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## PART 1- GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

### § 1.3 Definitions.

(a) *Board of Trade*. This term means any-an organized exchange or other trading facility.association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.

(b) *Business day*. This term means any day other than a Sunday or holiday. In all notices required by the ~~act~~ Act or by the rules and regulations in this chapter to be given in terms of business days the rule for computing time shall be to exclude the day on which notice is given and include the day on which shall take place the act of which notice is given.

(c) *Clearing member*. This term means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market ~~or registered derivatives transaction execution facility.~~

(d) *Clearing organization*. This term means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market ~~or registered derivatives transaction execution facility.~~

(e) *Commodity*. This term means and includes wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, millfeeds, butter, eggs, Irish potatoes, wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions (as provided by the first section of Pub. L. 85-839) and motion picture box office receipts (or any index, measure, value or data related to such receipts), and all services, rights and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.

(f) *Commodity Exchange Act; the Act.* These terms mean the Commodity Exchange Act, as amended, 7 U.S.C. 1 et seq.

(g) *Institutional customer.* This term has the same meaning as “eligible contract participant” as defined in section 1a(12 18) of the Act.

(h) *Contract market; Designated contract market.* ~~These~~ these terms means a board of trade designated by the Commission as a contract market under the ~~Commodity Exchange~~ Act or in accordance with the provisions of part ~~33-38~~ of this chapter.

(i) *Contract of sale.* This term includes sales, purchases, agreements of sale or purchase and agreements to sell or purchase.

(j) *Controlled account.* An account shall be deemed to be controlled by a person if such person by power of attorney or otherwise actually directs trading for such account.

(k) ~~Customer; commodity customer. These terms have the same meaning and refer to a customer trading in any commodity named in the definition of commodity herein. This term means any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest;~~ *Provided, however,* an owner or holder of a proprietary account as defined in paragraph (y) of this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and §1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a customer within the meaning of the Act and §§1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

(l) *Delivery month.* This term means the month of delivery specified in a contract of sale of any commodity for future delivery.

(m) [Reserved]

(n) *Floor broker*. This term means any person:

(1) Who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person- (i) any commodity for future delivery, security futures product, or swap; or (ii) any commodity option authorized under section 4c of the Act; or

(2) Who is registered with the Commission as a floor broker.

~~on or subject to the rules of any contract market and shall include any person required to register as a floor broker under the Act by virtue of part 33 of this chapter.~~

(o) *Future delivery*. This term does not include any sale of a cash commodity for deferred shipment or delivery.

(p) *Futures commission merchant*. This term means:

(1) ~~Individuals~~ Any individual, association, partnership, corporation, or trust (i) who is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery; a security futures product; a swap; any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; a commodity option authorized under section 4c of the Act; a leverage transaction authorized under section 19 of the Act; or acting as a counterparty in any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act and

(ii) who, in connection with any of these activities accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; ~~on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result therefrom;~~ and

(2) ~~Shall include~~ Any person that is required to registered with the Commission as a futures commission merchant. ~~under the Act by virtue of part 32 or part 33 of this chapter~~

(q) *Member of a contract market*. This term means:

(i) ~~An and includes~~ individuals, associations, partnerships, corporations, ~~and or~~ trusts – (A) owning or holding membership in, or admitted to membership representation on, a ~~contract market~~ registered entity; or (ii) ~~having or given members'~~ trading privileges ~~thereon~~ a registered entity.

(2) A participant in an alternative trading system that is designated as a contract market pursuant to section 5f of the Act is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(r) *Net equity.* (1) For futures and commodity option positions, This term means the credit balance which would be obtained by combining the ~~commodity~~ margin balance of any person with the net profit or loss, if any, accruing on the open ~~trades-futures-or-or-contracts-or~~ commodity option, ~~or swap positions-transactions~~ of such person.

(2) For swap positions other than commodity option positions, this term means the credit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open swap positions of such person.

(s) *Net deficit.* (1) For futures and commodity option positions, This term means the debit balance which would be obtained by combining the ~~commodity~~ margin balance of any person with the net profit or loss, if any, accruing on the open ~~trades-futures-or-contracts~~ or commodity option, ~~or swap transactionspositions~~ of such person.

(2) For swap positions other than commodity option positions, this term means the debit balance which would be obtained by combining the margin balance of any person with the net profit or loss, if any, accruing on the open swap positions of such person.

(t) *Open-~~contracts~~ positions.* This term means:

(1) contracts of purchase or sale of any commodity made by or for any person on or subject to the rules of a board of trade for future delivery during a specified month or delivery period-~~which~~ that have ~~not-neither~~ been fulfilled by delivery nor ~~been~~ offset by other contracts of purchase or sale-~~or-purchase~~ in the same commodity and delivery month;

(2) commodity option transactions that have not expired, been exercised, or offset; and

(3) swaps that have neither expired nor been terminated.

(u) *Person.* This term includes individuals, associations, partnerships, corporations, and trusts.

(v) [Reserved]

(w) *Secretary of Agriculture*. This term means the Secretary of Agriculture or any person to whom authority has heretofore lawfully been delegated or to whom authority may hereafter lawfully be delegated to act in his stead.

(x) *Floor trader*. This term means any person:

(1) Who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account- (i) any commodity for future delivery, security futures product, or swap; or (ii) any commodity option authorized under section 4c of the Act; or

(2) Who is registered with the Commission as a floor trader.

~~on or subject to the rules of any contract market and shall include any person required to register as a floor trader under the Act by virtue of part 33 of this chapter or by rule or regulation of the Commission pertaining to the operation of an electronic trading system.~~

(y) *Proprietary account*. This term means a commodity futures, ~~or~~ commodity option, or swap trading account carried on the books and records of an individual, a partnership, corporation or other type of association (1) for one of the following persons, or (2) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such individual himself, or such partnership, corporation or association itself;

(ii) In the case of a partnership, a general partner in such partnership;

(iii) In the case of a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of the trades of customers or customer funds ~~of customers or option customers~~ of such partnership,

(C) The keeping of records pertaining to the trades of customers or customer funds ~~of customers or option customers~~ of such partnership, or

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) In the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such individual, partnership, corporation or association whose duties include:

(A) The management of the business of such individual, partnership, corporation or association or any part thereof,

(B) The handling of the trades of customers or customer funds ~~of customers or option customers~~ of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of customers or customer funds ~~of customers or option customers~~ of such individual, partnership, corporation or association, or

(D) The signing or co-signing of checks or drafts on behalf of such individual, partnership, corporation or association;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that directly or indirectly controls such individual, partnership, corporation or association; or-

(viii) A business affiliate that, directly or indirectly is controlled by or is under common control with, such individual, partnership, corporation or association. *Provided, however,* That an account owned by any shareholder or member of a cooperative association of producers, within the meaning of sections ~~5(5) and~~ 6a of the Act, which association is registered as a futures commission merchant and carries such account on its records, shall be deemed to be an account of a customer ~~or option customer~~ and not a proprietary account of such association, unless the shareholder or member is an officer, director or manager of the association.

(z) *Bona fide hedging transactions and positions* —(1) *General definition.* Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising,

(ii) The potential change in the value of liabilities which a person owns or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z) (2) and (3) of this section ~~and §§1.47 and 1.48 of the regulations~~ have been satisfied.

(2) *Enumerated hedging transactions.* The definitions of bona fide hedging transactions and positions in paragraph (z)(1) of this section includes, but is not limited to, the following specific transactions and positions:

(i) *Sales* of any commodity for future delivery on a contract market which do not exceed in quantity:

(A) Ownership or fixed-price purchase of the same cash commodity by the same person; and

(B) Twelve months' unsold anticipated production of the same commodity by the same person provided that no such position is maintained in any future during the five last trading days of that future.

(ii) *Purchases* of any commodity for future delivery on a contract market which do not exceed in quantity.

(A) The fixed-price sale of the same cash commodity by the same person.

(B) The quantity equivalent of fixed-price sales of the cash products and by-products of such commodity by the same person; and

(C) Twelve months' unfilled anticipated requirements of the same cash commodity for processing, manufacturing, or feeding by the same person, provided that such transactions and positions in the five last trading days of any one future do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and for the next succeeding month.

(iii) Offsetting sales and purchases for future delivery on a contract market which do not exceed in quantity that amount of the same cash commodity which has been bought and sold by the same person at unfixed prices basis different delivery months of the contract market, provided that no such position is maintained in any future during the five last trading days of that future.

(iv) Sales and purchases for future delivery described in paragraphs (z)(2)(i), (ii), and (iii) of this section may also be offset other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery are substantially related to the fluctuations in value of the actual or anticipated cash position, and provided that the positions in any one future shall not be maintained during the five last trading days of that future.

(3) *Non-enumerated cases.* Upon specific request made in accordance with §1.47 of the regulations, the Commission may recognize transactions and positions other than those enumerated in paragraph (z)(2) of this section as bona fide hedging in such amount and under such terms and conditions as it may specify in accordance with the provisions of §1.47. Such transactions and positions may include, but are not limited to, purchases or sales for future delivery on any contract market by an agent who does not own or who has not contracted to sell or purchase the offsetting cash commodity at a fixed price, *provided* That the person is responsible for the merchandising of the cash position which is being offset.

(aa) *Associated person.* This term means any natural person who is associated in any of the following capacities with:

- (1) A futures commission merchant as a partner, officer, or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves
- (i) the solicitation or acceptance of customers' ~~or option customers'~~ orders (other than in a clerical capacity) or
  - (ii) the supervision of any person or persons so engaged;
- (2) An introducing broker as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves
- (i) the solicitation or acceptance of customers' ~~or option customers'~~ orders (other than in a clerical capacity) or
  - (ii) the supervision of any person or persons so engaged;
- (3) A commodity pool operator as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged; or
- (4) A commodity trading advisor as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) The solicitation of a client's or prospective client's discretionary account, or (ii) the supervision of any person or persons so engaged; and
- (5) A leverage transaction merchant as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves: (i) The solicitation or acceptance of leverage customers' orders (other than in a clerical capacity) for leverage transactions as defined in [Sec. § 31.4\(x\)](#) of this chapter, or (ii) the supervision of any person or persons so engaged.

(bb)(1) *Commodity trading advisor.* This term means any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery ~~made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility~~, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option authorized under section 4c of the Act; ~~or~~ any leverage transaction authorized under section 19 of the Act; any person registered with the Commission as a commodity trading advisor; ~~;~~ or any person, who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing. The ~~;~~ ~~but such~~ term does not include (i) Any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (vi) any contract market ~~or derivatives transaction execution facility~~, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession: *Provided*



further, That the Commission, by rule or regulation, may include within this definition, any person advising as to the value of commodities or issuing reports or analyses concerning commodities, if the Commission determines that such rule or regulation will effectuate the purposes of this provision.

(2) *Client.* This term, as it relates to a commodity trading advisor, means any person (i) to whom a commodity trading advisor provides advice, for compensation or profit, either directly or through publications, writings, or electronic media, as to the value of, or the advisability of trading in, any contract of sale of a commodity for future delivery ~~made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility,~~ security futures product or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; any commodity option authorized under section 4c of the Act; ~~or~~ any leverage transaction authorized under section 19 of the Act; or (ii) to whom, for compensation or profit, and as part of a regular business, the commodity trading advisor issues or promulgates analyses or reports concerning any of the activities referred to in paragraph (bb)(2)(i) of this section. The term “client” includes, without limitation, any subscriber of a commodity trading advisor.

(cc) *Commodity pool operator.* This term means any person engaged in a business which is of the nature of ~~an~~ a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in ~~any~~ commodity interests, including any commodity for future delivery, security futures product, or swap; any agreement contract or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; ~~or~~ any commodity option authorized ~~on or subject to the rules of any contract market~~ under section 4c of the Act; any leverage transaction authorized under section 19 of the Act; or any person who is registered with the Commission as a commodity pool operator, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

(dd) *Commission.* This term means the Commodity Futures Trading Commission.

(ee) *Self-regulatory organization.* This term means a contract market (as defined in §1.3(h)), a swap execution facility (as defined in §1.3( )), a derivatives clearing organization (as defined in section 1a(15) of the Act), or a registered futures association under section 17 of the Act.

(ff) *Designated self-regulatory organization.* This term means:

(1) Self-regulatory organization of which a futures commission merchant, an introducing broker, ~~or~~ a leverage transaction merchant, a retail foreign exchange dealer, a swap dealer, or a major swap participant is a member; or

(2) If a ~~futures commission merchant or an introducing broker~~ Commission registrant other than a leverage transaction merchant is a member of more than one self-regulatory organization and such ~~futures commission merchant or introducing broker~~ registrant is the subject of an approved plan under ~~See~~ § 1.52 of this part, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such ~~futures commission merchant or introducing broker~~ registrant for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the ~~futures commission merchant or introducing broker~~ registrant is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such ~~registrant~~ futures commission merchant or introducing broker; or

(3) If a leverage transaction merchant is a member of more than one self-regulatory organization and such leverage transaction merchant is the subject of an approved plan under ~~See~~ § 31.28 of this chapter, then a self-regulatory organization delegated the responsibility by such a plan for monitoring and auditing such leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations of which the leverage transaction merchant is a member, and for receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements from such leverage transaction merchant.

(gg) *Customer funds*. This term means all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of, customers ~~or option customers~~:

(1) ~~In the case of commodity customers, to~~ To margin, guarantee, or secure contracts for future delivery or swaps on or subject to the rules of a contract market, swap execution facility, or derivatives clearing organization, as the case may be, and all money accruing to such customers as the result of such contracts; and

(2) ~~In the case of option customers, in~~ In connection with a commodity option transaction on or subject to the rules of a contract market, swap execution facility, or derivatives clearing organization, as the case may be:

(i) To be used as a premium for the purchase of ~~an~~ a commodity option transaction for ~~an option~~ customer;

(ii) As a premium payable to a ~~option~~ customer;

(iii) To guarantee or secure performance of ~~an~~ a commodity option by ~~an~~ customer; or

(iv) Representing accruals (including, for purchasers of ~~an~~ a commodity option for which the full premium has been paid, the market value of such commodity -option) to a ~~option~~ customer.

(3) Notwithstanding paragraphs (1) and (2) of this section, the term *customer funds* shall exclude money, securities or property held to margin, guarantee or secure security futures products held in a securities account, and all money accruing as the result of such security futures products.

(hh) *Commodity option transaction; commodity option.* These terms each mean any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “call,” “put,” “advance guaranty,” or “decline guaranty,” and which is subject to regulation under the Act and these regulations.

(ii) *Premium.* This term means the amount agreed upon between the purchaser and seller, or their agents, for the purchase or sale of a commodity option ~~on or subject to the rules of a contract market.~~

(jj) ~~[Reserved] *Option customer.* This term means any person who directly or indirectly, purchases or grants (sells), or otherwise acquires or disposes of any interest in a commodity option for value, but does not include:~~

~~(1) For purposes of §§1.16, 1.17, 1.20–1.30, 1.32, 1.36, 33.3 and 33.7 of this chapter, the owner or holder of a proprietary account; and~~

~~(2) Option customers whose option transactions are conducted in accordance with the requirements of part 32 of this chapter.~~

(kk) *Strike price.* This term means the price, per unit, at which a person may purchase or sell the commodity, swap, or contract of sale of a commodity for future delivery ~~or the physical that~~ which is the subject of a commodity option: *Provided*, That for purposes of ~~See~~ §1.17, the term “*strike price*” means the total price at which a person may purchase or sell the commodity, swap, or contract of sale of a commodity for future delivery ~~or the that physical which~~ is the subject of a commodity option (*i.e.*, price per unit times the number of units).

(ll) *Physical.* This term means any good, article, service, right or interest upon which a commodity option may be traded in accordance with the Act and these regulations.

(mm) *Introducing broker.* This term means:

(1) Any person who, for compensation or profit, whether direct or indirect, (i) is engaged in soliciting or in accepting orders (other than in a clerical capacity) for the purchase or sale of any commodity for future delivery ~~on or subject to the rules of any contract market~~, security futures product, or swap; any agreement, contract or transaction described in section 2(c)(2)(C)(i) or

section 2(c)(2)(D)(i) of the Act; any commodity option transaction authorized under section 4c; or any leverage transaction authorized under section 19; or who is registered with the Commission as an introducing broker; and (ii) ~~who~~ does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. ~~;~~ ~~and~~

(2) ~~Includes any person required to register as an introducing broker by virtue of part 33 of this chapter. Provided, That~~ The term “introducing broker” shall not include:

(i) Any futures commission merchant, floor broker, ~~or~~ associated person, or associated person of a swap dealer or major swap participant acting in its capacity as such, regardless of whether that futures commission merchant, floor broker, or associated person is registered or exempt from registration in such capacity;

(ii) Any commodity trading advisor, which, acting in its capacity as a commodity trading advisor, is not compensated on a per-trade basis or which solely manages discretionary accounts pursuant to a power of attorney, regardless of whether that commodity trading advisor is registered or exempt from registration in such capacity; and

(iii) Any commodity pool operator which, acting in its capacity as a commodity pool operator, solely operates commodity pools, regardless of whether that commodity pool operator is registered or exempt from registration in such capacity.

(nn) *Guarantee agreement.* This term means an agreement of ~~guaranty-guarantee~~ in the form set forth in part B or C of Form 1-FR, executed by a registered futures commission merchant or retail foreign exchange dealer, as appropriate, and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in §1.17(a)(1)(iii).

(oo) *Leverage transaction merchant.* ~~Means-This term means~~ and includes any individual, association, partnership, corporation, trust or other person that is engaged in the business of offering to enter into, entering into or confirming the execution of leverage contracts, or soliciting or accepting orders for leverage contracts, and who accepts leverage customer funds (or extends credit in lieu thereof) in connection therewith.

(pp) *Leverage customer funds.* ~~Means-This term means~~ all money, securities and property received, directly or indirectly by a leverage transaction merchant from, for, or on behalf of leverage customers to margin, guarantee or secure leverage contracts and all money, securities and property accruing to such customers as the result of such contracts, or the customers'

leverage equity. In the case of a long leverage transaction, profit or loss accruing to a leverage customer is the difference between the leverage transaction merchant's current bid price for the leverage contract and the ask price of the leverage contract when entered into. In the case of a short leverage transaction, profit or loss accruing to a leverage customer is the difference between the bid price of the leverage contract when entered into and the leverage transaction merchant's current ask price for the leverage contract.

(qq) *Leverage contract*. Shall have the same meaning as that set forth in §31.4(w) of this chapter.

(rr) *Foreign futures or foreign options secured amount*. This term means all money, securities and property held by or held for or on behalf of a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers as defined in §30.1 of this chapter:

(1) In the case of foreign futures customers, money, securities and property required by a futures commission merchant to margin, guarantee, or secure open foreign futures contracts plus or minus any unrealized gain or loss on such contracts; and

(2) In the case of foreign options customers in connection with open foreign options transactions, money, securities and property representing premiums paid or received, plus any other funds required to guarantee or secure open transactions plus or minus any unrealized gain or loss on such transactions.

(ss) *Foreign board of trade*. This term means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures, ~~or foreign options, or foreign swaps transactions~~ are entered into.

(tt) *Electronic signature*. This term means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(uu) ~~[Reserved] *Opt-out customer*. This term means a customer that is an eligible contract participant, as defined in section 1a(12) of the Act, and that, in accordance with §1.68, has elected not to have funds that are being carried for purposes of trading on or through the facilities of a registered derivatives transaction execution facility, separately accounted for and segregated by the futures commission merchant pursuant to section 4d of the Act and §§1.20–1.30, 1.32 and 1.36. A customer is an opt-out customer solely with respect to agreements, contracts or~~

~~transactions, and the money, securities or property received by a futures commission merchant to margin, guarantee or secure such agreements, contracts or transactions, made on or subject to the rules of any derivatives transaction execution facility that has adopted rules permitting a customer to elect to be an opt-out customer and with respect to which the customer has made such an election. For all other purposes under the Act and the rules thereunder, except where otherwise provided, an opt-out customer shall be a customer as defined in §1.3(k).~~

(vv) *Futures account*. This term means an account that is maintained in accordance with the segregation requirements of section 4d(a) of the ~~Commodity Exchange~~ Act and the rules thereunder.

(ww) *Securities account*. This term means an account that is maintained in accordance with the requirements of section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-3 thereunder.

(xx) *Foreign broker*. This term means any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders only from persons located outside the United States, its territories or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market or swap execution facility~~derivatives transaction execution facility~~ and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(yy) *Commodity interest*. This term means:

(1) Any contract for the purchase or sale of a commodity for future delivery;  
(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; ~~and~~

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; ~~and~~

(4) Any swap as defined in the Act, the Commission's regulations, a Commission order or interpretation, or a joint interpretation or order issued by the Commission and the Securities and Exchange Commission.

**(zz) Associated person of a swap dealer or major swap participant.** This term means any person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves the solicitation or acceptance of swaps, or the supervision of any person or persons so engaged. *Provided, however,* That the term does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

(aaa) **Confirmation.** When used in reference to a futures commission merchant, introducing broker, or commodity trading advisor, this term means documentation (electronic or otherwise) that memorializes specified terms of a transaction executed on behalf of a customer. When used in reference to a swap dealer or major swap participant, this term means documentation (electronic or otherwise) that memorializes specified terms of a transaction executed opposite a counterparty.

