provisions of Rule 11Ac1-7.

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By the Commission.

Dated: March 15, 2001.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-7007 Filed 3-20-01; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-44078; File No. S7-17-00]

RIN 3235-AH96

Firm Quote and Trade-Through Disclosure Rules for Options

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission ("Commission") is extending the compliance date for Rule 11Ac1-7 of the Securities Exchange Act of 1934. Rule 11Ac1-7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, unless the transaction was effected on a market that participates in an intermarket linkage plan approved by the Commission. This rule was published on December 1, 2000 (65 FR 75439).

DATES: *Effective Date:* The effective date for Rule 11Ac1-7, (§ 240.11Ac1-7) published on December 1, 2000 (65 FR 75439), remains February 1, 2001.

Compliance Date: The compliance date for Rule 11Ac1-7 (§ 240.11Ac1-7) is extended from April 1, 2001 to October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Colihan, Special Counsel, at (202) 942-0735, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

SUPPLEMENTARY INFORMATION: On November 17, 2000, the Commission adopted Rule 11Ac1-7¹ ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") to require a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote ("intermarket trade-through"), and to disclose the better published quote available at that time.² This disclosure must be made in writing at or before the completion of the transaction, and may be provided in conjunction with the confirmation statement routinely sent to investors. However, a broker-dealer is not required to disclose to its customer an intermarket trade-through if the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan that includes provisions reasonably designed to limit customers' orders from being executed at prices that trade through a better published quote. In addition, broker-dealers will not be required to provide the disclosure required by the Rule if the customer's order is executed as part of a block trade.

In the Adopting Release, the Commission noted that it would reconsider the compliance date if the options exchanges continued to make substantial progress towards implementing a linkage plan.³ The Commission notes that while progress has been made toward implementing the linkage plan approved by the Commission in July 2000,⁴ efforts in this regard have not yet resulted in a linkage that can be implemented before the compliance date of April 1, 2001. Specifically, the options markets have achieved their goal of narrowing the selection of linkage providers to three

¹ 17 CFR 240.11Ac1-7.

² See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) ("Adopting Release").

³ *Id.*

⁴ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan").

⁵ U.S.C. 553(b)(3)(A).

and are on schedule to make the final selection. In addition, on March 12, 2001, the Linkage Plan participants filed an amendment to the Linkage Plan to conform the Linkage Plan to the minimum requirements set forth by the Commission in adopting Rule 11Ac1-7 and therefore, to allow broker-dealers effecting transactions on their markets to be eligible for an exemption from the disclosure requirements of Rule 11Ac1-7 once implementation is completed. In a letter dated February 20, 2001, the Securities Industry Association requested, on behalf of its member firms, that the Commission extend the compliance date of the rule.⁵

Because the Commission believes that options exchanges have continued to make substantial progress towards implementing a linkage, it is extending the compliance date of Rule 11Ac1-7 for six months, to October 1, 2001. The extension is intended to allow the options markets to make a final selection of the vendor to build the linkage, and provide the options exchanges with time to integrate their internal systems into the linkage system, once built. The Commission believes that good cause exists to extend the compliance date so that the options markets can implement a linkage before imposing the disclosure requirements of the Rule on broker-dealers.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedures Act,⁶ that extending the compliance date relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication prior to the extension is unnecessary.

By the Commission.

Dated: March 15, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-7008 Filed 3-20-01; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM00-7-001;
Order No. 641-A]

Revision of Annual Charges Assessed to Public Utilities

March 15, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Denying Rehearing and Granting Clarification in Part.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing and granting clarification in part of its order amending its regulations to establish a new methodology for the assessment of annual charges to public utilities. Under this new methodology, annual charges will be assessed to public utilities that provide transmission service based on the volume of electricity transmitted by those public utilities. In effect, the Commission will assess annual charges on transmission rather than on both power sales and transmission.

EFFECTIVE DATE: This Order Denying Rehearing and Granting Clarification in Part will become effective on March 15, 2001.

FOR FURTHER INFORMATION CONTACT:

Herman Dalgetty (Technical Information), Office of the Executive Director and Chief Financial Officer, 888 First Street, N.E., Washington, D.C. 20426, (202) 219-2918.

Lawrence R. Greenfield (Legal Information), Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-0415.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing and Granting Clarification in Part

Issued March 15, 2001.

I. Introduction

In an effort to reflect changes in the electric industry and in the way the Federal Energy Regulatory Commission (Commission) regulates the electric industry, in Order No. 641,¹ the Commission amended its regulations to establish a new methodology for the assessment of annual charges to public utilities. Under the new regulations,

¹ Revision of Annual Charges Assessed to Public Utilities, Order No. 641, 65 FR 65,757 (November 2, 2000), FERC Stats. & Regs. ¶ 31,109 (2000) (Order No. 641).

annual charges will be assessed to public utilities that provide transmission service based on the volume of electricity they transmit. The new regulations will result in the Commission's assessing annual charges on transmission rather than, as previously, assessing annual charges on both power sales and transmission.

On November 27, 2000, Public Service Electric and Gas Company (PSE&G) filed a request for rehearing of Order No. 641, and, separately, the California Independent System Operator Corporation filed a motion for clarification of Order No. 641. As discussed below, rehearing will be denied, and clarification will be granted in part.

II. Background

A. Commission Authority

The Commission is required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act)² to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year."³ The annual charges must be computed based on methods which the Commission determines to be "fair and equitable."⁴ The Conference Report accompanying the Budget Act provides the Commission with the following guidance as to this phrase's meaning:

[A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; [5] (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[6]

The Commission may assess these charges by making estimates based upon data available to it at the time of the assessment.⁷

² 42 U.S.C. 7178.

³ This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the Federal Power Act (FPA). 16 U.S.C. 803(e), 823a(e).

⁴ 42 U.S.C. 7178(b).

⁵ The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs. See H.R. Rep. No. 99-1012 at 238 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3868, 3883 (Conference Report); see also S. Rep. No. 99-348 at 56, 66 and 68 (1986).

⁶ See Conference Report at 239 (1986 U.S.C.C.A.N. at 3884).

⁷ 42 U.S.C. 7178(c).

⁵ See letter from Marc E. Lackritz, President, Securities Industry Association, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated February 20, 2001 (explaining the difficulty broker-dealers face in their efforts to comply with Rule 11Ac1-7 before an options linkage is fully implemented).

⁶ 5 U.S.C. 553(b)(3)(A).