(bbb) **Electronic trading facility.** This term means a trading facility that—  
(1) operates by means of an electronic or telecommunications network; and  
(2) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(ccc) **Order.** This term means an instruction or authorization provided by a customer to a futures commission merchant, introducing broker, or commodity trading advisor regarding trading in a commodity interest on behalf of the customer.

(ddd) **Organized exchange.** This term means a trading facility that—  
(1) Permits trading—  
(i) by or on behalf of a person that is not an eligible contract participant; or  
(ii) by persons other than on a principal-to-principal basis; or  
(2) Has adopted (directly or through another nongovernmental entity) rules that—  
(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and  
(ii) include disciplinary sanctions other than the exclusion of participants from trading.

(eee) **Prudential regulator.** This term has the meaning given to the term in section 1a(39) of the Commodity Exchange Act and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency, as applicable to the swap

dealer or major swap participant. The term also includes the Federal Deposit Insurance Corporation, with respect to any financial company as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any insured depository institution under the Federal Deposit Insurance Act, and with respect to each affiliate of any such company or institution.

(fff) **Registered entity.** This term means:

(1) a board of trade designated as a contract market under section 5 of the Act;

(2) a derivatives clearing organization registered under section 5b of the Act;

(3) a board of trade designated as a contract market under section 5f of the Act;

(4) a swap execution facility registered under section 5h of the Act;

(5) a swap data repository registered under section 21 of the Act; and

(6) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded.

(ggg) **Registrant.** This term means a: commodity pool operator; commodity trading advisor; futures commission merchant; introducing broker; leverage transaction merchant; floor broker; floor trader; major swap participant; retail foreign exchange dealer; or swap dealer that is subject to these regulations; or an associated person of any of the foregoing other than an associated person of a swap dealer or major swap participant.

(hhh) **Retail forex customer.** This term means a person, other than an eligible contract participant as defined in section 1a(18) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

(iii) **Swap account.** This term means an account that is maintained in accordance with the segregation requirements of section 4d(f) of the Act and the rules thereunder.

(jjj) **Swap data repository.** This term means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.



(kkk) Swap execution facility. This term means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—(1) facilitates the execution of swaps between persons; and (2) is not a designated contract market.

(lll) Trading facility. This term has the meaning set forth in section 1a(51) of the Act.

#### **§ 1.4 Electronic Signatures, Acknowledgments and Verifications.**

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a swap transaction to be acknowledged by a swap dealer or major swap participant or a document to be signed or verified by (a) a customer of a futures commission merchant or introducing broker, (b) a retail forex customer of a retail foreign exchange dealer or futures commission merchant, (c) a pool participant or a client of a commodity trading advisor or (d) a counterparty of a swap dealer or major swap participant, an electronic signature executed by the customer, retail forex customer, participant, client, counterparty, swap dealer, or major swap participant will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, ~~or,~~ commodity trading advisor, swap dealer or major swap participant elects generally to accept electronic signatures, acknowledgments or verifications or another Commission rule permits the use of electronic signatures for the purposes listed above; *Provided, however*, That the electronic signature must comply with applicable Federal laws and other Commission rules; *And, Provided further*, That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator, ~~or,~~ commodity trading advisor, swap dealer or major swap participant must adopt and ~~utilize~~use reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

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

(a)(1)(i) \*\*\*\*\*

~~(ii) [Reserved.] Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery or any commodity option on or subject to the rules of a registered derivatives transaction execution facility from any customer who does not qualify as an “institutional customer” as defined in §1.3(g) must:(A) Be a clearing member of a derivatives clearing~~

~~organization and maintain net capital in the amount of the greater of \$20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section; or~~

~~(B) Receive orders on behalf of the customer from a commodity trading advisor acting in accordance with §4.32 of this chapter.~~

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## **§ 1.20 Customer funds to be segregated and separately accounted for.**

(a) All customer funds shall be separately accounted for and segregated as belonging to ~~commodity or option~~ customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in §1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of ~~commodity or option~~ customers and are being held in accordance with the provisions of the Act and this part: *Provided, however*, that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of ~~commodity or option~~ customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the ~~option or commodity~~ customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a clearing organization from a member of the clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's ~~commodity or option~~ customers and all money accruing to such ~~commodity or option~~ customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such ~~commodity or option~~ customers, and a clearing organization shall not hold, use or dispose of such customer funds except as belonging to such ~~commodity or option~~ customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the ~~commodity or option~~ customers of clearing members, segregated as required by the Act and these regulations. The clearing organization shall obtain and retain in its files for the period provided by §1.31 an acknowledgment from such bank or trust company that it was informed that the customer funds deposited therein are those of

~~commodity or option~~ customers of its clearing members and are being held in accordance with the provisions of the Act and these regulations.

(c) Each futures commission merchant shall treat and deal with the customer funds of a ~~commodity~~ customer ~~or of an option customer~~ as belonging to such ~~commodity or option~~ customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That customer funds treated as belonging to the ~~commodity or option~~ customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such ~~commodity or option~~ customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further,* That customer funds may be invested in instruments described in §1.25.

#### **§ 1.21 Care of money and equities accruing to customers.**

All money received directly or indirectly by, and all money and equities accruing to, a futures commission merchant from any clearing organization or from any clearing member or from any member of a contract market incident to or resulting from any trade, contract or commodity option made by or through such futures commission merchant on behalf of any ~~commodity or option~~ customer shall be considered as accruing to such ~~commodity or option~~ customer within the meaning of the Act and these regulations. Such money and equities shall be treated and dealt with as belonging to such ~~commodity or option~~ customer in accordance with the provisions of the Act and these regulations. Money and equities accruing in connection with ~~commodity or option~~ customers' open trades, contracts, or commodity options need not be separately credited to individual accounts but may be treated and dealt with as belonging undivided to all ~~commodity or option~~ customers having open trades, contracts, or commodity option positions which if closed would result in a credit to such ~~commodity or option~~ customers.

#### **§ 1.22 Use of customer funds restricted.**

No futures commission merchant shall use, or permit the use of, the customer funds of one ~~commodity and/or option~~ customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such ~~customer~~

~~or option~~ customer. Customer funds shall not be used to carry trades or positions of the same ~~commodity and/or option~~ customer other than in commodities or commodity options traded through the facilities of a contract market.

### **§ 1.23 Interest of futures commission merchant in segregated funds; additions and withdrawals.**

The provision in section 4d(a)(2) of the Act and the provision in §1.20(c), which prohibit the commingling of customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the customer funds, segregated as required by the Act and the rules in this part and set apart for the benefit of ~~commodity or option~~ customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in §1.25, as it may deem necessary to ensure any and all ~~commodity or option~~ customers' accounts from becoming undersegregated at any time. The books and records of a futures commission merchant shall at all times accurately reflect its interest in the segregated funds. A futures commission merchant may draw upon such segregated funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, contract market, clearing organization or other futures commission merchant. Such withdrawal shall not result in the funds of one ~~commodity and/or option~~ customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other ~~commodity customer, option~~ customer or other person.

### **§ 1.24 Segregated funds; exclusions therefrom.**

Money held in a segregated account by a futures commission merchant shall not include: (a) Money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market; or (b) money held by any clearing organization which it may use for any purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the contracts, trades, or commodity options of the ~~commodity or option~~ customers of such futures commission merchant.

### **§ 1.26 Deposit of instruments purchased with customer funds.**

(a) Each futures commission merchant who invests customer funds in instruments described in §1.25 shall separately account for such instruments and segregate such instruments as belonging to such ~~commodity or option~~ customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited

under an account name which clearly shows that they belong to ~~commodity or option~~ customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to ~~commodity or option~~ customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with §1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to ~~commodity or option~~ customers of its clearing members in instruments described in §1.25 shall separately account for such instruments and segregate such instruments as belonging to such ~~commodity or option~~ customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to ~~commodity or option~~ customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to ~~commodity or option~~ customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with §1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

### **§ 1.27 Record of investments.**

(a) Each futures commission merchant which invests customer funds, and each derivatives clearing organization which invests customer funds of its clearing members' ~~customers or option~~ customers, shall keep a record showing the following:

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### **§ 1.30 Loans by futures commission merchants; treatment of proceeds.**

Nothing in these regulations shall prevent a futures commission merchant from lending its own funds to ~~commodity or option~~ customers on securities and property pledged by such ~~commodity or option~~ customers, or from repledging or selling such securities and property pursuant to specific written agreement with such ~~commodity or option~~ customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options

of ~~commodity or option~~ customers shall be treated and dealt with by a futures commission merchant as belonging to such ~~commodity or option~~ customers, in accordance with and subject to the provisions of section 4d(a)(2) of the Act and these regulations.

### § 1.31 Books and records; keeping and inspection.

(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept in their original form (for paper records) or native file format (for electronic records) for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period; Provided, however, That records of any swap or related cash or forward transaction shall be kept until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of five years after such date. All such books and records shall be open to inspection by any representative of the Commission, ~~or~~ the United States Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or, in connection with those security-based swap agreements described in section 1a(47)(A)(v) of the Act, the United States Securities and Exchange Commission. For purposes of this section, native file format means an electronic file that exists in the format in which it was originally created.

(2) Persons required to keep books and records by the Act or by these regulations shall produce such records in a form specified by any representative of the Commission. A copy of any book or record required to be kept by the Act or by these regulations shall be provided. Such production shall be made, at the expense of the person required to keep the book or record, to a Commission representative upon the representative's request. Instead of furnishing a copy, such person may provide the original book or record for reproduction, which the representative may temporarily remove from such person's premises for this purpose. All copies or originals shall be provided promptly. Upon request, the Commission representative shall issue a receipt provided by such person for any copy or original book or record received. At the request of the Commission representative, such person shall, upon the return thereof, issue a receipt for any copy or original book or record returned by the representative.

(b) Except as provided in paragraph (d) of this section, books and records required to be kept by the Act or by these regulations may be stored ~~immediate reproductions~~ on either "micrographic media" (as defined in paragraph (b)(1)(i) of this section) or "electronic storage media" (as defined in paragraph (b)(1)(ii) of this section) ~~may be kept in that form~~ for the required time period under the conditions set forth in this paragraph (b); Provided, however, For electronic records, such storage media must preserve the native file format of the electronic records as required by paragraph (a)(1) of this section.

(1) For purposes of this section:

(i) The term "micrographic media" means microfilm or microfiche or any similar medium.

(ii) The term "electronic storage media" means any digital storage medium or system that:

- (A) Preserves the records exclusively in a non-rewritable, non-erasable format;
- (B) Verifies automatically the quality and accuracy of the storage media recording process;
- (C) Serializes the original and, if applicable, duplicate units of storage media and creates a time-date record for the required period of retention for the information placed on such electronic storage media; and
- (D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph upon the request of representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act.

(2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:

- (i) Have available at all times, for examination by representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;
- (ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, may request;
- (iii) Keep only Commission-required records on the individual medium employed (*e.g.*, a disk or sheets of microfiche);
- (iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and
- (v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:
  - (A) The location of any particular record stored on the media may be immediately ascertained;
  - (B) The index is available at all times for immediate examination by representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act;

(C) A duplicate of the index is stored at a location separate from the original index; and

(D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.

(3) In addition to the foregoing conditions, persons using electronic storage media must:

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such ~~approved machine-readable~~ compatible data processing media as defined in §15.00(1d) of this chapter which any representative of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an “audit system”) designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission, ~~or~~ the Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act, all information necessary to access records and indexes maintained on the electronic storage media; or



(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records (“Electronic Recordkeeper”) shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant (“Technical Consultant”) who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission, ~~or~~ the United States Department of Justice, any applicable prudential regulator as that term is defined in section 1a(39) of the Act, or the United States Securities and Exchange Commission with respect to those security-based swap agreements described in section 1a(47)(A)(5) of the Act (the “Representative”), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD-ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in §1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, written orders required to be kept pursuant to §1.35(a), (a-1)(1), (a-1)(2) and (d), and paper copies of electronically filed certified Forms 1-FR and FOCUS Reports with the original manually signed certification must be retained in hard-copy for the required time period.

### § 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of ~~commodity and option~~ customers;

(2) the amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such ~~commodity and option~~ customers; and

(3) the amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions ( *i.e.*, “securities haircuts”) as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3-1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a “ready market” as defined in Rule 15c3-1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3-1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of §1.31.

### § 1.33 Monthly and confirmation statements.

(a) *Monthly statements.* Each futures commission merchant must promptly furnish in writing to each ~~commodity customer and to each option~~ customer, and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of

the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each commodity futures customer and foreign futures customer position—

- (i) The open contracts position with prices at which acquired;
- (ii) The net unrealized profits or losses in all open contracts positions marked to the market; ~~and~~
- (iii) Any customer funds carried with the futures commission merchant; and
- (iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign futures transactions in accordance with §30.7 of this chapter received from or disbursed to such customer and realized profits and losses; and

(2) For each commodity option customer position and foreign options customer position—

- (i) All commodity options and foreign options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;
- (ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;
- (iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any;
- (iv) Any customer funds carried in such customer's account(s); and
- (v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign options transactions in accordance with §30.7 of this chapter received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(3) For each swap position---

- (i) All swaps caused to be executed by the futures commission merchant for the customer;
- (ii) The net unrealized profits or losses in all swaps marked to the market;
- (iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds received from or disbursed to such customer and realized profits and losses.

(b) *Confirmation statement.* Each futures commission merchant must, not later than the next business day after any commodity ~~futures~~interest or commodity option transaction, including any foreign futures or foreign options transactions, furnish to each ~~commodity~~-customer~~;~~:

(1) a written confirmation of each commodity futures transaction caused to be executed by it for the customer.

(2) a written confirmation of each swap caused to be executed by it for the customer, containing at least the following information:

(i) The unique swap identifier, as required by §45.4(a) of this chapter, for each swap and date each swap was executed;

(ii) The product name of each swap;

(iii) The price at which the swap was executed;

(iv) The date of maturity for each swap; and

(v) If cleared, the derivatives clearing organization through which it is cleared.

(3) ~~To each option customer,~~ a written confirmation of each commodity option transaction, containing at least the following information:

(i) The ~~option~~-customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the commodity option transaction;

(iii) The strike price;

(iv) The underlying futures contract or underlying physical;

(v) The final exercise date of the commodity option purchased or sold; and

(vi) The date the commodity option transaction was executed.

(4) ~~To each option customer,~~ Upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of the

futures or physical position which resulted therefrom including, if applicable, the final trading date of the contract for future delivery underlying the option.

(54) Notwithstanding the provisions of paragraphs (b)(1) through (b)(43) of this section, a commodity ~~futures-interest or commodity-option~~ transaction that is caused to be executed for a commodity pool need be confirmed only to the operator of the commodity pool.

(c) *Exemptions.* The requirements of paragraphs (a)(1)(i), (a)(1)(ii), and (b)(1) of this section shall not apply to the following:

- (1) Any account carried for a person who is a member of any contract market;
- (2) Any omnibus account carried for another futures commission merchant; and
- (3) Any account containing only bona fide hedge positions, except that confirmations must be furnished to accounts containing only bona fide hedge positions.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the ~~commodity~~ customer ~~or option customer~~ for whom such account is carried, each futures commission merchant shall:

(1) Promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section;

(2) [Reserved]

(3) Promptly furnish in writing to such other person a copy of the statement required by §1.46: *Provided, however,* That the provisions of this paragraph (d) shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

(e) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with §1.31, a copy of each monthly statement and confirmation required by this section.

(f) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the futures commission merchant is providing the statement was introduced by an introducing broker and the names of the futures commission merchant and introducing broker.

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by §1.46, may be furnished to any customer by means of electronic media if the customer so consents, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an “institutional customer” as defined in §1.3(g), a futures commission merchant must obtain the customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with §1.31.

### § 1.34 Monthly record, “point balance”

(a) With respect to commodity futures transactions, Each futures commission merchant shall prepare, and retain in accordance with the requirements of §1.31, a statement commonly known as a “point balance,” which accrues or brings to the official closing price, or settlement price fixed by the clearing organization, all open contracts positions of customers as of the last business day of each month or of any regular monthly date selected: *Provided, however,* That a futures commission merchant who carries part or all of customers' open contracts positions with other futures commission merchants on an “instruct basis” will be deemed to have met the requirements of this section as to open contracts positions so carried if a monthly statement is prepared which shows that the prices and amounts of such contracts positions long and short in the customers' accounts are in balance with those in the carrying futures commission merchants' accounts, and such statements are retained in accordance with the requirements of §1.31.

(b) With respect to commodity option transactions, Each futures commission merchant shall prepare, and retain in accordance with the requirements of §1.31, a listing in which all open commodity option positions carried for option customers customers are marked to the market. Such listing shall be prepared as of the last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying physical (by option expiration date), and by strike price.

### § 1.35 Records of commodity interest and cash commodity, ~~futures, and option~~ transactions.

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets or swap execution facilities.* Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall keep full, complete, and systematic records, together which include with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, retail forex exchange transactions, commodity options, commodity interests and cash commodities. Each futures commission merchant, retail foreign

exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall retain the required records, ~~data, and memoranda~~ in accordance with the requirements of §1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, ~~data and memoranda~~, which have been prepared in the course of its business of dealing in commodity futures, retail forex transactions, commodity options, commodity interests and cash commodities, and all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. Each transaction record shall be maintained as a separate electronic file identifiable by transaction and counterparty. Among such records each member of a designated contract market or swap execution facility must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission, ~~or the~~ designated contract market or the swap execution facility. For purposes of this section, such documents are referred to as “original source documents.”

(a-1) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets and swap execution facilities: Recording of customers' and option customers' orders.* (1) Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, and each member of a designated contract market or swap execution facility receiving a customer's ~~or option customer's~~ order that cannot immediately be entered into a trade matching engine shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a-1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for commodity option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a designated contract market who on the floor of such designated contract market receives a customer's ~~or option customer's~~ order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such designated contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a-1)(5) of this section ~~or appendix C to this part~~, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

(ii) Except as provided in paragraph (a-1)(3) of this section:

(A) Each member of a designated contract market ~~member~~ who on the floor of such designated contract market receives an order from another member present on the floor which is not in the

form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received; or

(B) When a member of a designated contract market ~~member~~ present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such designated contract market for execution:

~~(-1-) The member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a sequentially-numbered trading card maintained in accordance with the requirements of paragraph (d) of this section;~~

~~(-2-) The member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (d) of this section; and~~

~~(-3-) The member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to designated contract market personnel or the clearing member, ~~in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.~~~~

~~(iii) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, that provide alternative requirements to those contained in paragraph (a-1)(2)(ii) of this section. Such rules shall, at a minimum, require that the contemporaneous written records:~~

~~(A) Contain the terms of the order;~~

~~(B) Include reliable timing data for the initiation and execution of the order which would permit complete and effective reconstruction of the order placement and execution; and~~

~~(C) Be submitted to contract market personnel or clearing members in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.~~

(3)(i) The requirements of paragraph (a-1)(2)(ii) of this section will not apply if a designated contract market maintains in effect rules ~~which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41,~~ which provide for an exemption where:

(A) A member of a designated contract market ~~member~~ places with another member of such designated contract market- an order that is part of a spread transaction;

(B) The member placing the order personally executes one or more legs of the spread; and



(C) The member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d) of this section.

~~(ii) Each contract market shall, as part of its trade practice surveillance program, conduct surveillance for compliance with the recordkeeping and other requirements under paragraphs (a-1)(2) and (3) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.~~

(4) Each member of a designated contract market reporting the execution from the floor of the designated contract market of a customer's ~~or option customer's~~ order or the order of another member of the designated contract market received in accordance with paragraphs (a-1)(2)(i) or (a-1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a-1)(5) of this section, and order number, by time-stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a designated contract market shall submit the written records of customer orders or orders from other designated contract market members to designated contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph ~~as required by contract market rules adopted in accordance with paragraph (j)(1) of this section~~. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders ~~to be executed on designated contract markets or swap execution facilities~~ need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a-1)(5)(i)-(iv v) of this section are met. Specific customer account identifiers for accounts included in bunched orders involving swaps need not be included in confirmations or acknowledgments provided by swap dealers or major swap participants pursuant to §23.501(a) if the requirements of paragraphs (a-1)(5)(i)-(v) of this section are met.

(i) *Eligible account managers* for orders executed on designated contract markets or swap execution facilities. The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed on designated contract markets or swap execution facilities:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under §4.14(a)(3) ~~or §4.14(a)(6)~~ of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; ~~or~~

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in §4.7(a)(1)(iv) of this chapter;

(E) A futures commission merchant registered with the Commission pursuant to the Act; or

(F) An introducing broker registered with the Commission pursuant to the Act.

(ii) Eligible account managers for orders executed bilaterally. The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed bilaterally:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under §4.14(a)(3) of this chapter;

(B) A futures commission merchant registered with the Commission pursuant to the Act; or

(C) An introducing broker registered with the Commission pursuant to the Act.

(iii) Information. Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable and consistent with §155.3(a)(1) and §155.4(a)(1), any account in which the account manager has an interest.

(iiiiv) Allocation. Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iiv) *Records.* (A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a-1)(5)(iii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a-1)(5)(iiiv) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants, introducing brokers, or commodity trading advisors that execute orders or that carry accounts eligible for post-execution allocation, and members of designated contract markets or swap execution facilities that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a-1)(5)(iiv)(A) or (a-1)(5)(iiv)(B) of this section, the Commission may inform in writing any designated contract market, ~~or derivatives transaction execution facility~~ swap execution facility, swap dealer, or major swap participant, and that designated contract market, ~~or derivatives transaction execution facility~~ swap execution facility, swap dealer, or major swap participant shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market, ~~or derivatives transaction execution facility~~ swap execution facility, or bilaterally from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a-1)(5)(iiv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of §21.03(g) of this chapter.

(a-2)(1) *Futures commission merchants, introducing brokers, and members of designated contract markets* and swap execution facilities. Upon request of the designated contract market or swap execution facility, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a designated contract market or swap execution facility shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures or

swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a designated contract market or swap execution facility shall create, retain, and produce upon request of the designated contract market or swap execution facility, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures or swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

~~(3) *Contract markets.* Every contract market shall adopt rules which require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.~~

(34) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

(b) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and ~~clearing~~ members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* Each futures commission merchant, each retail foreign exchange dealer, and each ~~clearing~~ member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility and, for purposes of paragraph (b)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer ~~or option customer~~ all charges against and credits to such customer's ~~or option customer's~~ account, including but not limited to customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future; ~~and~~

(ii) All retail forex transactions executed for such account, including the date, price, quantity, and currency; ~~and~~

(iii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future

delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(iv) All swaps transactions executed for such account, including the date, price, quantity, market, commodity, ~~and~~ swap, and, if cleared, the derivatives clearing organization; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made;

(iii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; ~~and~~

(iv) All swaps transactions executed on that day, including the date, price, quantity, market, commodity, swap, ~~and~~ the person for whom such transaction was made, and, if cleared, the derivatives clearing organization; and

(vii) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant or retail foreign exchange dealer carrying the account for which each commodity futures, retail forex, ~~and~~ commodity option, and swap transaction was executed on that day. *Provided, however,* that where reproductions on microfilm, microfiche or optical disk are substituted for hard copy in accordance with the provisions of §1.31(b) of this part, the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity futures, retail forex, ~~or~~ commodity option, or swap books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

(c) ~~Clearing m~~Members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities. In the daily record or journal required to be kept under paragraph (b)(3) of this section, each ~~clearing~~ member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall also show the floor broker or floor trader executing each transaction, the opposite floor broker or floor trader, and the opposite clearing member with whom it was made.

(d) Members of designated contract markets. (1) Each member of a designated contract market who, in the place provided by the designated contract market for the meeting of persons similarly

engaged, executes purchases or sales of any commodity for future delivery or commodity option or swap on or subject to the rules of such designated contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time ~~(as specified in rules of the contract market which comply with the requirements of this section)~~, quantity, and, as applicable, underlying commodity, contract for future delivery, swap or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member (if, ~~in accordance with the rules or practice of the contract market,~~ such opposite clearing member is made known to the member).

(2) Each member of a designated contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; *Provided, however,* That if lines remain after the last execution recorded on a trading card, the remaining lines must be marked through.

(3) Each member of a designated contract market must identify on his or her trading cards ~~in the manner prescribed by the rules of the contract market~~ the purchases and sales executed during the opening and closing periods designated by the designated contract market ~~pursuant to paragraph (j)(7) of this section.~~

(4) Trading cards prepared by a member of a designated contract market ~~pursuant to contract market rules~~ must contain:

(i) Pre-printed member identification or other unique identifying information which would permit the trading cards of one member to be distinguished from those of all other members;

(ii) Pre-printed sequence numbers to permit the intra-day sequencing of the cards; and

(iii) Unique and pre-printed identifying information which would distinguish each of the trading cards prepared by the member from other such trading cards for no less than a one-week period.

(5) Trading cards prepared by a member of a designated contract market and ~~submitted-collected~~ pursuant to paragraph ~~(d)(7)(i)(j)(4)~~ of this section must be timestamped promptly to the nearest minute upon collection by either the designated contract market or the relevant clearing member.

(6) Each member of a designated contract market shall be accountable for all trading cards prepared ~~pursuant to contract market rules~~ in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) Trading records prepared by a member of a designated contract market ~~pursuant to contract market rules~~ must:

(i) Be submitted to designated contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period for submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be submitted as often as is practicable to the designated contract market or relevant clearing member~~in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section~~; and

(ii) Be completed in non-erasable ink. A member may correct any errors by crossing out erroneous information without obliterating or otherwise making illegible any of the originally recorded information. With regard to trading cards only, a member may correct erroneous information by rewriting the trading card; ~~provided~~ *provided, however*, that the member must submit a copy of the trading card, or in the absence of copies the original trading card, that is subsequently rewritten in accordance with ~~contract market rules which set forth the required~~ collection schedule for trading cards and *provided further* that the member is accountable for any trading card that subsequently is rewritten pursuant to paragraph (d)(6) of this section.

(8) Each member of a designated contract market must use a new trading card at the beginning of each designated 30-minute interval ~~required by paragraph (j)(1) of this section~~ (or such lesser interval as may be determined appropriate ~~by the applicable contract market~~) or as may be required pursuant hereto.

(e) ~~Clearing members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.~~ Each clearing member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall maintain ~~or cause to be maintained by its clearing organization~~ a single record which shall show for each futures or option or swap trade: the transaction date, time ~~(as described in paragraph (g) of this section)~~, quantity, and, as applicable, underlying commodity, contract for future delivery, swap or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer ~~or option customer~~ types. The customer ~~and option customer~~ type indicators shall show, with respect to each person executing the trade, whether such person:

(1) Was trading for his or her own account, or an account for which he or she has discretion;

(2) Was trading for his or her clearing member's house account;

(3) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(4) Was trading for any other type of customer ~~or option customer~~. The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with the provisions of subpart J of part 38 of this chapter, written rules of the contract market which have been submitted to and approved by the

~~Commission in accordance with the provisions of §1.38,~~ and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in a format and coding structure approved by the Commission (i) in hard copy or on microfilm as specified in §1.31 and (ii) for 60 days in computer-readable form on compatible magnetic tapes or discs.

~~(f) Each contract market shall provide for the identification of floor brokers, floor traders, and clearing members, in the records required to be kept under paragraphs (c), (d), and (e) of this section, by the use of a distinctive, nonvariable designation for each such floor broker, floor trader, and clearing member.~~

~~(g) Time of trade execution. For purposes of paragraph (e) of this section: (1) The actual time of the execution of each side of a transaction must be obtained, or (2) if a contract market identifies and records the time of a transaction, a single actual time of execution for both sides of the transaction may be obtained. Actual times of execution shall be stated in increments of no more than one minute in length. If a contract market submits rules to the Commission, in accordance with the provisions of section 5a(a)(12)(A) of the Act and §1.41, defining and separately identifying opening and closing time periods, the contract market may, for purposes of paragraph (e) of this section, use those time periods for trades occurring during the opening and closing periods. Contract market rules in effect prior to the effective date of this paragraph (g) upon which a contract market intends to rely in complying herewith must be submitted for this purpose to the Commission in accordance with the provisions of section 5a(a)(12)(A) of the Act and §1.41.~~

~~(h) Contract market price change register. Each contract market shall establish and maintain a record of all changes in the price of futures or option transactions executed on the floor of the contract market. This record shall include the time of all changes in price to the nearest ten seconds.~~

~~(i) Contract markets. A contract market, in order to demonstrate that it is exercising due diligence in maintaining the continuing affirmative action program required by the Act and §1.51, shall, at a minimum:~~

~~(1) Demonstrate effective use in its continuing affirmative action program of the information required to be obtained by paragraph (e) of this section to reconstruct rapidly and accurately transactions executed on or subject to the rules of such contract market; and~~

~~(2) Submit to the Commission such reports as the Commission or the Director of the Division of Trading and Markets, or such persons under the supervision of the Director as may be specified from time to time, may require concerning the accuracy of all information recorded under paragraph (e) of this section and the use of such information in the contract market's affirmative action program.~~

~~(j) Contract markets. Each contract market must maintain in effect rules which require that:~~



~~(1) Trading records prepared by a member of the contract market pursuant to paragraphs (a)(1) and (d) of this section be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period permitted for the submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be collected as often as is practicable by the contract market or relevant clearing member. Such contract market rules need not, however, require that those original source documents which cannot be relied upon by the contract market or clearing member for clearing purposes be submitted pursuant to this paragraph. Each contract market shall submit a written report to the Commission no later than nine months after the effective date of this paragraph describing with particularity the contract market's system(s) in place to comply with this paragraph and the level of compliance achieved to date.~~

~~(2) Trading cards collected pursuant to this paragraph must be timestamped promptly to the nearest minute upon collection by either the contract market or relevant clearing member.~~

~~(3) A member of the contract market must use a new trading card at the beginning of each designated 30 minute interval required by paragraph (j)(1) of this section.~~

~~(4) A member of the contract market must record trades in the manner prescribed by paragraph (d)(2) of this section.~~

~~(5) Trading cards prepared by a member of the contract market must contain the identifying information prescribed by paragraph (d)(4) of this section.~~

~~(6) A member of the contract market must be accountable for all trading cards prepared pursuant to contract market rules in exact numerical sequence, whether or not such trading cards are relied on as original source documents.~~

~~(7) A member of the contract market must identify on his trading cards trades executed during opening and closing periods either by drawing a line on the trading card to separate those trades from others recorded thereon or by some other method. Each contract market must designate as opening and closing periods for this purpose those periods upon which the opening and closing trading ranges are based for each of its markets.~~

~~(8) A member of the contract market must complete trades in non-erasable ink in the manner prescribed by paragraph (d)(7)(ii) of this section.~~

~~(k) *Collection of trading cards in intervals not to exceed 15 minutes.* The Commission, in its discretion, may publish a schedule in the Federal Register no earlier than 11 months after paragraph (j)(1) of this section becomes effective, indicating when the records required to be submitted pursuant to that paragraph must be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 15 minutes, commencing with the beginning of each trading session.~~

~~(1) A contract market which can demonstrate that it currently has available hand held terminals or such other automated means for the recordation of trades which can eliminate the opportunity for improper alteration or fabrication of trading records, may petition the Commission for an exemption from Regulations 1.35(a-1) (2) and (4), (d), (j) or (k), as appropriate.~~

**§ 1.36 Record of securities and property received from customers ~~and option customers.~~**

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in §1.31, a record of all securities and property received from customers or, retail forex customers ~~or option customers~~ in lieu of money to margin, purchase, guarantee, or secure the ~~commodity, retail forex or commodity option transactions~~ commodity interests of such customers or, retail forex customers ~~or option customers~~. Such record shall show separately for each customer, or retail forex customer ~~or option customer~~: A description of the securities or property received; the name and address of such customer, or retail forex customer ~~or option customer~~; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer, or retail forex customer ~~or option customer~~, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with ~~the a~~ a clearing organization ~~of a contract market~~, directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer ~~or option customer~~, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers ~~or option customers~~ of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in §1.31.

(b) Each clearing organization ~~of a contract market~~ which receives from members securities or property belonging to particular customers ~~or option customers~~ of such members in lieu of money to margin, purchase, guarantee, or secure the ~~commodity or commodity option transactions~~ commodity interests of such customers ~~or option customers~~, or receives notice that any such securities or property have been received by a bank or trust company acting as custodian for such clearing organization, shall maintain, as provided in §1.31, a record which will show separately for each member, the dates when such securities or property were received, the identity of the depositories or other places where such securities or property are segregated, the dates such securities or property were returned to the member, or otherwise disposed of, together with the facts and circumstances of such other disposition including the authorization therefor.

**§ 1.37 Customer's ~~or option customer's~~ name, address, and occupation recorded; record of guarantor or controller of account.**

(a)(1) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each ~~commodity futures, retail forex, or option or swap~~ commodity interest account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant, introducing broker, and member of a contract market must also show the name of the person who has solicited and is responsible for each ~~option~~ customer's account or assign account numbers in such a manner to identify that person.

~~(2) Each futures commission merchant who receives a customer's election not to have the customer's funds separately accounted for and segregated, in accordance with §1.68, shall keep a record in permanent form that indicates such customer's election. The record of such a customer election may be indicated on the record required by paragraph (a)(1) of this section.~~

(b) As of the close of the market each day, each futures commission merchant which carries an account for another futures commission merchant, foreign broker (as defined in §15.00 of this chapter), member of a contract market, or other person, on an omnibus basis shall maintain a daily record for each such omnibus account of the total open long contracts and the total open short contracts in each future and in each swap and, for commodity option transactions, the total open put options purchased, the total open put options granted, the total open call options purchased, and the total open call options granted for each commodity option expiration date.

(c) Each designated contract market and swap execution facility shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange. In addition, upon request, a designated contract market or swap execution facility shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a designated contract market or swap execution facility on which transactions in futures, swaps or options (other than swaps) contracts of foreign traders are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraph (a) of this section.

### **§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.**

(a) *Conditions and requirements.* A member of a contract market or a swap execution facility who shall have ~~in hand~~ at the same time both buying and selling orders of different principals for the same swap, commodity for future delivery in the same delivery month or the same option (both puts or both calls, with the same underlying contract for future delivery or the same

underlying physical, expiration date and strike price) may execute such orders for and directly between such principals at the market price, if in conformity with written rules of such contract market or swap execution facility which have been approved by or self-certified to the Commission, and:

(1)(i) When trading is conducted in a trading pit or ring, such orders are first offered openly and competitively by open outcry in such trading pit or ring (A) by both bidding and offering at the same price, and neither such bid nor offer is accepted, or (B) by bidding and offering to a point where such offer is higher than such bid by not more than the minimum permissible price fluctuation applicable to such futures contract or commodity option on such contract market, and neither such bid nor offer is accepted; or

(ii) When in ~~non-pit~~non-pit trading in swaps or contracts of sale for future delivery, bids and offers are posted on a board, such member (A) pursuant to such buying order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or (B) pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions or on a system or platform accessible by an official representative of such swap execution facility and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other ~~similar~~ record, made at the time of execution, and notes thereon the exact time of execution and promptly presents or makes available said record to such official representative for verification and initialing, as appropriate;

(3) Such swap execution facility or contract market keeps a record in permanent form of each such transaction showing ~~the all~~ transaction ~~date, details required to be captured by whom executed, the exact time of execution, quantity, the Act, Commission rule or regulation;~~ and, ~~as applicable, underlying commodity, contract for future delivery or physical, price or premium, whether a put or a call, and strike price; and~~

(4) Neither the futures commission merchant, other registrant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

(b) *Large Order Execution Procedures.* A member of a contract market or a swap execution facility may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with Commission regulations and large order execution procedures established by written rules of the contract market or swap execution facility that have been approved by or self-certified to the Commission: ~~Provided, That~~Provided, that, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market or swap execution facility has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by

proposed contract market or swap execution facility rules to implement the large order execution procedures. The petition shall include:

(1) An explanation of why the proposed large order execution rules do not comply with paragraph (a) of this section; and

(2) A description of a special surveillance program that would be followed by the contract market or swap execution facility in monitoring the large order execution procedures.

The Commission may, in its discretion and upon such terms and conditions as it deems appropriate, grant such petition for exemption if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition shall be considered concurrently with the proposed large order execution rules.

(c) *Not deemed filling orders by offset* ~~nor cross trades.~~ The execution of orders in compliance with the conditions herein set forth will not be deemed the filling of orders by offset within the meaning of ~~paragraph (iv) of section 4b(a) of the Act, nor to constitute cross trades within the meaning of paragraph (A) of section 4~~ section 4b(a) of the Act.

#### **§ 1.40 Crop, market information letters, reports; copies required.**

Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, ~~and~~ and each eligible contract participant with trading privileges on a swap execution facility shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, ~~telegram~~ telecommunication, or report published or given general circulation by such futures commission merchant, retail foreign exchange dealer, introducing broker, ~~or~~ or eligible contract participant which concerns crop or market information or conditions that affect or tend to affect the price of any commodity, including any ~~or~~ exchange rate, and the true source of or authority for the information contained therein.

#### **§1.44 [Reserved]. Records and reports of warehouses, depositories, and other similar entities; visitation of premises.**

~~Each contract market shall require the operators of warehouses, depositories and other similar entities whose receipts are deliverable in satisfaction of commodity futures contracts or options on physicals made on or subject to the rules of such contract market:~~

~~— (a) To keep records showing the stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market in store in such warehouses, depositories and other similar entities by kinds, by classes, and by grades, if stored under conditions requiring such designation or identification, and including also lots and parcels stored~~

~~specialty or separately or in specialty leased space of the warehouse, depository or other similar entity;~~

~~—(b) Upon call from the Commission, to report the stocks of commodities in such warehouses, depositories and other similar entities and to furnish information concerning stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market about to be transferred or in the process of being transferred or otherwise moved into or out of such warehouses, depositories and other similar entities, as well as any other information concerning commodities stored in such warehouse, depositories and other similar entities and which are or may be available for delivery on futures contracts or options on physicals; and~~

~~—(c) To permit visitation of the premises and inspection of the books and records of such warehouses, depositories and other similar entities by duly authorized representatives of the Commission or the Department of Justice, and to keep all books, records, papers, and memoranda relating to the storage and warehousing of commodities in such warehouse, depository or other similar entity for a period of 5 years from the date thereof.~~

#### **§ 1.46 Application and closing out of offsetting long and short positions.**

(a) *Application of purchases and sales.* (1) Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated contract market ~~or registered derivatives transaction execution facility~~:

(i) Purchases any commodity for future delivery for the account of any customer when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market;

(ii) Sells any commodity for future delivery for the account of any customer when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market;

(iii) Purchases a put or call option for the account of any ~~option~~-customer when the account of such ~~option~~-customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(iv) Sells a put or call option for the account of any ~~option~~-customer when the account of such ~~option~~-customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold—shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

(2) Any futures commission merchant or retail foreign exchange dealer who:

(i) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;

(ii) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;

(iii) Purchases a put or call option involving foreign currency for the account of any ~~option~~ customer when the account of such ~~option~~ customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(iv) Sells a put or call option involving foreign currency for the account of any ~~option~~ customer when the account of such ~~option~~ customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold—shall immediately apply such purchase or sale against such previously held opposite transaction, and shall promptly furnish such retail forex customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant or retail foreign exchange dealer by an introducing broker and the names of the futures commission merchant or retail foreign exchange dealer, and the introducing broker.

(b) *Close-out against oldest open position.* In all instances wherein the short or long futures, retail forex transaction or option position in such customer's, ~~or~~ retail forex customer's ~~or option~~ ~~customer's~~ account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the futures commission merchant or retail foreign exchange dealer shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position: Provided, That upon specific instructions from the customer ~~or option customer~~ the offsetting transaction shall be applied as specified by the customer ~~or option customer~~ without regard to the date of acquisition of the previously held position; and Provided, further, that a futures commission merchant or retail foreign exchange dealer, if permitted by the rules of a registered futures association, may offset, at the customer's request, retail forex transactions of the same size, even if the customer holds other transactions of a different size, but in each case must offset the transaction against the oldest transaction of the same size. Such instructions may also be accepted from any person who, by power of attorney or otherwise, actually directs trading in the customer's, ~~or~~ retail forex customer's ~~or option customer's~~ account unless the person directing the trading is the futures commission merchant or retail foreign exchange dealer (including any partner thereof), or is an officer, employee, or agent of the futures commission merchant or retail foreign exchange dealer. With respect to every such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held position, the futures commission merchant or retail foreign exchange dealer shall clearly show on the statement issued to the customer, ~~or~~ retail forex customer ~~or option~~ ~~customer~~ in connection with the transaction, that because of the specific instructions given by or

on behalf of the customer, ~~or~~ retail forex customer ~~or option customer~~ the transaction was not applied in the usual manner, *i.e.*, against the oldest portion of the previously held position. However, no such showing need be made if the futures commission merchant or retail foreign exchange dealer has received such specific instructions in writing from the customer, ~~or~~ retail forex customer ~~or option customer~~ for whom such account is carried.

(c) *In-and-out trades; day trades.* Notwithstanding the provisions of paragraphs (a) and (b) of this section shall not be deemed to require the application of purchases or sales closed out during the same day (commonly known as “in-and-out trades” or “day trades”) against short or long positions carried forward from a prior date.

(d) *Exceptions.* The provisions of this section shall not apply to:

(1) Purchases or sales of commodity options constituting “bona fide hedging transactions” pursuant to rules of the contract market which have been adopted in accordance with the requirements of §1.61(b) and approved by the Commission pursuant to; section 5a(a)(12)(A) of the Act *Provided*, That no contract market or futures commission merchant shall permit such option positions to be offset other than by open and competitive execution in the trading pit or ring provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity option.

(2) Purchases or sales constituting “bona fide hedging transactions” as defined in §1.3(z); nor

(3) Sales during a delivery period for the purpose of making delivery during such delivery period if such sales are accompanied by instructions to make delivery thereon, together with warehouse receipts or other documents necessary to effectuate such delivery.

(4)–(7) [Reserved]

(8) Purchases or sales held in error accounts, including but not limited to floor broker error accounts, and purchases or sales identified as errors at the time they are assigned to an account that contains other purchases or sales not identified as errors and held in that account (“error trades”), provided that:

(i) Each error trade does not offset another error trade held in the same account;

(ii) Each error trade is offset by open and competitive means on or subject to the rules of a contract market by not later than the close of business on the business day following the day the error trade is discovered and assigned to an error account or identified as an error trade, unless at the close of business on the business day following the discovery of the error trade, the relevant market has reached a daily price fluctuation limit and the trader is unable to offset the error trade, in which case the error trade must be offset as soon as practicable thereafter; and

(iii) No error trade is closed out by transferring such an open position to another account also controlled by that same trader.



(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in §1.33(d) by means of electronic transmission, in accordance with §1.33(g).

#### **§ 1.49 Denomination of customer funds and location of depositories.**

(b) *Permissible denominations of obligations.*

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(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market ~~or registered derivatives transaction execution facility~~, to the extent of such accruals.

#### **§ 1.53 ~~[Reserved]~~ Enforcement of contract market bylaws, rules, regulations, and resolutions:**

~~Each contract market shall enforce each bylaw, rule, regulation, and resolution, made or issued by it or by the governing board thereof or any committee thereof, which is in effect as of July 18, 1975, and which relates to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market or relates to other trading requirements, unless such bylaw, rule, regulation, or resolution has been disapproved by the Commission pursuant to section 5a(a)(12)(A) of the Act, or the amendment or revocation of such bylaw, rule, regulation or resolution has been approved by the Commission pursuant to section 5a(a)(12)(A) of the Act.~~

#### **§ 1.57 Operations and activities of introducing brokers.**

(a) Each introducing broker must:

(1) Open and carry each customer's ~~and option customer's~~ account with a carrying futures commission merchant on a fully-disclosed basis: *Provided, however*, That an introducing broker which has entered into a guarantee agreement with a futures commission merchant in accordance with the provisions of §1.10(j) of this part must open and carry such customer's ~~and option customer's~~ account with such guarantor futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all customer ~~and option customer~~ orders to:

(i) A carrying futures commission merchant; or

(ii) a floor broker, if the introducing broker identifies its carrying futures commission merchant and that carrying futures commission merchant is also the clearing member with respect to the customer's ~~or option customer's~~ order.

(b) An introducing broker may not carry proprietary accounts, nor may an introducing broker carry accounts in foreign futures.

(c) An introducing broker may not accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts of customers ~~or option customers~~, or any money, securities or property accruing as a result of such trades or contracts: *Provided, however,* That an introducing broker may deposit a check in a qualifying account or forward a check drawn by a customer ~~or option customer~~ if:

(1) The futures commission merchant carrying the customer's ~~or option customer's~~ account authorizes the introducing broker, in writing, to receive a check in the name of the futures commission merchant, and the introducing broker retains such written authorization in its files in accordance with §1.31;

(2) The check is payable to the futures commission merchant carrying the customer's ~~or option customer's~~ account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) For purposes of this paragraph (c), a qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to ~~commodity or option~~ customers of the futures commission merchant carrying the customer's ~~or option customer's~~ account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's ~~or option customer's~~ account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with §1.31, that it was informed that the funds deposited therein are those of ~~commodity or option~~ customers and are being held in accordance with the provisions of the Act and these regulations.

## **§1.59 Activities of self-regulatory organization employees, governing board members, committee members and consultants**

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization," as defined in Commission regulation 1.3(ee), and includes the term "clearing organization," as defined in Commission regulation 1.3(d).

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Committee member* means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(4) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include:

(i) Any governing board member compensated by a self-regulatory organization solely for governing board activities; or

(ii) Any committee member compensated by a self-regulatory organization solely for committee activities; or

(iii) Any consultant hired by a self-regulatory organization.

(5) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular commodity interest on a contract market or a swap execution facility, or to clear a swap contract through a derivatives clearing organization. -As used in this section, "material information" includes, but is not limited to, information relating to present or anticipated cash positions, commodity interests, futures, or option positions, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers ~~or option customers~~, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange.

(6) *Non-public information* means information which has not been disseminated in a manner which makes it generally available to the trading public.

(7) *Linked exchange* means: (i) any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market or swap execution facility in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market; (ii) any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States contract market, swap execution facility, or a trading facility thereof; (iii) any securities exchange, the products of which are held as margin in a commodity

account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or (iv) any clearing organization which clears the products of any of the foregoing markets.

(8) *Commodity interest* means any commodity futures, ~~or~~ commodity option or swap contract traded on or subject to the rules of a contract market, a swap execution facility or linked exchange, or cleared by a derivatives clearing organization, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

(9) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, swap execution facility, linked exchange, or other board of trade, exchange or market, or cleared by a derivatives clearing organization, other than the self-regulatory organization by which a person is employed, and with respect to which:

(i) Such employing self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or

(ii) Such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, nonpublic information.

(10) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within the meaning of regulation §4.10(d), and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which regulation §4.5 makes available relief from regulation as a commodity pool operator, *i.e.*, registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(b) *Employees of self-regulatory organizations; Self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section section 5c(c)a(a)(12)(A) of the Act and Sec. 1.41 and part 40 of this chapter (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization from:

(A) Trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market, swap execution facility or clearing organization;

(B) Trading, directly or indirectly, in any related commodity interest;

(C) Trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets, swap execution facilities or clearing organizations contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the employing self-

regulatory organization if the employee has access to material, non-public information concerning such commodity interest;

(D) Trading, directly or indirectly, in a commodity interest traded on or cleared by a linked exchange if the employee has access to material, non-public information concerning such commodity interest; and

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(c) *Governing board members, committee members, and consultants*; ~~Self-regulatory organization-Registered futures association~~ rules. Each ~~self-regulatory organization-registered futures association~~ must maintain in effect rules which have been submitted to the Commission pursuant to ~~Section 5a(a)(12)(A) of the Act and Sec. 1.41 (or, pursuant to Section-section~~ 17(j) of the Act ~~in the case of a registered futures association)~~ which provide that no governing board member, committee member, or consultant shall use or disclose—for any purpose other than the performance of official duties as a governing board member, committee member, or consultant—material, non-public information obtained as a result of the performance of such person's official duties.

(d) *Prohibited conduct*. (1) No employee, governing board member, committee member, or consultant shall:

(i) Trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(ii) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (d)(1) of this section from an employee, governing board member, committee member, or consultant.

**§ 1.62 ~~[Reserved]Contract market requirement for floor broker and floor trader registration:~~**

~~(a)(1) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(a)(12)(A) of the Act and §1.41 and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged may:~~

~~(i) Purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered or has been granted a temporary license as a floor broker; or~~

~~(ii) Purchase or sell solely for such person's own account, any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered or has been granted a temporary license as a floor trader, or has been granted a temporary license as a floor broker to act as a floor trader, in accordance with section 4f of the Act and §3.11 or §3.40 of this chapter, and such temporary license or registration has not been terminated, revoked or withdrawn: *Provided, however,* That such contract market rules must provide that a floor broker or floor trader will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such person's registration or the suspension by a contract market of access of such person to any pit, ring, post or other place provided by such contract market for the meeting of persons engaged in purchasing and selling any commodity for future delivery or commodity option on or subject to the rules of that contract market.~~

~~(2) Each contract market shall also adopt, maintain in effect and enforce rules which have become effective pursuant to section 5a(a)(12)(A) of the Act and §1.41 which provide for requests for withdrawal of floor broker or floor trader registration using Form 8-W in accordance with §3.33 of this chapter, which require training of floor brokers and floor traders in accordance with §3.34 of this chapter and which require review of registration information by floor brokers and by floor traders every three years in accordance with §3.11(d) of this chapter.~~

~~(b) Each contract market must notify the Commission of any facts regarding a floor broker or floor trader or an applicant for registration as a floor broker or floor trader, or a floor trader whose name appears on a list submitted in accordance with §1.66 in order to qualify for a temporary no-action position thereunder, who has been granted trading privileges at the contract market, which are set forth as statutory disqualifications in section 8a(2) of the Act (unless such facts result from an enforcement action filed by the Commission or a disciplinary action taken by another contract market) or which are terminations of floor trading privileges for cause under §9.11(c) of this chapter within ten business days of the date upon which the contract market first knows of such facts. Notice to the Commission shall be sufficient if the contract market gives notice to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee by facsimile transmission and/or first class mail or equivalent means to the Commission at its Washington, DC office (Attn: Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581).~~

### **§ 1.63 Service on self-regulatory organization governing boards or committees by persons with disciplinary histories.**

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means a “self-regulatory organization” as defined in Commission ~~R~~regulation 1.3(ee), and includes a “clearing organization” as defined in Commission ~~regulation~~ Regulation 1.3(d) , except as defined in paragraph (b)(6) of this section.

(2) *Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a self-regulatory organization to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof.

(3) *Arbitration panel* means any person or panel empowered by a self-regulatory organization to arbitrate disputes involving such organization's members or their customers.

(4) *Oversight panel* means any panel authorized by a self-regulatory organization to review, recommend or establish policies or procedures with respect to the self-regulatory organization's surveillance, compliance, rule enforcement or disciplinary responsibilities.

(5) *Final decision* means:

(i) A decision of a self-regulatory organization which cannot be further appealed within the self-regulatory organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or,

(ii) Any decision by an administrative law judge, a court of competent jurisdiction or the Commission which has not been stayed or reversed.

(6) *Disciplinary offense* means:

(i) Any violation of the rules of a self-regulatory organization except those rules related to

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping unless resulting in fines aggregating more than \$5,000 within any calendar year;

(ii) Any rule violation described in subparagraphs (a)(6)(i) (A) through (C) of this regulation which involves fraud, deceit or conversion or results in a suspension or expulsion;

(iii) Any violation of the Act or the regulations promulgated thereunder; or,

(iv) Any failure to exercise supervisory responsibility with respect to acts described in paragraphs (a)(6) (i) through (iii) of this section when such failure is itself a violation of either the rules of a self-regulatory organization, the Act or the regulations promulgated thereunder.

(v) A disciplinary offense must arise out of a proceeding or action which is brought by a self-regulatory organization, the Commission, any federal or state agency, or other governmental body.

(7) *Settlement agreement* means any agreement consenting to the imposition of sanctions by a self-regulatory organization, a court of competent jurisdiction or the Commission.

(b) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to section ~~5~~ca(~~ca~~)(~~12~~)(~~A~~) of the Act ~~and §1.41 and part 40 of this chapter~~ or, in the case of a registered futures association, pursuant to section 17(j) of the Act, that render a person ineligible to serve on its disciplinary committees, ~~arbitration panels,~~ oversight panels or governing board who:

(1) Was found within the prior three years by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission to have committed a disciplinary offense;

(2) Entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

- (3) Currently is suspended from trading on any contract market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
- (i) A finding by a final decision of a self-regulatory organization, an administrative law judge, a court of competent jurisdiction or the Commission that such person committed a disciplinary offense; or,
  - (ii) A settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense.
- (4) Currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;
- (5) Currently is subject to or has had imposed on him within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D) (ii) through (iv) of the Act;
- (6) Currently is subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization as that term is defined in section 3(a)(26) of the Securities Exchange Act of 1934.
- (c) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a self-regulatory organization if such person is subject to any of the conditions listed in paragraphs (b) (1) through (6) of this section.
- (d) Each self-regulatory organization shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses as defined in paragraph (a)(6)-(i) of this section and to the extent necessary to reflect revisions shall submit an amended schedule within thirty days of the end of each calendar year. Each self-regulatory organization must maintain and keep current the schedule required by this section, ~~and~~ and post the schedule on the self-regulatory organization's website so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public.
- (e) Each self-regulatory organization shall submit to the Commission within thirty days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels or governing board pursuant to the requirements of this regulation during the prior year.
- (f) Whenever a self-regulatory organization finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that self-regulatory organization's disciplinary committees, arbitration panels, oversight panels or governing board, the self-regulatory organization shall inform the Commission of that finding and the length of the ineligibility in any notice it is required to provide to the Commission pursuant to either section 17(h)(1) of the Act or Commission regulation 9.11.

### **§ 1.67 Notification of final disciplinary action involving financial harm to a customer.**

- (a) *Definitions.* For purposes of this section:



(1) *Final disciplinary action* means any decision by or settlement with a contract market or swap execution facility in a disciplinary matter which cannot be further appealed at the contract market or swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(2) [Reserved]

(b) Upon any final disciplinary action in which a contract market or swap execution facility finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(1)(i) the contract market or swap execution facility shall promptly provide written notice of the disciplinary action to the futures commission merchant or other registrant ~~that cleared the transaction~~; and,

(ii) a futures commission merchant or other registrant that receives a notice, under paragraph (b)(1)(i) of this section shall promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. If the customer is another futures commission merchant or other registrant, such futures commission merchant or other registrant shall promptly provide the notice to the customer.

(2) A written notice required by paragraph (b)(1) of this section must include the principal facts of the disciplinary action and a statement that the contract market or swap execution facility has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer. For the purposes of this paragraph, a notice which includes the information listed in §9.11(b) shall be deemed to include the principal facts of the disciplinary action thereof.

**§ 1.68 ~~[Reserved] Customer election not to have funds, carried by a futures commission merchant for trading on a registered derivatives transaction execution facility, separately accounted for and segregated.~~**

~~(a) A futures commission merchant shall not separately account for and segregate, in accordance with the provisions of section 4d of the Act and Sec. Sec. 1.20-1.30, 1.32 and 1.36, funds received from a customer if:~~

~~(1) The customer is an eligible contract participant as defined in section 1a(12) of the Act;~~

~~(2) The customer's funds are being carried by the futures commission merchant for the purpose of trading on or through the facilities of a derivatives transaction execution facility registered under section 5a(c) of the Act;~~

~~(3) The registered derivatives transaction execution facility has authorized, in accordance with Sec. 37.7 of this chapter, futures commission merchants to offer eligible contract participants the right to elect not to have funds that are being carried for purposes of trading on or through the facilities of the registered derivatives transaction execution facility, separately accounted for and segregated by the futures commission merchant; and~~

~~(4) The futures commission merchant and the customer have entered into a written agreement, signed by a person with the authority to bind the customer, in which the customer:~~

~~(i) Represents and warrants that the customer is an eligible contract participant as defined in section 1a(12) of the Act;~~

~~(ii) Elects not to have its funds separately accounted for and segregated in accordance with the provisions of section 4d of the Act and Sec. Sec. 1.20-1.30, 1.32 and 1.36 with respect to agreements, contracts or transactions traded on or subject to the rules of any registered derivatives transaction execution facility that has authorized such treatment in accordance with Sec. 37.7 of this chapter;~~

~~(iii) Acknowledges that it has been informed, and by making this election agrees that:~~

~~(A) The customer's funds, related to agreements, contracts or transactions on any registered derivatives transaction execution facility that authorizes the opting out of segregation will not be segregated from the funds of the futures commission merchant in accordance with the provisions of section 4d of the Act and Sec. Sec. 1.20-1.30, 1.32 and 1.36;~~

~~(B) The futures commission merchant may use such funds in the course of the futures commission merchant's business without the prior consent of the customer or any third party;~~

~~(C) In the event the futures commission merchant files, or has a petition filed against it, for bankruptcy, the customer, as to those funds that the customer has elected not to have separately accounted for and segregated by the futures commission merchant in accordance with the provisions of section 4d of the Act and Sec. Sec. 1.20-1.30, 1.32 and 1.36, will not be entitled to the priority for customer claims provided for under the Bankruptcy Code and part 190 of this chapter;~~

~~(D) The customer may not retain a security interest in assets excluded from segregation in accordance with this section;~~

~~(E) The customer may not enter into any agreement or other understanding with the futures commission merchant relating to the manner in which the customer's assets will be held at the futures commission merchant, that directly or indirectly gives the customer a priority in bankruptcy that is equal or superior to the priority afforded public customers under the Bankruptcy Code and part 190 of this chapter; and~~

~~(iv) Acknowledges that the agreement shall remain in effect unless and until the customer abrogates the agreement in accordance with paragraph (e) of this section.~~

~~(b) In no event may money, securities or property representing those funds that customers have elected not to have separately accounted for and segregated by the futures commission merchant, in accordance with this section, be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and Sec. Sec. 1.20-1.30, 1.32 and 1.36.~~

~~(c)(1) A customer that has entered into an agreement in accordance with paragraph (a)(4) of this section may abrogate that agreement by so informing the futures commission merchant in writing, signed by a person with the authority to bind the customer. The effective date of the abrogation shall not exceed five business days from the futures commission merchant's receipt of the customer's abrogation. The abrogation shall not become effective if the futures commission merchant files, or has had filed against it, a petition for bankruptcy prior to the effective date of the abrogation.~~

~~(2) Upon the effective date of the abrogation, permitted under paragraph (c)(1) of this section, provided that the customer's positions in the non-segregated account are fully margined and the customer is not in default with respect to any of its obligations to the futures commission merchant arising out of agreements, contracts or transactions entered on, or subject to the rules of, a registered entity, as defined in section 1a(29) of the Act, the futures commission merchant shall transfer to a customer segregated account:~~

~~(i) All trades or positions of the customer with respect to which the customer had previously elected to opt out of segregation; and~~

~~(ii) All money, securities, or property held in such account to margin, guarantee or secure such trades or positions.~~

~~(d) Each futures commission merchant shall maintain any agreements entered into with customers pursuant to paragraph (a) of this section and any abrogations of such agreements, made pursuant to paragraph (c) of this section, in accordance with Sec. 1.31.~~

## **Appendix B – Fees for Contract Market Rule Enforcement Reviews and Financial Reviews.**

(a) Within 60 days of the effective date of a final fee schedule for each fiscal year, each board of trade which has been designated as a contract market for at least one actively trading contract shall submit a check or money order, made payable to the Commodity Futures Trading Commission, to cover the Commission's actual costs in conducting contract market rule enforcement reviews and financial reviews.

(b) The Commission determines ~~fees changed~~ fees charged to exchanges based upon a formula ~~which that~~ considers both actual costs and trading volume.

(c) Checks should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Appendix C - ~~Bunched Orders and Account Identification~~- [Reserved].

## PART 5- OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

### §5.1 Definitions.

(k) *Retail forex customer* means a person, other than an eligible contract participant as defined in section 1a(~~4218~~) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

(m) *Retail forex transaction* means any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act. A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a contract market designated pursuant to section 5(a) of the Act ~~or a derivatives transaction execution facility registered pursuant to section 5a(e) of the Act.~~

## PART 7--~~CONTRACT MARKET REGISTERED ENTITY~~ RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

### Subpart A—General Provisions

#### §7.1 Scope of rules.

This part sets forth ~~contract market~~registered entity rules altered or supplemented by the Commission pursuant to section 8a(7) of the Act.

### Subpart B--[RESERVED]

~~§§7.100-7.101~~ [Reserved]

### Subpart C--[RESERVED]

~~§7.200-7.201~~ [Reserved]

## Part 8--EXCHANGE PROCEDURES FOR DISCIPLINARY, SUMMARY, AND MEMBERSHIP DENIAL ACTIONS [Reserved]

## PART 15- REPORTS-GENERAL PROVISIONS

### § 15.05 Designation of agent for foreign persons.

(a) For purposes of this section, the term “futures contract” means any contract for the purchase or sale of any commodity for future delivery, or a contract identified under ~~section § 36.3(bc)(1)(i) traded on an electronic trading facility operating in reliance on the exemption set forth in §36.3 of this chapter as traded in reliance on the exemption in section 2(h)(3) of the Act,~~ traded or executed on or subject to the rules of any designated contract market ~~or registered derivatives transaction execution facility~~, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term “option contract” means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act ~~pursuant to section 5a(g) of the Act~~, traded or executed on or subject to the rules of any designated contract market ~~or registered derivatives transaction execution facility~~, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term “customer” means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term “communication” means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

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(e) Any designated contract market ~~or registered derivatives transaction execution facility~~ that permits a foreign broker to intermediate contracts, agreements or transactions, or permits a foreign trader to effect contracts, agreements or transactions on the facility or exchange, shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader, for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any contracts, agreements or transactions executed by the foreign broker or the foreign trader on the designated contract market ~~or registered derivatives transaction execution facility~~. Service or delivery of any communication issued by or on behalf of the Commission to a designated contract market ~~or registered derivatives transaction execution facility~~ shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A designated contract market ~~or registered derivatives transaction execution facility~~ which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any designated contract market ~~or registered derivatives transaction execution facility~~ to permit a foreign broker, any of its customers or a foreign trader to effect contracts, agreements or transactions on the facility unless the designated contract market ~~or registered derivatives transaction execution facility~~ prior thereto informs the foreign broker, any

of its customers or the foreign trader, in any reasonable manner the facility deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any contracts, transactions or agreements traded on any designated contract market ~~or registered derivatives transaction execution facility~~ if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the designated contract market ~~or registered derivatives transaction execution facility~~ prior to effecting any contract, agreement or transaction on the facility. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the designated contract market ~~or registered derivatives transaction execution facility~~ prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the designated contract market ~~or registered derivatives transaction execution facility~~ knows or should know that the agreement has expired, been terminated, or is no longer in effect, the designated contract market ~~or registered derivatives transaction execution facility~~ shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the designated contract market ~~or registered derivatives transaction execution facility~~ and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a designated contract market ~~or registered derivatives transaction execution facility~~ on which all transactions of foreign brokers, their customers or foreign traders in futures or option contracts are executed through, or the resulting transactions are maintained in, accounts carried by a registered futures commission merchant or introduced by a registered introducing broker subject to the provisions of paragraphs (a), (b), (c) and (d) of this section.

## **PART 18—REPORTS BY TRADERS**

### **§ 18.05 Maintenance of books and records.**

(a) Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions in the commodity:

(1) On all reporting markets;

(2) ~~Executed o~~ver the counter or pursuant to ~~sections 2(d), 2(g) or 2(h)(1)–(2) of the Act or part 35 of this chapter;~~

(3) On exempt commercial markets operating ~~under a Commission grandfather relief order issued pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376 (2010))~~ pursuant to ~~sections 2(h)(3)–(5) of the Act;~~

(4) On exempt boards of trade operating ~~under a Commission grandfather relief order issued pursuant to Section 734(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376 (2010))~~ pursuant to ~~section 5d of the Act;~~ and

(5) On foreign boards of trade.

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## PART 21- SPECIAL CALLS

### § 21.03 Selected special calls-duties of foreign brokers, domestic and foreign traders, futures commission merchants, clearing members, introducing brokers, and reporting markets.

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(b) It shall be unlawful for a futures commission merchant to open a futures or options account or to effect transactions in futures or options contracts for an existing account, or for an introducing broker to introduce such an account, for any customer for whom the futures commission merchant or introducing broker is required to provide the explanation provided for in §15.05(c) of this chapter, or for a reporting market that is a registered entity under section 1a(~~2940~~)(~~EF~~) of the Act, to cause to open an account, or to cause transactions to be effected transactions, in a contract traded in reliance on a Commission grandfather relief order issued pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376 (2010)), ~~the exemption in section 2(h)(3) of the Act or to cause to be effected transactions in a contract traded in reliance on the exemption in section 2(h)(3) of the Act~~ for an existing account for any person that is a foreign clearing member or foreign trader, until the futures commission merchant, introducing broker, clearing member, or reporting market has explained fully to the customer, in any manner that such persons ~~s~~ deems s appropriate, the provisions of this section.

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## PART 36- EXEMPT MARKETS

### § 36.1 Scope.

The provisions of this part apply to any board of trade or electronic trading facility that operates as:

- (a) An exempt commercial market operating under a grandfather relief order issued by the Commission pursuant to Section 723(c)(2)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376 (2010)), or
- (b) An exempt board of trade operating under a grandfather relief order issued by the Commission pursuant to Section 734(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, 124 Stat. 1376 (2010)).

~~receiving an eligible for exemption under Commission orders issued pursuant to Section 723 and 734 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), sections 5d and 2(h)(3) through (5) of the Act, respectively.~~

### § 36.2 Exempt boards of trade.

(a) *Eligible commodities.* Commodities eligible ~~under section 5d(b)(1) of the Act~~ to be traded by an exempt board of trade are:

(1) Commodities having—

(i) A nearly inexhaustible deliverable supply;

(ii) A deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(iii) No cash market.

(2) The commodities that meet the criteria of paragraph (a)(1) of this section are:

(i) The commodities defined in section 1a(~~1319~~) of the Act as “excluded commodities” (other than a security, including any group or index thereof or any interest in, or based on the value of, any security or group or index of securities); and

(ii) Such other commodity or commodities as the Commission may determine by rule, regulation or order;

(3) Such contracts must be entered into only between persons that are eligible contract participants, as defined in section 1a(18) of the Act and as further defined by the Commission, at the time at which the persons entered into the contract.



(b) *Notification.* Boards of trade operating ~~under Section 5d of the Act~~ as exempt boards of trade shall ~~maintain on file~~ ~~so notify the Commission. This notification shall be filed~~ with the Secretary of the Commission at ~~the Commission's~~ Washington, DC headquarters, in electronic form, ~~shall be labeled as a~~ “Notification of Operation as an Exempt Board of Trade,” and ~~it~~ shall include:

- (1) The name and address of the exempt board of trade; and
- (2) The name and telephone number of a contact person.

(c) *Additional requirements* —(1) *Prohibited representation.* A board of trade ~~notifying the Commission that it~~ meets the criteria ~~set forth in this section of Section 5d of the Act~~ and ~~elects to operate~~ as an exempt board of trade shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(2) *Market data dissemination.* (i) *Criteria for price discovery determination.* An exempt board of trade ~~operating a market in reliance on the exemption in Section 5d of the Act~~ performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract, or transaction executed or traded on the facility when:

- (A) Cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis; or
- (B) The market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions.

(ii) *Notification.* An exempt board of trade operating a market in reliance on the ~~criteria set forth in this section exemption in Section 5d of the Act~~ shall notify the Commission when:

- (A) It has reason to believe that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a more than occasional basis;
- (B) It has reason to believe that the market's prices are routinely disseminated in a widely distributed industry publication and are routinely consulted by industry participants in pricing cash market transactions; or
- (C) The exempt board of trade holds out the market to the public as performing a price discovery function for the cash market for the commodity.

(iii) *Price discovery determination.* Following receipt of a notice under paragraph (c)(2)(ii) of this section, or on its own initiative, the Commission may notify an exempt board of trade ~~operating a market in reliance on the exemption in Section 5d of the Act~~ that the facility appears to meet the criteria for performing a significant price discovery function under paragraph (c)(2)(i)(A) or (B) of this section. Before making a final price discovery determination under this paragraph, the Commission shall provide the exempt board of trade with an opportunity for a hearing through the submission of written data, views and arguments. Any such written data,

views and arguments shall be filed with the Secretary of the Commission in the form and manner and within the time specified by the Commission. After consideration of all relevant matters, the Commission shall issue an order containing its determination whether the facility performs a significant price discovery function under the criteria of paragraph (c)(2)(i)(A) or (B) of this section.

(iv) *Price dissemination.* (A) An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section shall disseminate publicly, and on a daily basis, all of the following information with respect to transactions executed in reliance on the criteria set forth in this section~~exemption in Section 5d of the Act~~:

( 1 ) Contract terms and conditions, or a product description, and trading conventions, mechanisms and practices;

( 2 ) Trading volume by commodity and, if available, open interest; and

( 3 ) The opening and closing prices or price ranges, the daily high and low prices, a volume-weighted average price that is representative of trading on the board of trade, or such other daily price information as proposed by the board of trade and approved by the Commission.

(B) The exempt board of trade shall make such information readily available to the news media and the general public without charge no later than the business day following the day to which the information pertains.

(v) *Modification of price discovery determination.* An exempt board of trade that the Commission has determined performs a significant price discovery function under paragraph (c)(2)(iii) of this section may petition the Commission at any time to modify or vacate that determination. The petition shall contain an appropriate justification for the request. The Commission, after notice and opportunity for a hearing through the submission of written data, views and arguments, shall by order grant, grant subject to conditions, or deny such request.

(3) *Annual Certification.* A board of trade operating ~~under Section 5d of the Act~~ as an exempt board of trade shall file with the Commission annually, no later than the end of each calendar year, a notice that includes: (i) A statement that it continues to operate under the exemption; and (ii) ~~a~~A certification that the information contained in the previous Notification of Operation as an Exempt Board of Trade is still correct.

### **§ 36.3 Exempt commercial markets.**

(a) Eligible Transactions. Agreements, contracts or transactions in an exempt commodity eligible to be entered into on an exempt commercial market must be:

(1) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities, as that term is defined in section 1a(17) of the Act, at the time the persons enter into the agreement, contract or transaction; and

(2) executed or traded on an electronic trading facility.

~~(ab) Notification.~~ An electronic trading facility relying upon the exemption set forth in this section in Section 2(h)(3) of the Act shall maintain on file ~~notify the Commission of its intention to do so. This notification, and subsequent notification of any material changes in the information initially provided, shall be filed~~ with the Secretary of the Commission at the Commission's Washington, DC headquarters, in electronic form, ~~shall be labeled as~~ “Notification of Operation as an Exempt Commercial Market,” and it shall include the information and certifications specified in this section in Section 2(h)(5)(A) of the Act.

~~(bc) Required information~~ —(1) *All electronic trading facilities.* A facility operating in reliance on the exemption set forth in this section in section 2(h)(3) of the Act, initially and on an on-going basis, must:

(i) Provide the Commission with the terms and conditions, as defined in §40.1(i) of this chapter and product descriptions for each agreement, contract or transaction listed by the facility in reliance on the exemption set forth in this section set forth in section 2(h)(3) of the Act, as well as trading conventions, mechanisms and practices;

(ii) Provide the Commission with information explaining how the facility meets the definition of “trading facility” contained in section 1a(~~3351~~) of the Act and provide the Commission with access to the electronic trading facility's trading protocols, in a format specified by the Commission;

(iii) Demonstrate to the Commission that the facility requires, and will require, with respect to all current and future agreements, contracts and transactions, that each participant agrees to comply with all applicable laws; that the authorized participants are “eligible commercial entities” as defined in section 1a(~~4417~~) of the Act; that all agreements, contracts and transactions are and will be entered into solely on a principal-to-principal basis; and that the facility has in place a program to routinely monitor participants' compliance with these requirements;

(iv) At the request of the Commission, provide any other information that the Commission, in its discretion, deems relevant to its determination whether an agreement, contract, or transaction performs a significant price discovery function; and

(v) File with the Commission annually, no later than the end of each calendar year, a completed copy of CFTC Form 205—Exempt Commercial Market Annual Certification. The information submitted in Form 205 shall include:

(A) A statement indicating whether the electronic trading facility continues to operate under the exemption; and

(B) A certification that affirms the accuracy of and/or updates the information contained in the previous Notification of Operation as an Exempt Commercial Market.

(2) *Electronic trading facilities trading or executing agreements, contracts or transactions other than significant price discovery contracts.* In addition to the requirements of paragraph (bc)(1) of this section, a facility operating in reliance on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~, with respect to agreements, contracts or transactions that have not been determined to perform significant price discovery function, ~~initially and~~ on an on-going basis, must:

(i) Identify to the Commission those agreements, contracts and transactions conducted on the electronic trading facility with respect to which it intends, in good faith, to rely on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~, and which averaged five trades per day or more over the most recent calendar quarter; and, with respect to such agreements, contracts and transactions, either:

(A) Submit to the Commission, in a form and manner acceptable to the Commission, a report for each business day. Each such report shall be electronically transmitted weekly, within such time period as is acceptable to the Commission after the end of the week to which the data applies, and shall show for each such agreement, contract or transaction executed the following information:

(-1-) The underlying commodity, the delivery or price-basing location specified in the agreement, contract or transaction maturity date, whether it is a financially settled or physically delivered instrument, and the date of execution, time of execution, price, and quantity;

(-2-) Total daily volume and, if cleared, open interest;

(-3-) For an option instrument, in addition to the foregoing information, the type of option ( *i.e.* , call or put) and strike prices; and

(-4-) Such other information as the Commission may determine; or

(B) Provide to the Commission, in a form and manner acceptable to the Commission, electronic access to those transactions conducted on the electronic trading facility in reliance on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~, and meeting the average five trades per day or more threshold test of this section, which would allow the Commission to compile the information ~~described~~~~set forth~~ in paragraph (bc)(2)(i)(A) of this section and create a permanent record thereof.

(ii) Maintain a record of allegations or complaints received by the electronic trading facility concerning instances of suspected fraud or manipulation in trading activity conducted in reliance on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~. The record shall contain the name of the complainant, if provided, date of the complaint, market instrument, substance of the allegations, and name of the person at the electronic trading facility who received the complaint;

(iii) Provide to the Commission, in the form and manner prescribed by the Commission, a copy of the record of each complaint received pursuant to paragraph (bc)(2)(ii) of this section that

alleges, or relates to, facts that would constitute a violation of the Act or Commission regulations. Such copy shall be provided to the Commission no later than 30 calendar days after the complaint is received; *Provided*, however, that in the case of a complaint alleging, or relating to, facts that would constitute an ongoing fraud or market manipulation under the Act or Commission rules, such copy shall be provided to the Commission within three business days after the complaint is received; and

(iv) Provide to the Commission on a quarterly basis, within 15 calendar days of the close of each quarter, a list of each agreement, contract or transaction executed on the electronic trading facility in reliance on the exemption ~~set forth in this section set forth in section 2(h)(3) of the Act~~ and indicate for each such agreement, contract or transaction the contract terms and conditions, the contract's average daily trading volume, and the most recent open interest figures.

(3) *Electronic trading facilities trading or executing significant price discovery contracts.* In addition to the requirements of paragraph (bc)(1) of this section, if the Commission determines that a facility operating in reliance on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~ trades or executes an agreement, contract or transaction that performs a significant price discovery function, the facility must, with respect to any significant price discovery contract, publish and provide to the Commission the information required by §16.01 of this chapter.

(4) *Delegation of authority.* The Commission hereby delegates, until the Commission orders otherwise, the authority to determine the form and manner of submitting the required information under paragraphs (bc)(1) through (3) of this section, to the Director of the Division of Market Oversight and such members of the Commission's staff as the Director may designate. The Director may submit to the Commission for its consideration any matter that has been delegated by this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(5) *Special calls.* (i) All information required upon special call of the Commission ~~under section 2(h)(5)(B)(iii) of the Act~~ shall be transmitted at the time and to the office of the Commission as may be specified in the call.

(ii) Such information shall include: information related to the facility's business as an exempt electronic trading facility in reliance on the exemption set forth in this section, including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption, as the Commission may determine appropriate--

(A) to enforce the antifraud and anti--manipulation provisions in the Act and Commission regulations, and

(B) to evaluate a systemic market event; or

(C) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities.

(iii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls ~~as set forth in section 2(h)(5)(B)(iii) of the Act~~ to the Directors of the Divisions of Market Oversight, the Division of Clearing and Intermediary Oversight, and the

Division of Enforcement to be exercised by each such Director or by such other employee or employees as the Director may designate. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(6) *Subpoenas to foreign persons.* A foreign person whose access to an electronic trading facility is limited or denied at the direction of the Commission based on the Commission's belief that the foreign person has failed timely to comply with a subpoena ~~as provided under section 2(h)(5)(C)(ii) of the Act~~ shall have an opportunity for a prompt hearing under the procedures provided in §21.03(b) and (h) of this chapter.

(7) *Prohibited representation.* An electronic trading facility relying upon the exemption set forth in this section in section 2(h)(3) of the Act, with respect to agreements, contracts or transactions that are not significant price discovery contracts, shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

(ed) *Significant price discovery contracts* —(1) *Criteria for significant price discovery determination.* The Commission may determine, in its discretion, that an electronic trading facility operating a market in reliance on the exemption set forth in this section in section 2(h)(3) of the Act performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract or transaction executed or traded on the facility. In making such a determination, the Commission shall consider, as appropriate:

(i) *Price linkage.* The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ~~or a derivatives transaction execution facility~~, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position;

(ii) *Arbitrage.* The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market ~~or derivatives transaction execution facility~~, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis;

(iii) *Material price reference.* The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility;

(iv) *Material liquidity.* The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material

effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market, ~~a derivatives transaction execution facility~~, or an electronic trading facility operating in reliance on the exemption ~~set forth in this section in section 2(h)(3) of the Act~~;

(v) *Other material factors*. [Reserved]

(2) *Notification of possible significant price discovery contract conditions*. An electronic trading facility operating in reliance on ~~the exemption set forth in this section section 2(h)(3) of the Act~~ shall promptly notify the Commission, and such notification shall be accompanied by supporting information or data concerning any contract that:

(i) Averaged five trades per day or more over the most recent calendar quarter; and

(ii) (A) For which the exchange sells its price information regarding the contract to market participants or industry publications; or

(B) Whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another agreement, contract or transaction.

(3) *Procedure for significant price discovery determination*. Before making a final price discovery determination under this paragraph, the Commission shall publish notice in the Federal Register that it intends to undertake a determination with respect to whether a particular agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Any such written data, views and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the Federal Register or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission shall, within a reasonable period of time after the close of the comment period, issue an order explaining its determination whether the agreement, contract or transaction executed or traded by the electronic trading facility performs a significant price discovery function under the criteria specified in paragraph (ed)(1)(i) through (v) of this section.

(4) *Compliance with core principles*. Following the issuance of an order by the Commission that the electronic trading facility executes or trades an agreement, contract or transaction that performs a significant price discovery function, the electronic trading facility must demonstrate, with respect to that agreement, contract or transaction, compliance with the Core Principles ~~set forth in this section under section 2(h)(7)(C) of the Act~~ and the applicable provisions of this part. If the Commission's order represents the first time it has determined that one of the electronic trading facility's agreements, contracts or transactions performs a significant price discovery function, the facility must submit a written demonstration of compliance with the Core Principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the electronic trading facility has an additional agreement, contract or transaction that performs a significant price discovery function, the facility must

submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of the Commission's order. Attention is directed to Appendix B of this part for guidance on and acceptable practices for complying with the Core Principles. Submissions demonstrating how the electronic trading facility complies with the Core Principles with respect to its significant price discovery contract must be filed with the Secretary of the Commission at its Washington, DC headquarters. Submissions must include the following:

(i) A written certification that the significant price discovery contract(s) complies with the Act and regulations thereunder;

(ii) A copy of the electronic trading facility's rules (as defined in §40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants. Subsequent rule changes must be certified by the electronic trading facility pursuant to section 5c(c) of the Act and §40.6 of this chapter. The electronic trading facility also may request Commission approval of any rule changes pursuant to section 5c(c) of the Act and §40.5 of this chapter;

(iii) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(iv) A copy of any documents pertaining to or describing the electronic trading system's legal status and governance structure, including governance fitness information;

(v) An executed or executable copy of any agreements or contracts entered into or to be entered into by the electronic trading facility, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the electronic trading facility to comply with a Core Principle;

(vi) A copy of any manual or other document describing, with specificity, the manner in which the trading facility will conduct trade practice, market and financial surveillance;

(vii) To the extent that any of the items in paragraphs (ed)(4)(ii) through (vi) of this section raise issues that are novel, or for which compliance with a Core Principle is not self-evident, an explanation of how that item satisfies the applicable Core Principle or Principles.

The electronic trading facility must identify with particularity information in the submission that will be subject to a request for confidential treatment pursuant to §145.09 of this chapter. The electronic trading facility must follow the procedures specified in §40.8 of this chapter with respect to any information in its submission for which confidential treatment is requested.

(5) *Determination of compliance with core principles.* The Commission shall take into consideration differences between cleared and uncleared significant price discovery contracts when reviewing the implementation of the Core Principles by an electronic trading facility. The electronic facility also has reasonable discretion in accounting for differences between cleared



and uncleared significant price discovery contracts when establishing the manner in which it complies with the Core Principles.

(6) *Information relating to compliance with core principles.* Upon request by the Commission, an electronic trading facility trading a significant price discovery contract shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the electronic trading facility is in compliance with one or more Core Principles as specified in the request, or that is otherwise requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(7) *Enforceability.* An agreement, contract or transaction entered into on or pursuant to the rules of an electronic trading facility trading or executing a significant price discovery contract shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(i) A violation by the electronic trading facility of the provisions ~~set forth in this section of section 2(h) of the Act or this part~~; or

(ii) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement or require an electronic trading facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

(8) *Procedures for vacating a determination of a significant price discovery function* —(i) *By the electronic trading facility.* An electronic trading facility that executes or trades an agreement, contract or transaction that the Commission has determined performs a significant price discovery function under paragraph (ed)(3) of this section may petition the Commission to vacate that determination. The petition shall demonstrate that the agreement, contract or transaction no longer performs a significant price discovery function under the criteria specified in paragraph (ed)(1), and has not done so for at least the prior 12 months. An electronic trading facility shall not petition for a vacation of a significant price discovery determination more frequently than once every 12 months for any individual contract.

(ii) *By the Commission.* The Commission may, on its own initiative, begin vacation proceedings if it believes that an agreement, contract or transaction has not performed a significant price discovery function for at least the prior 12 months.

(iii) *Procedure.* Before making a final determination whether an agreement, contract or transaction has ceased to perform a significant price discovery function, the Commission shall publish notice in the Federal Register that it intends to undertake such a determination and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Written submissions shall be filed with the Secretary of the Commission in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the Federal Register or within such other time specified by the

Commission. After consideration of all relevant information, the Commission shall issue an order explaining its determination whether the agreement, contract or transaction has ceased to perform a significant price discovery function and, if so, vacating its prior order. If such an order issues, and the Commission subsequently determines, on its own initiative or after notification by the electronic trading facility, that the agreement, contract or transaction that was subject to the vacation order again performs a significant price discovery function, the electronic trading facility must comply with the Core Principles within 30 calendar days of the date of the Commission's order.

(iv) *Automatic vacation of significant price discovery determination.* Regardless of whether a proceeding to vacate has been initiated, any significant price discovery contract that has no open interest and in which no trading has occurred for a period of 12 complete and consecutive calendar months shall, without further proceedings, no longer be considered to be a significant price discovery contract.

(~~de~~) *Commission Review.* The Commission shall, at least annually, evaluate as appropriate agreements, contracts or transactions conducted on an electronic trading facility in reliance on the exemption ~~set forth in this section provided in section 2(h)(3) of the Act~~ to determine whether they serve a significant price discovery function as ~~described~~set forth in ~~§~~paragraph(d)(1) above.

#### **Appendix A to Part 36—Guidance on Significant Price Discovery Contracts**

1. ~~Section 2(h)(7) of the CEA specifies~~There are four factors that the Commission must consider, as appropriate, in making a determination that a contract is performing a significant price discovery function. The four factors prescribed by the statute are: Price Linkage; Arbitrage; Material Price Reference; and Material Liquidity.

2. Not all listed factors must be present to support a determination that a contract performs a significant price discovery function. Moreover, the statutory language neither prioritizes the factors nor specifies the degree to which a significant price discovery contract must conform to the various factors. Congress has indicated that it intends that the Commission should not make a determination that an agreement, contract or transaction performs a significant price discovery function on the basis of the Price Linkage factor unless the agreement, contract or transaction also has sufficient volume to impact other regulated contracts or to become an independent price reference or benchmark that is regularly utilized by the public. The Commission believes that the Arbitrage and Material Price Reference factors can be considered separately from each other. That is, the Commission could make a determination that a contract serves a significant price discovery function based on the presence of one of these factors and the absence of the other. The presence of any of these factors, however, would not necessarily be sufficient to establish the contract as a significant price discovery contract. The fourth factor, Liquidity, would be considered in conjunction with the arbitrage and linkage factors as a significant amount of liquidity presumably would be necessary for a contract to perform a significant price discovery function in conjunction with these factors.

3. These factors do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, this guidance is intended to illustrate which factors, or combinations of factors, the Commission will look to when determining that a contract is performing a significant price discovery function, and under what circumstances the presence of a particular factor or factors would be sufficient to support such a determination.

*(A) MATERIAL LIQUIDITY—The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market, ~~a derivatives transaction execution facility~~, or an electronic trading facility operating in reliance on the exemption set forth in this section~~in~~ section 2(h)(3) of the Act.*

1. Liquidity is a broad concept that captures the ability to transact immediately with little or no price concession. Traditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity. So, for example, a market in which trades occur multiple times per minute at prices that differ by only fractions of a cent normally would be considered highly liquid, since presumably a trader could quickly execute a trade at a price that was approximately the same as the price for other recently executed trades. Other factors also will affect the characterization of liquidity, such as whether a large trade— *e.g.* , 100 contracts versus 1 contract—could be executed without a significant price concession. For example, having to wait a day to sell 1000 bushels of corn may be considered an illiquid market while waiting a day to sell a home may be considered quite liquid. Thus, quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another.

2. The Commission believes that material liquidity alternatively can be identified by the impact liquidity exhibits through observed prices. In markets where material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar. For example, if the trading of a contract occurs on average five times a day, there will be on average five observed prices for the contract per day. If the market is liquid in terms of traders having to make little in the way of price concessions to execute these trades, the prices of this contract should be similar to those observed for similar or related contracts traded in liquid markets elsewhere. Thus, in making determinations that contracts have material liquidity, the Commission will look to transaction prices, both in terms of how often prices are observed and the extent to which observed prices tend to correlate with other contemporaneous prices.

3. The Commission anticipates that material liquidity will frequently be a consideration in evaluating whether a contract is a significant price discovery contract; however, there may be circumstances in which other factors so dominate the conclusion that a contract is serving a significant price discovery function that a finding of material liquidity in the contract would not be necessary. Circumstances in which this might arise are discussed with respect to the assessment of other factors below.

4. Finally, material liquidity itself would not be sufficient to make a determination that a contract is a significant price discovery contract, but combined with other factors it can serve as a

guidepost indicating which contracts are functioning as significant price discovery contracts. As further discussed below, material liquidity, as reflected through the prices of linked or arbitrated contracts, will be a primary consideration in determining whether such contracts are significant price discovery contracts.

*(B) PRICE LINKAGE—The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ~~or a derivatives transaction execution facility~~, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.*

1. A price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract. The link may involve a one-to-one linkage, in that the value of the linked contract is based on a single contract's price, or it may involve multiple contracts. An example of a multiple contract linkage might be where the settlement price is calculated as an index of prices obtained from a basket of contracts traded on other exchanges.

2. For a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract(s). The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract(s). Where such price characteristics are observed on an ongoing basis, the Commission would expect to determine that the linked contract is a significant price discovery contract.

3. As an example, where the Commission has observed price linkage, it will next consider whether transactions were occurring on a daily basis for the linked contract in material volumes. (Conversely, where volume has increased noticeably in a particular contract, the Commission would look for linkage) The ultimate level of volume that would be considered material for purposes of deeming a contract a significant price discovery contract will likely differ from one contract to another depending on the characteristics of the underlying commodity and the overall size of the physical market in which it is traded. At a minimum, however, the Commission will consider a linked contract which has volume equal to 5% of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a significant price discovery contract.

4. In combination with this volume level, the Commission will also examine the relationship between prices of the linked contract and the contract to which it is linked to determine whether a contract is serving a significant price discovery function. As a threshold, the Commission will consider a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement, or other daily prices over the most recent quarter to be sufficiently close for a linked contract potentially to be deemed a significant price discovery contract. For example, if, over the

most recent quarter, it was found that 95 percent of the closing, settlement, or other daily prices of the contract, which have been calculated using transaction prices, were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily prices of a contract to which it was linked, the Commission potentially would consider the contract to perform a significant price discovery function.

*(C) ARBITRAGE CONTRACTS—The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market ~~or derivatives transaction execution facility~~, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.*

1. Arbitrage contracts are those contracts that can be combined with other contracts to exploit expected economic relationships in anticipation of a profit. In assessing whether a contract can be incorporated into an arbitrage strategy, the Commission will weigh the terms and conditions of a contract in comparison to contracts that potentially could be used in an arbitrage strategy; will consult with industry or other sources regarding a contract's viability in an arbitrage strategy; and will rely on direct observation confirming the use of a contract in arbitrage strategies.

2. As with linked contracts, the mere fact that a contract could be employed in an arbitrage strategy will not be sufficient to make a determination that a contract is a significant price discovery contract. In addition, the level of liquidity will be considered. To assess whether designation as a significant price discovery contract is warranted, the Commission will examine the relationship between transaction prices of an arbitrage contract and the prices of the contract(s) to which it is related. The Commission believes that where material liquidity exists, prices for the arbitrage contract would be observed to move substantially in conjunction with the prices of the related contract(s) to which it is economically linked. Where such price characteristics are observed on an ongoing basis, it is likely that the linked contract performs a significant price discovery function.

3. The Commission will apply the same threshold liquidity and price relationship standards for arbitrage contracts as it does for linked contracts. That is, the Commission will view the average of five trades per day or more threshold as the level of activity that would potentially meet the material volume criterion. With respect to prices, the Commission will consider an arbitrage contract potentially to be a significant price discovery contract if, over the most recent quarter, greater than 95 percent of the closing or settlement prices of the contract, which have been calculated using transaction prices, fall within 2.5 percent of the closing or settlement price of the contract or contracts to which it could be arbitrated.

*(D) MATERIAL PRICE REFERENCE—The extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.*

1. The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and, therefore, serving a significant price discovery function. The primary source of direct evidence is that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a frequent and recurring basis. The Commission expects that normally only contracts with material liquidity will be referenced by the cash market; however, the Commission notes that it may be possible for a contract to have very low liquidity and yet still be used as a price reference. In such cases, the simple fact that participants in the underlying cash market broadly have elected to use the contract price as a price reference would be a strong indicator that the contract is a significant price discovery contract.

2. In evaluating a contract's price discovery role as a directly referenced price source, the Commission will perform an analysis to determine whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract. Cash market prices are set explicitly at a differential to the ~~contract being traded on the electronic trading facility~~~~section 2(h)(3) contract~~ when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a ~~contract being traded on the electronic trading facility~~~~section 2(h)(3) contract~~ when, for instance, they are arrived at after adding to, or subtracting from the ~~contract being traded on the electronic trading facility~~~~section 2(h)(3) contract~~, but then quoted or reported at a flat price. The Commission will also consider whether cash market entities are quoting cash prices based on a ~~contract being traded on the electronic trading facility~~~~section 2(h)(3) contract~~ on a frequent and recurring basis.

3. The second source of evidence is that the price of the contract is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. As with contract prices that are directly incorporated into cash market prices, the Commission assumes that industry publications choose to publish prices because of the value they transfer to industry participants for the purpose of formulating prices in the cash market.

4. In applying this criterion, consideration will be given to whether prices established by a ~~contract being traded on the electronic trading facility~~~~section 2(h)(3) contract~~ are reported in a widely distributed industry publication. In making this determination, the Commission will consider the reputation of the publication within the industry, how frequently it is published, and whether the information contained in the publication is routinely consulted by industry participants in pricing cash market transactions.

5. Under a Material Price Reference analysis, the Commission expects that material liquidity in the contract likely will be the primary motivation for a publisher to publish particular prices. In other words, the fact that the price of a contract is being used as a reference by industry participants suggests, *prima facie*, that the contract performs a significant price discovery function. But the Commission recognizes that trading levels could nonetheless be low for the contract while still serving a significant price discovery function and that evidence of routine publication and consultation by industry participants may be sufficient to establish the contract

as a significant price discovery contract. On the other hand, while cash market participants may regularly refer to published prices of a particular contract when establishing cash market prices, it may be the case that the contract itself is a niche market for a specialized grade of the commodity or for delivery at a minor geographic location. In such cases, the Commission will look to such measures as trading volume, open interest, and the significance of the underlying cash market to make a determination that a contract is functioning as a significant price discovery contract. If an examination of trading in the contract were to reveal that true price discovery was occurring in other more broadly defined contracts and that this contract was itself simply reflective of those broader contracts, it is less likely the Commission will deem the contract a significant price discovery contract.

6. Because price referencing normally occurs out of the view of the electronic trading facility, the Commission may have difficulty ascertaining the extent to which cash market participants actually reference or consult a contract's price when transacting. The Commission expects, however, that as a contract begins to be relied upon to set a reference price, market participants will be increasingly willing to purchase price information. To the extent, then, that an electronic trading facility begins to sell its price information regarding a contract to market participants or industry publications, the contract will meet a threshold standard to indicate that the contract potentially is a significant price discovery contract.

## **Appendix B to Part 36—Guidance on, and Acceptable Practices in, Compliance With Core Principles**

1. This Appendix provides guidance on complying with the core principles set forth in ~~under section 2(h)(7)(C) of the Act and~~ this part, both initially and on an ongoing basis. The guidance is provided in paragraph (a) following each core principle and can be used to demonstrate to the Commission core principle compliance under §36.3(ed)(4). The guidance for each core principle is illustrative only of the types of matters an electronic trading facility may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this guidance will help the Commission in its consideration of whether the electronic trading facility is in compliance with the core principles. A submission pursuant to §36.3(ed)(4) should include an explanation or other form of documentation demonstrating that the electronic trading facility complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Electronic trading facilities on which significant price discovery contracts are traded or executed that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

*~~CORE PRINCIPLE 1-OF-SECTION 2(h)(7)(C)—CONTRACTS NOT READILY SUSCEPTIBLE TO MANIPULATION.~~ The electronic trading facility shall list only significant price discovery contracts that are not readily susceptible to manipulation.*

(a) *Guidance.* Upon determination by the Commission that a contract listed for trading on an electronic trading facility is a significant price discovery contract, the electronic trading facility must self-certify the terms and conditions of the significant price discovery contract under §36.3(ed)(4) within 90 calendar days of the date of the Commission's order, if the contract is the electronic trading facility's first significant price discovery contract; or 30 days from the date of the Commission's order if the contract is not the electronic trading facility's first significant price discovery contract. Once the Commission determines that a contract performs a significant price discovery function, subsequent rule changes must be self-certified to the Commission by the electronic trading facility pursuant to §40.6 or submitted to the Commission for review and approval pursuant to §40.5.

(b) *Acceptable practices.* Guideline No. 1, 17 CFR part 40, Appendix A may be used as guidance in meeting this core principle for significant price discovery contracts.

~~CORE PRINCIPLE II-OF SECTION 2(h)(7)(C)~~—*MONITORING OF TRADING.* The electronic trading facility shall monitor trading in significant price discovery contracts to prevent market manipulation, price distortion, and disruptions of the delivery of cash-settlement process through market surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, demonstrate a capacity to prevent market manipulation and have trading and participation rules to detect and deter abuses. The facility should seek to prevent market manipulation and other trading abuses through a dedicated regulatory department or by delegation of that function to an appropriate third party. An electronic trading facility also should have the authority to intervene as necessary to maintain an orderly market.

(b) *Acceptable practices* —(1) *An acceptable trade monitoring program.* An acceptable trade monitoring program should facilitate, on both a routine and non-routine basis, arrangements and resources to detect and deter abuses through direct surveillance of each significant price discovery contract. Direct surveillance of each significant price discovery contract will generally involve the collection of various market data, including information on participants' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices. For contracts with a substantial number of participants, an effective surveillance program should employ a much more comprehensive large trader reporting system.

(2) *Authority to collect information and documents.* The electronic trading facility should have the authority to collect information and documents in order to reconstruct trading for appropriate market analysis. Appropriate market analysis should enable the electronic trading facility to assess whether each significant price discovery contract is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through market channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply



and the future or potential supply—and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but non-deliverable, kinds of the commodity. For cash-settled contracts, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the contract will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) *Ability to assess participants' market activity and power.* To assess participants' activity and potential power in a market, electronic trading facilities, with respect to significant price discovery contracts, at a minimum should have routine access to the positions and trading of its participants and, if applicable, should provide for such access through its agreements with its third-party provider of clearing services.

~~CORE PRINCIPLE III-OF SECTION 2(h)(7)(C)~~—*ABILITY TO OBTAIN INFORMATION.* The electronic trading facility shall establish and enforce rules that allow the electronic trading facility to obtain any necessary information to perform any of the functions ~~described~~set forth in this subparagraph, provide the information to the Commission upon request, and have the capacity to carry out such international information-sharing agreements as the Commission may require.

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, have the ability and authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by participants. This includes having arrangements and resources for recording full data entry and trade details and safely storing audit trail data. An electronic trading facility should have systems sufficient to enable it to use the information for purposes of assisting in the prevention of participant and market abuses through reconstruction of trading and providing evidence of any violations of the electronic trading facility's rules.

(b) *Acceptable practices* —(1) The goal of an audit trail is to detect and deter market abuse. An effective contract audit trail should capture and retain sufficient trade-related information to permit electronic trading facility staff to detect trading abuses and to reconstruct all transactions within a reasonable period of time. An audit trail should include specialized electronic surveillance programs that identify potentially abusive trades and trade patterns. An acceptable audit trail must be able to track an order from time of entry into the trading system through its fill. The electronic trading facility must create and maintain an electronic transaction history database that contains information with respect to transactions executed on each significant price discovery contract.

(2) An acceptable audit trail should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. An acceptable audit trail system would satisfy the following practices.

(i) *Original source documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded. For each order (whether filled, unfilled or cancelled, each of which should be retained or electronically

captured), such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry.

(ii) *Transaction history*. A transaction history consists of an electronic history of each transaction, including (a) all the data that are input into the trade entry or matching system for the transaction to match and clear; (b) timing and sequencing data adequate to reconstruct trading; and (c) the identification of each account to which fills are allocated.

(iii) *Electronic analysis capability*. An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to market abuse.

(iv) *Safe storage capability*. Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in the form and manner specified by the Commission or, where no acceptable manner of retention is specified, in accordance with the recordkeeping standards of Commission rule 1.31.

(3) Arrangements and resources for the disclosure of the obtained information and documents to the Commission upon request. ~~To satisfy section 2(h)(7)(C)(III)(bb),~~ the electronic trading facility should maintain records of all information and documents related to each significant price discovery contract in a form and manner acceptable to the Commission. Where no acceptable manner of maintenance is specified, records should be maintained in accordance with the recordkeeping standards of Commission rule 1.31.

(4) The capacity to carry out appropriate information-sharing agreements as the Commission may require. Appropriate information-sharing agreements could be established with other markets or the Commission can act in conjunction with the electronic trading facility to carry out such information sharing.

~~CORE PRINCIPLE IV-OF SECTION 2(h)(7)(C)~~—*POSITION LIMITATIONS OR ACCOUNTABILITY*. The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.

(a) *Guidance*. [Reserved]

(b) *Acceptable practices for uncleared trades* [Reserved]

(c) *Acceptable practices for cleared trades* —(1) *Introduction*. In order to diminish potential problems arising from excessively large speculative positions, and to facilitate orderly liquidation of expiring contracts, an electronic trading facility relying on the exemption set forth in this section ~~in section 2(h)(3)~~ should adopt rules that set position limits or accountability

levels on traders' cleared positions in significant price discovery contracts. These position limit rules specifically may exempt bona fide hedging; permit other exemptions; or set limits differently by market, delivery month or time period. For the purpose of evaluating a significant price discovery contract's speculative-limit program for cleared positions, the Commission will consider the specified position limits or accountability levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified limits or levels, and procedures for dealing with violations.

(2) *Accounting for cleared trades* —(i) Speculative-limit levels typically should be set in terms of a trader's combined position involving cleared trades in a significant price discovery contract, plus positions in agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contract. (This circumstance typically exists where an exempt commercial market lists a particular contract for trading but also allows for positions in that contract to be cleared together with positions established through bilateral or off-exchange transactions, such as block trades, in the same contract. Essentially, both the on-facility and off-facility transactions are considered fungible with each other.) In this connection, the electronic trading facility should make arrangements to ensure that it is able to ascertain accurate position data for the market.

(ii) For significant price discovery contracts that are traded on a cleared basis, the electronic trading facility should apply position limits to cleared transactions in the contract.

(3) *Limitations on spot-month positions.* Spot-month limits should be adopted for significant price discovery contracts to minimize the susceptibility of the market to manipulation or price distortions, including squeezes and corners or other abusive trading practices.

(i) *Contracts economically equivalent to an existing contract.* An electronic trading facility that lists a significant price discovery contract that is economically-equivalent to another significant price discovery contract or to a contract traded on a designated contract market ~~or derivatives transaction execution facility~~ should set the spot-month limit for its significant price discovery contract at the same level as that specified for the economically-equivalent contract.

(ii) *Contracts that are not economically equivalent to an existing contract.* There may not be an economically-equivalent significant price discovery contract or economically-equivalent contract traded on a designated contract market ~~or derivatives transaction execution facility~~. In this case, the spot-month speculative position limit should be established in the following manner. The spot-month limit for a physical delivery market should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. The spot-month limit for a physical-delivery market is appropriately set at no more than 25 percent of the estimated deliverable supply. In the case where a significant price discovery contract has a cash settlement provision, the spot-month limit should be set at a level that minimizes the potential for price manipulation or distortion in the significant price discovery contract itself; in related futures and options contracts traded on a designated contract market ~~or derivatives transaction execution facility~~; in other significant price discovery contracts; in other fungible agreements, contracts and transactions; and in the underlying commodity.

(4) *Position accountability for non-spot-month positions.* The electronic trading facility should establish for its significant price discovery contracts non-spot individual month position accountability levels and all-months-combined position accountability levels. An electronic trading facility may establish non-spot individual month position limits and all-months-combined position limits for its significant price discovery contracts in lieu of position accountability levels.

(i) *Definition.* Position accountability provisions provide a means for an exchange to monitor traders' positions that may threaten orderly trading. An acceptable accountability provision sets target accountability threshold levels that may be exceeded, but once a trader breaches such accountability levels, the electronic trading facility should initiate an inquiry to determine whether the individual's trading activity is justified and is not intended to manipulate the market. As part of its investigation, the electronic trading facility may inquire about the trader's rationale for holding a position in excess of the accountability levels. An acceptable accountability provision should provide the electronic trading facility with the authority to order the trader not to further increase positions. If a trader fails to comply with a request for information about positions held, provides information that does not sufficiently justify the position, or continues to increase contract positions after a request not to do so is issued by the facility, then the accountability provision should enable the electronic trading facility to require the trader to reduce positions.

(ii) *Contracts economically equivalent to an existing contract.* When an electronic trading facility lists a significant price discovery contract that is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract market ~~or derivatives transaction execution facility~~, the electronic trading facility should set the non-spot individual month position accountability level and all-months-combined position accountability level for its significant price discovery contract at the same levels, or lower, as those specified for the economically-equivalent contract.

(iii) *Contracts that are not economically equivalent to an existing contract.* For significant price discovery contracts that are not economically equivalent to an existing contract, the trading facility shall adopt non-spot individual month and all-months-combined position accountability levels that are no greater than 10 percent of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year. For electronic trading facilities that choose to adopt non-spot individual month and all-months-combined position limits in lieu of position accountability levels for their significant price discovery contracts, the limits should be set in the same manner as the accountability levels.

(iv) *Contracts economically equivalent to an existing contract with position limits.* If a significant price discovery contract is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract market ~~or derivatives transaction execution facility~~ that has adopted non-spot or all-months-combined position limits, the electronic trading facility should set non-spot month position limits and all-months-combined position limits for its significant price discovery contract at the same (or lower) levels as those specified for the economically-equivalent contract.

(5) *Account aggregation.* An electronic trading facility should have aggregation rules for significant price discovery contracts that apply to accounts under common control, those with common ownership, *i.e.*, where there is a ten percent or greater financial interest, and those traded according to an express or implied agreement. Such aggregation rules should apply to cleared transactions with respect to applicable speculative position limits. An electronic trading facility will be permitted to set more stringent aggregation policies. An electronic trading facility may grant exemptions to its price discovery contracts' position limits for bona fide hedging (as defined in §1.3(z) of this chapter) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) *Implementation deadlines.* An electronic trading facility with a significant price discovery contract is required to comply with Core Principle IV ~~as set forth in section 2(h)(7)(C) of the Act~~ within 90 calendar days of the date of the Commission's order determining that the contract performs a significant price discovery function if such contract is the electronic trading facility's first significant price discovery contract, or within 30 days of the date of the Commission's order if such contract is not the electronic trading facility's first significant price discovery contract. For the purpose of applying limits on speculative positions in newly-determined significant price discovery contracts, the Commission will permit a grace period following issuance of its order for traders with cleared positions in such contracts to become compliant with applicable position limit rules. Traders who hold cleared positions on a net basis in the electronic trading facility's significant price discovery contract must be at or below the specified position limit level no later than 90 calendar days from the date of the electronic trading facility's implementation of position limit rules, unless a hedge exemption is granted by the electronic trading facility. This grace period applies to both initial and subsequent price discovery contracts. Electronic trading facilities should notify traders of this requirement promptly upon implementation of such rules.

(7) *Enforcement provisions.* The electronic trading facility should have appropriate procedures in place to monitor its position limit and accountability provisions and to address violations.

(i) An electronic trading facility with significant price discovery contracts should use an automated means of detecting traders' violations of speculative limits or exemptions, particularly if the significant price discovery contracts have large numbers of traders. An electronic trading facility should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication. An automated system also should be used to determine whether a trader has exceeded applicable non-spot individual month position accountability levels and all-months-combined position accountability levels.

(ii) An electronic trading facility should establish a program for effective enforcement of position limits for significant price discovery contracts. Electronic trading facilities should use a large trader reporting system to monitor and enforce daily compliance with position limit rules. The Commission notes that an electronic trading facility may allow traders to periodically apply to the electronic trading facility for an exemption and, if appropriate, be granted a position level higher than the applicable speculative limit. The electronic trading facility should establish a program to monitor approved exemptions from the limits. The position levels granted under such hedge exemptions generally should be based upon the trader's commercial activity in related markets including, but not limited to, positions held in related futures and options contracts listed

for trading on designated contract markets, fungible agreements, contracts and transactions, as determined by ~~either a registered or unregistered~~ derivatives clearing organization. Electronic trading facilities may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An electronic trading facility should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the electronic trading facility approve a specific maximum higher level.

(iii) An acceptable speculative limit program should have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The electronic trading facility policies should consider appropriate actions.

(8) *Violation of Commission rules.* A violation of position limits for significant price discovery contracts that have been self-certified by an electronic trading facility is also a violation of section 4a(e) of the Act.

*CORE PRINCIPLE V-~~OF SECTION 2(h)(7)(C)~~—EMERGENCY AUTHORITY—The electronic trading facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate open positions in significant price discovery contracts and to suspend or curtail trading in a significant price discovery contract.*

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded should have clear procedures and guidelines for decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. An electronic trading facility on which significant price discovery contracts are executed or traded should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of the electronic trading facility's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the electronic trading facility's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to part 40 of this chapter, when carried out pursuant to an electronic trading facility's emergency authority. To address perceived market threats, the electronic trading facility on which significant price discovery contracts are executed or traded should, among other things, be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from market participants or clearing members (for contracts that are cleared through a clearinghouse), order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the electronic trading facility, order the transfer of contracts and the margin for such contracts from one market participant to another, or alter the delivery terms or conditions or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

~~CORE PRINCIPLE VI-OF SECTION 2(h)(7)(C)~~—*DAILY PUBLICATION OF TRADING INFORMATION.* *The electronic trading facility shall make public daily information on price, trading volume, and other trading data to the extent appropriate for significant price discovery contracts.*

(a) *Guidance.* An electronic trading facility, with respect to significant price discovery contracts, should provide to the public information regarding settlement prices, price range, volume, open interest, and other related market information for all applicable contracts as determined by the Commission on a fair, equitable and timely basis. Provision of information for any applicable contract can be through such means as provision of the information to a financial information service or by timely placement of the information on the electronic trading facility's public Web site.

(b) *Acceptable practices.* Compliance with §16.01 of this chapter, which is mandatory, is an acceptable practice that satisfies the requirements of Core Principle VI.

~~CORE PRINCIPLE VII-OF SECTION 2(h)(7)(C)~~—*COMPLIANCE WITH RULES.* *The electronic trading facility shall monitor and enforce compliance with the rules of the electronic trading facility, including the terms and conditions of any contracts to be traded and any limitations on access to the electronic trading facility.*

(a) *Guidance* —(1) An electronic trading facility on which significant price discovery contracts are executed or traded should have appropriate arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by its market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the electronic trading facility itself or through delegation or contracting-out to a third party. If the electronic trading facility on which significant price discovery contracts are executed or traded delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such programs, and the electronic trading facility should retain appropriate supervisory authority over the third party.

(2) An electronic trading facility on which significant price discovery contracts are executed or traded should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend the activities of a market participant as well as the authority and ability to terminate the activities of a market participant pursuant to clear and fair standards. The electronic trading facility can satisfy this criterion for market participants by expelling or denying such person's future access upon a determination that such a person has violated the electronic trading facility's rules.

(b) *Acceptable practices.* An acceptable trade practice surveillance program generally would include:

- (1) Maintenance of data reflecting the details of each transaction executed on the electronic trading facility;
- (2) Electronic analysis of this data routinely to detect potential trading violations;
- (3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to the electronic trading facility's attention; and
- (4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend the activities of a market participant pursuant to clear and fair standards that are available to market participants. *See, e.g.* , 17 CFR part 8.

| *CORE PRINCIPLE VIII ~~OF SECTION 2(h)(7)(C)~~—CONFLICTS OF INTEREST.* *The electronic trading facility on which significant price discovery contracts are executed or traded shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the electronic trading facility and establish a process for resolving such conflicts of interest.*

(a) *Guidance.* (1) The means to address conflicts of interest in the decision-making of an electronic trading facility on which significant price discovery contracts are executed or traded should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the electronic trading facility on which significant price discovery contracts are executed or traded should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and electronic trading facility employees or gained through an ownership interest in the electronic trading facility or its parent organization(s).

(2) All electronic trading facilities on which significant price discovery contracts are traded bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided in section 3 of the Act. Under Core Principle VIII, they are also required to minimize conflicts of interest in their decision-making processes. To comply with this core principle, electronic trading facilities on which significant price discovery contracts are traded should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, market participants, other industry participants and other constituencies.

(b) *Acceptable practices.* [Reserved]

| *CORE PRINCIPLE IX ~~OF SECTION 2(h)(7)(C)~~—ANTITRUST CONSIDERATIONS.* *Unless necessary or appropriate to achieve the purposes of this Act, the electronic trading facility, with respect to any significant price discovery contracts, shall endeavor to avoid adopting any rules*



*or taking any actions that result in any unreasonable restraints of trade or imposing any material anticompetitive burden on trading on the electronic trading facility.*

(a) *Guidance.* An electronic trading facility, with respect to a significant price discovery contract, may at any time request that the Commission consider under the provisions of section 15(b) of the Act any of the electronic trading facility's rules, which may be trading protocols or policies, operational rules, or terms or conditions of any significant price discovery contract. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

## **PART 41- SECURITY FUTURES PRODUCTS**

### **§ 41.2 Required records.**

A designated contract market ~~or registered derivatives transaction execution facility~~ that trades a security index or security futures product shall maintain in accordance with the requirements of §1.31 books and records of all activities related to the trading of such products, including: Records related to any determination under subpart B of this part whether or not a futures contract on a security index is a narrow-based security index or a broad-based security index.

### **§ 41.12 Indexes underlying futures contracts trading for fewer than 30 days.**

(a) An index on which a contract of sale for future delivery is trading on a designated contract market, ~~registered derivatives transaction execution facility~~, or foreign board of trade is not a narrow-based security index under ~~Section-section~~ 1a(25) of the Act (7 U.S.C. 1a(25)) for the first 30 days of trading, if:

(1) Such index would not have been a narrow-based security index on each trading day of the preceding 6 full calendar months with respect to a date no earlier than 30 days prior to the commencement of trading of such contract;

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### **§ 41.13 Futures contracts on security indexes trading on or subject to the rules of a foreign board of trade.**

When a contract of sale for future delivery on a security index is traded on or subject to the rules of a foreign board of trade, such index shall not be a narrow-based security index if it would not be a narrow-based security index if a futures contract on such index were traded on a designated contract market, ~~or registered derivatives transaction execution facility.~~

## § 41.21 Requirements for underlying securities.

(a) *Security futures products based on a single security.* A futures contract on a single security is eligible to be traded as a security futures product only if:

(1) The underlying security is registered pursuant to ~~Section-section~~ 12 of the Securities Exchange Act of 1934;

(2) The underlying security is:

(i) Common stock,

(ii) Such other equity security as the Commission and the SEC jointly deem appropriate, or

(iii) A note, bond, debenture, or evidence of indebtedness; and

(3) The underlying security conforms with the listing standards for the security futures product that the designated contract market ~~or registered derivatives transaction execution facility~~ has filed with the SEC under ~~Section-section~~ 19(b) of the Securities Exchange Act of 1934.

(b) *Security futures product based on two or more securities.* A futures contract on an index of two or more securities is eligible to be traded as a security futures product only if:

(1) The index is a narrow-based security index as defined in ~~Section-section~~ 1a(25) of the Act;

(2) The securities in the index are registered pursuant to ~~Section-section~~ 12 of the Securities Exchange Act of 1934;

(3) The securities in the index are:

(i) Common stock,

(ii) Such other equity securities as the Commission and the SEC jointly deem appropriate, or

(iii) A note, bond, debenture, or evidence of indebtedness; and

(4) The index conforms with the listing standards for the security futures product that the designated contract market ~~or registered derivatives transaction execution facility~~ has filed with the SEC under ~~Section-section~~ 19(b) of the Securities Exchange Act of 1934.

## § 41.22 Required certifications.

It shall be unlawful for a designated contract market ~~or registered derivatives transaction execution facility~~ to list for trading or execution a security futures product unless the designated contract market ~~or registered derivatives transaction execution facility~~ has provided the Commission with a certification that the specific security futures product or products and the

designated contract market ~~or registered derivatives transaction execution facility~~ meet, as applicable, the following criteria:

- (a) The underlying security or securities satisfy the requirements of §41.21;
- (b) If the security futures product is not cash settled, arrangements are in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product;
- (c) Common clearing. [Reserved]
- (d) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder, may solicit, accept any order for, or otherwise deal in any transaction in or in connection with security futures products;
- (e) If the board of trade is a designated contract market pursuant to section 5 of the Act ~~or is a registered derivatives transaction execution facility pursuant to section 5a of the Act~~, dual trading in these security futures products is restricted in accordance with §41.27;
- (f) Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of §41.25;

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### **§ 41.23 Listing of security futures products for trading.**

(a) *Initial listing of products for trading.* To list new security futures products for trading, a designated contract market ~~or registered derivatives transaction execution facility~~ shall submit to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the initiation of trading, a filing that:

- (1) Is labeled “Listing of Security Futures Product;”
- (2) Includes a copy of the product's rules, including its terms and conditions;
- (3) Includes the certifications required by §41.22;
- (4) Includes a certification that the terms and conditions of the contract comply with the additional conditions for trading of §41.25;

(5) If the board of trade is a designated contract market pursuant to section 5 of the Act ~~or a registered derivatives transaction execution facility pursuant to section 5a of the Act~~, it includes a certification that the security futures product complies with the Act and rules thereunder; and

(6) Includes a copy of the submission cover sheet in accordance with the instructions in appendix D of part 40.

(7) Includes a request for confidential treatment as permitted under the procedures of §40.8.

(b) *Voluntary submission of security futures products for Commission approval.* A designated contract market ~~or registered derivatives transaction execution facility~~ may request that the Commission approve any security futures product under the procedures of §40.5 of this chapter, provided however that the registered entity shall include the certification required by §41.22 with its submission under §40.5 of this chapter. Notice designated contract markets may not request Commission approval of security futures products.

#### **§ 41.24 Rule amendments to security futures products.**

(a) *Self-certification of rules and rule amendments by designated contract markets and registered derivatives clearing organizations.* A designated contract market or registered derivatives clearing organization may implement any new rule or rule amendment relating to a security futures product by submitting to the Commission at its Washington, DC headquarters, either in electronic or hard-copy form, to be received by the Commission no later than the day prior to the implementation of the rule or rule amendment, a filing that:

(1) Is labeled "Security Futures Product Rule Submission;"

(2) Includes a copy of the new rule or rule amendment;

(3) Includes a certification that the designated contract market or registered derivatives clearing organization has filed the rule or rule amendment with the Securities and Exchange Commission, if such a filing is required;

(4) If the board of trade is a designated contract market pursuant to section 5 of the Act or is a registered derivatives clearing organization pursuant to section 5b of the Act, it includes the documents and certifications required to be filed with the Commission pursuant to §40.6 of this chapter, including a certification that the security futures product complies with the Act and rules thereunder; and

(5) Includes a copy of the submission cover sheet in accordance with the instructions in appendix D of part 40.

(6) Includes a request for confidential treatment as permitted under the procedures of §40.8.

~~(b) Self-certification of rules by registered derivatives transaction execution facilities. Notwithstanding §37.7 of this chapter, a registered derivatives transaction execution facility may~~

~~only implement a new rule or rule amendment relating to a security futures product if the registered derivatives transaction execution facility has certified the rule or rule amendment pursuant to the procedures of paragraph (a) of this section.~~

(~~e~~b) *Voluntary submission of rules for Commission review and approval.* A designated contract market, ~~registered derivatives transaction execution facility~~, or a registered derivatives clearing organization clearing security futures products may request that the Commission approve any rule or proposed rule or rule amendment relating to a security futures product under the procedures of §40.5 of this chapter, provided however that the registered entity shall include the certifications required by §41.22 with its submission under §40.5 of this chapter. Notice designated contract markets may not request Commission approval of rules.

#### § 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions* —(1) *Reporting of data.* The designated contract market ~~or registered derivatives transaction execution facility~~ shall comply with chapter 16 of this title requiring the daily reporting of market data.

(2) *Regulatory trading halts.* The rules of a designated contract market ~~or registered derivatives transaction execution facility~~ that lists or trades one or more security futures products must include the following provisions:

(i) Trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security; and

(ii) Trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(3) *Speculative position limits.* The designated contract market ~~or registered derivatives transaction execution facility~~ shall have rules in place establishing position limits or position accountability procedures for the expiring futures contract month. The designated contract market ~~or registered derivatives transaction execution facility~~ shall,

(i) Adopt a net position limit no greater than 13,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; except where,

(A) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares, or exceeds 15 million shares and there are more than 40 million shares of the underlying security outstanding, the designated contract market ~~or registered derivatives transaction execution facility~~ may adopt a net position limit no greater than 22,500 (100-share) contracts applicable to positions held during the last five trading days of an expiring contract month; or

(B) For security futures products where the average daily trading volume in the underlying security exceeds 20 million shares and there are more than 40 million shares of the underlying

security outstanding, the designated contract market ~~or registered derivatives transaction execution facility~~ may adopt a position accountability rule. Upon request by the designated contract market ~~or registered derivatives transaction execution facility~~, traders who hold net positions greater than 22,500 (100-share) contracts, or such lower level specified by exchange rules, must provide information to the exchange and consent to halt increasing their positions when so ordered by the exchange.

(ii) For a security futures product comprised of more than one security, the criteria in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this section must apply to the security in the index with the lowest average daily trading volume.

(iii) Exchanges may approve exemptions from these position limits pursuant to rules that are consistent with §150.3 of this chapter.

(iv) For purposes of this section, average daily trading volume shall be calculated monthly, using data for the most recent six-month period. If the data justify a higher or lower speculative limit for a security future, the designated contract market ~~or registered derivatives transaction execution facility~~ may raise or lower the position limit for that security future effective no earlier than the day after it has provided notification to the Commission and to the public under the submission requirements of §41.24. If the data require imposition of a reduced position limit for a security future, the designated contract market ~~or registered derivatives transaction execution facility~~ may permit any trader holding a position in compliance with the previous position limit, but in excess of the reduced limit, to maintain such position through the expiration of the security futures contract; provided that the designated contract market ~~or registered derivatives transaction execution facility~~ does not find that the position poses a threat to the orderly expiration of such contract.

(b) *Final settlement prices for security futures products.* (1) The final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities;

(2) Notwithstanding paragraph (b)(1) of this section, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect:

(i) The price of the underlying security or securities during the most recent regular trading session for such security or securities; or

(ii) The next available opening price of the underlying security or securities.

(3) Notwithstanding paragraphs (b)(1) or (b)(2) of this section, if a derivatives clearing organization registered under Section 5b of the Act or a clearing agency exempt from registration pursuant to Section 5b(a)(2) of the Act, to which the final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of customers and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance

of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing organization shall have the authority to determine, under its rules, a final settlement price for such security futures product.

(c) *Special requirements for physical delivery contracts.* For security futures products settled by actual delivery of the underlying security or securities, payment and delivery of the underlying security or securities must be effected through a clearing agency that is registered pursuant to section 17A of the Securities Exchange Act of 1934.

(d) The Commission may exempt a designated contract market from the provisions of paragraphs (a)(2) and (b) of this section, either unconditionally or on specified terms and conditions, ~~any designated contract market or registered derivatives transaction execution facility~~, if the Commission determines that such exemption is consistent with the public interest and the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any Securities and Exchange Commission rules. Any exemption that may be required from such rules must be obtained separately from the Securities and Exchange Commission.

#### **§ 41.27 Prohibition of dual trading in security futures products by floor brokers.**

(a) *Definitions.* For purposes of this section:

(1) Trading session means hours during which a designated contract market ~~or registered derivatives transaction execution facility~~ is scheduled to trade continuously during a trading day, as set forth in its rules, including any related post settlement trading session. A designated contract market ~~or registered derivatives transaction execution facility~~ may have more than one trading session during a trading day.

(2) Member shall have the meaning set forth in section 1a(24) of the Act.

(3) Broker association includes two or more designated contract market ~~or registered derivatives transaction execution facility~~ members with floor trading privileges of whom at least one is acting as a floor broker who:

(i) Engage in floor brokerage activity on behalf of the same employer;

(ii) Have an employer and employee relationship which relates to floor brokerage activity;

(iii) Share profits and losses associated with their brokerage or trading activity; or

(iv) Regularly share a deck of orders.

(4) Customer means an account owner for which a trade is executed other than:

(i) An account in which such floor broker has any interest;

- (ii) An account for which a floor broker has discretion;
- (iii) An account controlled by a person with whom a floor broker has a relationship through membership in a broker association;
- (iv) A house account of the floor broker's clearing member; or
- (v) An account for another member present on the floor of a designated contract market ~~or registered derivatives transaction execution facility~~ or an account controlled by such other member.

(5) Dual trading means the execution of customer orders by a floor broker through open outcry during the same trading session in which the floor broker executes directly or by initiating and passing to another member, either through open outcry or through a trading system that electronically matches bids and offers pursuant to a predetermined algorithm, a transaction for the same security futures product on the same designated contract market ~~or registered derivatives transaction execution facility~~ for an account described in paragraphs (a)(4)(i)–(v) of this section.

(b) *Dual Trading Prohibition.* (1) No floor broker shall engage in dual trading in a security futures product on a designated contract market ~~or registered derivatives transaction execution facility~~, except as otherwise provided under paragraphs (d), (e), and (f) of this section.

(2) A designated contract market ~~or a registered derivatives transaction execution facility~~ operating an electronic market or electronic trading system that provides market participants with a time or place advantage or the ability to override a predetermined algorithm must submit an appropriate rule proposal to the Commission consistent with the procedures set forth in §40.5. The proposed rule must prohibit electronic market participants with a time or place advantage or the ability to override a predetermined algorithm from trading a security futures product for accounts in which these same participants have any interest during the same trading session that they also trade the same security futures product for other accounts. This paragraph, however, is not applicable with respect to execution priorities or quantity guarantees granted to market makers who perform that function, or to market participants who receive execution priorities based on price improvement activity, in accordance with the rules governing the designated contract market ~~or registered derivatives transaction execution facility~~.

(c) *Rules Prohibiting Dual Trading* —(1) *Designated contract markets.* Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a designated contract market:

- (i) Must submit to the Commission in accordance with §40.6, a rule prohibiting dual trading, together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or
- (ii) Must obtain Commission approval of such rule pursuant to §40.5.



~~(2) Registered derivatives transaction execution facilities. Prior to listing a security futures product for trading on a trading floor where bids and offers are executed through open outcry, a registered derivatives transaction execution facility:~~

~~(i) Must notify the Commission in accordance with §37.7(b) that it has adopted a rule prohibiting dual trading; or~~

~~(ii) Must obtain Commission approval of such rule pursuant to §37.7(c).~~

(d) *Specific Permitted Exceptions.* Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market ~~or a registered derivatives transaction execution facility~~ pursuant to one or more of the following specific exceptions:

(1) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, provided, that the floor broker must liquidate the position in his or her personal error account resulting from that error through open outcry or through a trading system that electronically matches bids and offers as soon as practicable, but, except as provided herein, not later than the close of business on the business day following the discovery of error. In the event that a floor broker is unable to offset the error trade because the daily price fluctuation limit is reached, a trading halt is imposed by the designated contract market ~~or registered derivatives transaction execution facility~~, or an emergency is declared pursuant to the rules of the designated contract market ~~or registered derivatives transaction execution facility~~, the floor broker must liquidate the position in his or her personal error account resulting from that error as soon as practicable thereafter.

(2) *Customer consent.* To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's account. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, provided, that the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(3) *Spread transactions.* To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his or her personal account and to offset such position, provided, that a record is prepared and maintained to demonstrate that the customer order was for a spread.

(4) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action as determined by a designated contract market ~~or registered derivatives transaction execution facility~~.

(e) *Rules Permitting Specific Exceptions* —(1) *Designated contract markets.* Prior to permitting dual trading under any of the exceptions provided in paragraphs (d)(1)–(4) of this section, a designated contract market:

(i) Must submit to the Commission in accordance with §40.6, a rule permitting the exception(s), together with a written certification that the rule complies with the Act and the regulations thereunder, including this section; or

(ii) Must obtain Commission approval of such rule pursuant to §40.5.

~~(2) Registered derivatives transaction execution facilities. Prior to permitting dual trading under any of the exceptions provided in paragraphs (d)(1)–(4) of this section, a registered derivatives transaction execution facility:~~

~~(i) Must notify the Commission in accordance with §37.7(b) that it has adopted a rule permitting the exception(s); or~~

~~(ii) Must obtain Commission approval of such rule pursuant to §37.7(c).~~

~~(f) Unique or Special Characteristics of Agreements, Contracts, or Transactions, or of Designated Contract Markets or Registered Derivatives Transaction Execution Facilities.~~

Notwithstanding the applicability of a dual trading prohibition under paragraph (b) of this section, dual trading may be permitted on a designated contract market ~~or registered derivatives transaction execution facility~~ to address unique or special characteristics of agreements, contracts, or transactions, or of the designated contract market ~~or registered derivatives transaction execution facility~~ as provided herein. Any rule of a designated contract market ~~or registered derivatives transaction execution facility~~ that would permit dual trading when it would otherwise be prohibited, based on a unique or special characteristic of agreements, contracts, or transactions, or of the designated contract market ~~or registered derivatives transaction execution facility~~ must be submitted to the Commission for prior approval under the procedures set forth in §40.5. The rule submission must include a detailed demonstration of why an exception is warranted.

#### §41.43 Definitions.

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(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Exchange Act, a national securities association registered under section 15A of the Exchange Act, or a contract market registered under section 5 of the Act or section 5f of the Act., ~~or a derivatives transaction execution facility registered under section 5a of the Act~~

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#### § 41.49 Filing proposed margin rule changes with the Commission.

(a) *Notification requirement for notice-designated contract markets.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5f of the Act shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act,

concurrently provide to the Commission a copy of such proposed rule change and any accompanying documentation filed with the SEC.

(b) *Filing requirements under the Act.* Any self-regulatory authority that is registered with the Commission as a designated contract market under section 5 of the Act ~~or a derivatives transaction execution facility under section 5a of the Act~~ shall, when filing a proposed rule change regarding customer margin for security futures with the SEC for approval in accordance with section 19(b)(2) of the Exchange Act, submit such proposed rule change to the Commission as follows:

(1) If the self-regulatory authority elects to request the Commission's prior approval for the proposed rule change pursuant to section 5c(c)(2) of the Act, it shall concurrently file the proposed rule change with the Commission in accordance with §40.5 of this chapter.

(2) If the self-regulatory authority elects to implement a proposed rule change by written certification pursuant to section 5c(c)(1) of the Act, it shall concurrently provide to the Commission a copy of the proposed rule change and any accompanying documentation filed with the SEC. Promptly after obtaining SEC approval for the proposed rule change, such self-regulatory authority shall file its written certification with the Commission in accordance with §40.6 of this chapter.

## **PART 140- ORGANIZATIONS, FUNCTIONS, AND PROCEDURES OF THE COMMISSION**

**§ 140.72 Delegation of authority to disclose confidential information to a contract market, swap execution facility, swap data repository, 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, [swap execution facility, swap data repository](#), 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. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by an official of a contract market, [swap execution facility, swap data repository](#), registered futures association or self-regulatory organization.

(b) Disclosure under this section shall only be made to a contract market, [swap execution facility, swap data repository](#), registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the contract market, [swap execution facility, swap data repository](#), registered futures association or self-regulatory organization, which sets forth the official's name, business address and telephone number. The chief executive officer shall thereafter notify the Commission of any deletions or additions to the list of officials authorized to receive disclosures under this section. The original list and any supplemental list required by this paragraph shall be filed with the Secretary of the Commission, and a copy thereof shall also be filed with the Regional Coordinator for the region in which the contract market, [swap execution facility, or swap data repository](#), is located or in which the registered futures association or self-regulatory organization has its principal office.

(c) Notwithstanding the provisions of paragraph (a) of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether disclosure of information should be made.

(d) For purposes of this section, the term “official” shall mean any officer or member of a committee of a contract market, [swap execution facility, swap data repository](#), registered futures association or self-regulatory organization who is specifically charged with market surveillance or audit or investigative responsibilities, or their duly authorized representative or agent, who is named on the list filed pursuant to paragraph (b) of this section or any supplement thereto.

(e) For the purposes of this section, the term “self-regulatory organization” shall mean the same as that defined in section 3(a) (26) of the Securities Exchange Act of 1934.

(f) Any contract market, [swap execution facility, swap data repository](#), registered futures association or self-regulatory organization receiving information from the Commission under these provisions shall not disclose such information except that disclosure may be made in any self-regulatory action or proceeding.

**§ 140.77 Delegation of authority to determine that applications for contract market designation, swap execution facility registration, or swap data repository registration are materially incomplete.**

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designees, the authority to determine that an application for contract market designation, swap execution facility registration, or swap data repository registration is materially incomplete under section 6 of the Commodity Exchange Act and to so notify the applicant.

(b) The Director of the Division of Market Oversight may submit any matter which has been delegated to the director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (a) of this section.

**§ 140.96 Delegation of authority to publish in the Federal Register.**

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to publish in the Federal Register notice of the availability for comment of the proposed terms and conditions of applications for contract market designation, swap execution facility and swap data repository registration, and to determine to publish, and to publish, requests for public comment on proposed exchange, swap execution facility or swap data repository rules, and rule amendments, when there exists novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the Act, including regulations under the Act of major economic significance.

(b) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight or the Director's designee, and to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to determine to publish, and to publish, in the Federal Register, requests for public comment on proposed exchange and self-regulatory organization rule amendments when publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons.

(c) The Director of the Division of Market Oversight or the Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to such Director under paragraphs (a) or (b) of this section to the Commission for its consideration.

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight and to the Director of the Division of Clearing and Intermediary Oversight under paragraphs (a) and (b) of this section.

#### **§ 140.99 Requests for exemptive, no-action and interpretative letters.**

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(d) *Filing requirements.* Each request for a Letter must comply with the following filing requirements:

(1) The request must be in writing and signed.

(2) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered swap execution facilities, registered swap data repositories, registered derivatives transaction execution facilities, exempt commercial markets, exempt boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, foreign trading terminals, hedging exemptions, and the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. ~~A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.~~ The request must be submitted electronically using the e-mail address *dmoletters@cftc.gov* (for requests filed with the Division of Market Oversight), or *dciletters@cftc.gov* (for requests filed with the Division of Clearing and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight or the Division of Clearing and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

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#### **§ 140.735-2 Prohibited transactions.**

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee of the Commission, including transactions for the account of other persons

effected by the member or employee, directly or indirectly under a power of attorney or otherwise. A member or employee shall be deemed to have a sufficient interest in the transactions of his or her spouse, minor child, or other relative who is a resident of the immediate household of the member or employee so that such transactions must be reported and are subject to all the terms of this section.

(b) *Prohibitions.* Except as otherwise provided in this subsection, no member or employee of the Commission shall:

(1) Participate, directly or indirectly, in any transaction:

(i) In swaps;

(ii) In commodity futures;

(iii) In retail forex transactions, as that term is defined in §5.1(m);

(~~iv~~) Involving any commodity that is of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, or decline guaranty; or

(~~iv~~) For the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract;

(2) Effect any purchase or sale of ~~an~~ commodity option, futures contract, or swap, ~~or option on a futures contract~~ involving a security or group of securities;

(3) Sell a security which he or she does not own or consummate a sale by the delivery of a security borrowed by or for his or her account;

(4) Participate, directly or indirectly, in any investment transaction in an actual commodity if:

(i) Nonpublic information is used in the investment transaction;

(ii) It is prohibited by rule or regulation of the Commission; or

(iii) It is effected by means of any instrument regulated by the Commission and is not otherwise permitted by an exception under this section;

(5) Purchase or sell any securities of a company which, to his or her knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party;

(iii) Other matter under consideration by the Commission that could have a direct and predictable effect upon the company; or

(6) Recommend or suggest to another person any transaction in which the member or employee is not permitted to participate in any circumstance where the member or employee could reasonably expect to benefit or where the member or employee has or may have control or substantial influence over such person.

(c) *Exception for farming, ranching, and natural resource operations.* The prohibitions in paragraphs (b)(1)(i) and (ii) of this section shall not apply to a transaction in connection with any farming, ranching, oil and gas, mineral rights, or other natural resource operation in which the member or employee has a financial interest, if he or she is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures, ~~or commodity options, or swap~~ transaction and has previously notified the General Counsel<sup>2</sup> in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage, and the identity of the person or persons who will make trading decisions for the operation;<sup>3</sup>

<sup>2</sup> As used in this subpart, "General Counsel" refers to the General Counsel in his or her capacity as counselor for the Commission and designated agency ethics official for the Commission, and includes his or her designee and the alternate designated agency ethics official appointed by the agency head pursuant to 5 CFR 2638.202.

<sup>3</sup> Although not required, if they choose to do so, members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or options transactions permitted under paragraph (c) of this section. A member or employee considering such arrangements should consult with the Office of General Counsel in advance for approval. Should a member or employee gain knowledge of an actual futures, ~~or commodity option, or swap~~ transaction entered into by an operation described in paragraph (c) of this section that has already taken place and the market position represented by that transaction remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from any particular matter that will have a direct and predictable effect on the financial interest in question, may be appropriate.

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#### **§ 140.735-2a Prohibited interests.**

(a) *Application.* This section applies to all financial interests of a Commission member or employee of the Commission, including financial interests held by the member or employee for the account of other persons. A member or employee shall be deemed to have a sufficient interest in the financial interests of his or her spouse, minor child, or other relative who is a



resident of the immediate household of the member or employee, so that such financial interests must be reported and are subject to all the terms of this section.

(b) *Prohibitions.* Except as otherwise provided in this subsection, no member or employee of the Commission shall:

(1) Have a financial interest, through ownership of securities or otherwise, in any person<sup>5</sup> registered with the Commission (including futures commission merchants, associated persons and agents of futures commission merchants, floor brokers, commodity trading advisors and commodity pool operators, and any other persons required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission), or any contract market, [swap execution facility](#), [swap data repository](#), board of trade, or other trading facility, or any clearing organization subject to regulation or oversight by the Commission; or

[Footnote 5 to (b)(1)] As defined in section 1a(46 38) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a “person” includes an individual, association, partnership, corporation and a trust.

[Footnote 6 to (b)(1)] <sup>6</sup> Attention is directed to 18 U.S.C. 208.

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### **§ 140.735-3 Non-governmental employment and other outside activity.**

A Commission member or employee shall not accept employment or compensation from any person, exchange, [swap execution facility](#), [swap data repository](#), or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market, [swap execution facility](#), [swap data repository](#), or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.<sup>11</sup>

<sup>11</sup> Attention is directed to section 2(a)(78) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

## **PART 145 – COMMISSION RECORDS AND INFORMATION**

### **§ 145.9 Petition for confidential treatment of information submitted to the Commission.**

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This section does not affect the Commission's right, authority, or obligation to disclose information in any other context.

(b) *Scope.* The provisions of this section shall apply only where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. See 40.8 for procedures to be utilized in connection with filing information required to be filed pursuant to 17 CFR parts 40 and 41.

(c) *Definitions.* The following definitions apply to this section:

(1) *Submitter.* A “submitter” is any person who submits any information or material to the Commission or who permits any information or material to be submitted to the Commission. For purposes of paragraph (d)(1)(ii) of this section only, “submitter” includes any person whose information has been submitted to a designated contract market, derivatives clearing organization, swap execution facility, swap data repository, or registered futures association that in turn has submitted the information to the Commission.

(2) *FOIA requester.* A “FOIA requester” is any person who files with the Commission a request to inspect or copy Commission records or documents pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(d) *Written request for confidential treatment.* (1) Any submitter may request in writing that the Commission afford confidential treatment under the Freedom of Information Act to any information that he or she submits to the Commission. Except as provided in paragraph (d)(4) of this section, no oral requests for confidential treatment will be accepted by the Commission. The submitter shall specify the grounds on which confidential treatment is being requested but need not provide a detailed written justification of the request unless required to do so under paragraph (e) of this section. Confidential treatment may be requested only on the grounds that disclosure:

(i) Is specifically exempted by a statute that either requires that the matters be withheld from the public in such manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(ii) Would reveal the submitter's trade secrets or confidential commercial or financial information.

(iii) Would constitute a clearly unwarranted invasion of the submitter's personal privacy.

(iv) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would deprive the submitter of a right to a fair trial or an impartial adjudication.

(v) Would reveal investigatory records compiled for law enforcement purposes whose disclosure would constitute an unwarranted invasion of the personal privacy of the submitter.

(vi) Would reveal investigatory records compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings or disclose investigative techniques and procedures, provided that the claim may be made only by a designated contract market, derivatives clearing organization, swap execution facility, swap data repository, or registered futures association with regard to its own investigatory records.

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## **Appendix A to Part 145—Compilation of Commission Records Available to the Public**

The following documents are available, upon request, directly from the office indicated. Unless otherwise noted, the mailing address for the Commission offices listed below is Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(a) *Office of External Affairs*. (1) Commitments of Traders Reports.

(2) Weekly Advisory (solely available on the Commission's Web site at <http://www.cftc.gov/cftc/cftcpresoffice.htm>).

(3) Studies Prepared by Commission staff.

(4) Educational material ( *e.g.*, newsletters, brochures, annual reports, conference or advisory meetings, technical information about specific markets or contracts).

(5) Press releases.

(6) Rule enforcement and financial reviews (public version).

(7) CFTC litigation documents ( *e.g.* administrative and civil complaints, injunctions, initial decisions, opinions and orders).

(8) Commission rules and regulations, Federal Register notices, interpretative letters.

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(13) Publicly available portions of applications to become a registered entity including the transmittal letter, application form, proposed rules, proposed bylaws, corporate documents, any overview or similar summary provided by the applicant, any documents pertaining to the applicant's legal status and governance structure, including governance fitness information, and any other part of the application not covered by a request for confidential treatment.

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## **PART 155- TRADING STANDARDS**

## § 155.2 Trading standards for floor brokers.

Each contract market shall adopt ~~and submit to the Commission for approval pursuant to section 5a(a)(12)(A) of the Act and Sec. 1.41 of this chapter, a set of~~ rules which shall, at a minimum, with respect to each member of the contract market acting as a floor broker:

(a) Prohibit such member from purchasing any commodity for future delivery, purchasing any call option, or selling any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) purchase of any future, (2) purchase of any call option, or (3) sale of any put option, in the same commodity which is executable at the market price or at the price at which such purchase or sale can be made for the member's own account or any account in which he has an interest.

(b) Prohibit such member from selling any commodity for future delivery, selling any call option, or purchasing any put option, for his own account or for any account in which he has an interest, while holding an order of another person for the (1) sale of any future, (2) sale of any call option, or (3) purchase of any put option, in the same commodity which is executable at the market price or at the price at which such sale or purchase can be made for the member's own account or any account in which he has an interest.

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## § 155.3 Trading standards for futures commission merchants.

(a) Each futures commission merchant shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Insure, to the extent possible, that each order received from a customer ~~or from an option customer~~ which is executable at or near the market price is transmitted to the floor of the appropriate contract market before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's ~~or option customer's~~ order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

(2) Prevent affiliated persons from placing orders, directly or

indirectly, with another futures commission merchant in a manner designed to circumvent the provisions of paragraph (a)(1) of this section.

(b) No futures commission merchant or any of its affiliated persons shall:

(1) Disclose that an order of another person is being held by the futures commission merchant or any of its affiliated persons, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, the contract market on which such order is to be executed, or a futures association registered with the Commission pursuant to section 17 of the Act; or

(2)(i) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the futures commission merchant or any of its affiliated persons by reason of their relationship to such other person, except with such other person's prior consent and in conformity with contract market rules approved by or certified to the Commission.

(ii) In the case of a customer who does not qualify as an "institutional customer" as defined in [See-§ 1.3\(g\)](#) of this chapter, a futures commission merchant must obtain the customer's prior consent through a signed acknowledgment, which may be accomplished in accordance with [See-§ 1.55\(d\)](#) of this chapter.

(c) No futures commission merchant shall knowingly handle the account of any affiliated person of another futures commission merchant or of an introducing broker unless the futures commission merchant:

(1) Receives written authorization from a person designated by such other futures commission merchant or introducing broker with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section or [See-§ 155.4 \(a\)\(2\)](#), respectively;

(2) Prepares immediately upon receipt of an order for such account a written record of such order, including the account identification and order number, and records thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received; and

(3) Transmits on a regular basis to such other futures commission merchant or introducing broker copies of all statements for such account and of all written records prepared upon the receipt of orders for such account pursuant to paragraph (c)(2) of this section.

(d) No affiliated person of a futures commission merchant shall have an account, directly or indirectly, with another futures commission merchant unless:

(1) Such affiliated person receives written authorization to maintain such an account from a person designated by the futures commission merchant with which such person is affiliated with

responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such other futures commission merchant upon receipt of orders for such account pursuant to paragraph (c)(2) of this section are transmitted on a regular basis to the future commission merchant with which such person is affiliated.

#### **§ 155.4 Trading standards for introducing brokers.**

(a) Each introducing broker shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Insure, to the extent possible, that each order received from a customer ~~or from an option customer~~ which is executable at or near the market price is transmitted to the futures commission merchant carrying the account of the customer ~~or option customer~~ before any order in any future or in any commodity option in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the account owner, if the affiliated person has gained knowledge of the customer's ~~or option customer's~~ order prior to the transmission to the floor of the appropriate contract market of the order for a proprietary account, an account in which the affiliated person has an interest, or an account in which the affiliated person may originate orders without the prior specific consent of the account owner; and

(2) Prevent affiliated persons from placing orders, directly or indirectly, with any futures commission merchant in a manner designed to circumvent the provisions of paragraph (a)(1) of this section.

(b) No introducing broker or any of its affiliated persons shall:

(1) Disclose that an order of another person is being held by the introducing broker or any of its affiliated persons, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, the contract market on which such order is to be executed, or a futures association registered with the Commission pursuant to section 17 of the Act; or

(2)(i) Knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other persons's prior consent and in conformity with contract market rules approved by or certified to the Commission.

(ii) In the case of a customer who does not qualify as an "institutional customer" as defined in [See-§ 1.3\(g\)](#) of this chapter, an introducing broker must obtain the customer's prior consent through a

signed acknowledgment, which may be accomplished in accordance with ~~See-§ 1.55(d)~~ of this chapter.

(c) No affiliated person of an introducing broker shall have an account, directly or indirectly, with any futures commission merchant unless:

(1) Such affiliated person receives written authorization to maintain such an account from a person designated by the introducing broker with which such person is affiliated with responsibility for the surveillance over such account pursuant to paragraph (a)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such futures commission merchant upon receipt of orders for such account pursuant to ~~See-§ 155.3(c)(2)~~ are transmitted on a regular basis to the introducing broker with which such person is affiliated.

~~§ 155.6 [Reserved] Trading standards for the transaction of business on registered derivatives transaction execution facilities.~~

~~—(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a customer who does not qualify as an “institutional customer” as defined in Sec. 1.3(g) of this chapter on a registered derivatives transaction execution facility shall comply with the provisions of Sec. 155.3.~~

~~—(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a registered derivatives transaction execution facility.~~

## **PART 166- CUSTOMER PROTECTION RULES**

### **§ 166.2 Authorization to trade.**

No futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account:

(a) With respect to a commodity interest as defined in any paragraph of the commodity interest definition in §1.3(yy) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is “specifically authorized” if the customer or person designated by the customer to control the account specifies—

(1) The precise commodity interest to be purchased or sold; and

(2) The exact amount of the commodity interest to be purchased or sold); or

(b) With respect to a commodity interest as defined in paragraph (1) or (2) of the commodity interest definition in §1.3(yy) of this chapter, a authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; Provided, however, That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

### § 166.5 Dispute settlement procedures.

(a) Definitions. (1) The term claim or grievance as used in this section shall mean any dispute that:

(i) Arises out of any transaction executed on or subject to the rules of a designated contract market,

(ii) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(iii) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(iv) The term claim or grievance does not include disputes arising from cash market transactions that are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(2) The term customer as used in this section includes ~~an option customer (as defined in Sec. 1.3(jj) of this chapter) and~~ any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market. Provided, however, a person who is an "eligible contract participant" as defined in section ~~1a(12)-(18)~~ (18) of the Act shall not be deemed to be a customer within the meaning of this section.

(3) The term Commission registrant as used in this section means a person registered under the Act as a futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

(b) Voluntariness. The use by customers of dispute settlement procedures shall be voluntary as provided in paragraphs (c) and (g) of this section.

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