

## Commodity Futures Trading Commission

## § 1.46

### MISCELLANEOUS

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

Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, and each member of a contract market or a swap execution facility shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telecommunication, or report published or given general circulation by such futures commission merchant, retail foreign exchange dealer, introducing broker, member 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 exchange rate, and the true source of or authority for the information contained therein.

[77 FR 66329, Nov. 2, 2012]

#### §§ 1.41–1.45 [Reserved]

#### § 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:

(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 customer when the account of such customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying commodity, strike price, expiration date and contract market as that purchased; or

(iv) Sells a put or call option for the account of any customer when the account of such customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying commodity, 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 customer when the account of such 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 customer when the account of such 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 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 the offsetting transaction shall be applied as specified by the 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 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 in connection with the trans-

action, that because of the specific instructions given by or on behalf of the customer or retail forex 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 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

## Commodity Futures Trading Commission

## § 1.49

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).

(Approved by the Office of Management and Budget under control number 3038-0007)

(Secs. 4g, 5, 42 Stat. 1000, 49 Stat. 1496; 7 U.S.C. 6g, 7; secs. 4g, 5, 8a; 7 U.S.C. 6g, 7, 12a)

[41 FR 3194, Jan. 21, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.46, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### §§ 1.47–1.48 [Reserved]

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

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

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant’s obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

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

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer’s request.

(c) *Permissible locations of depositories.*

(1) Unless a customer provides instructions to the contrary, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;

(ii) In a money center country; or

(iii) In the country of origin of the currency.

(2) A futures commission merchant or derivatives clearing organization may hold customer funds outside the United States, in a jurisdiction that is not a money center country, or the country of origin of the currency only to the extent authorized by the customer, *provided*, that the futures commission merchant or derivatives clearing organization must make and maintain a written record of such authorization. Notwithstanding the foregoing, in no event shall a futures commission merchant or a derivatives clearing organization hold customer funds in a restricted country subject to sanctions by the Office of Foreign Assets Control of the U.S. Department of Treasury.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing

§§ 1.50–1.51

17 CFR Ch. I (4–1–17 Edition)

futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

- (i) A bank or trust company;
- (ii) A futures commission merchant registered as such with the Commission; or
- (iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

- (i) A bank or trust company that has in excess of \$1 billion of regulatory capital;
- (ii) A futures commission merchant that is registered as such with the Commission; or
- (iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

- (i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and
- (ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

[68 FR 5551, Feb. 4, 2003, as amended at 76 FR 44264, July 25, 2011; 77 FR 66330, Nov. 2, 2012]

§§ 1.50–1.51 [Reserved]

**§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.**

(a) For purposes of this section, the following terms are defined as follows:

(1) *Examinations expert* is defined as a Nationally recognized accounting and auditing firm with substantial expertise in audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission; and

(2) *Self-regulatory organization* means a contract market (as defined in § 1.3(h)) or a registered futures association under section 17 of the Act. The term “self-regulatory organization” for purpose of this section does not include a swap execution facility (as defined in § 1.3(rrrr)).

(b)(1) Each self-regulatory organization must adopt rules prescribing minimum financial and related reporting requirements for members who are registered futures commission merchants or registered retail foreign exchange dealers. Each self-regulatory organization other than a contract market must adopt rules prescribing minimum financial and related reporting requirements for members who are registered introducing brokers. The self-regulatory organization’s minimum financial and related reporting requirements must be the same as, or more stringent than, the requirements contained in §§ 1.10 and 1.17, for futures commission merchants and introducing brokers, and §§ 5.7 and 5.12 of this chapter for retail foreign exchange dealers; *provided, however*, that a self-regulatory organization may permit its member registrants that are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (“FOCUS Report”), Part II, Part IIA, or Part II CSE, as applicable, in lieu of Form 1-FR; *provided, further*, that such self-regulatory organization must require such member registrants to provide all information in Form 1-FR that is not included in the FOCUS Report

Part II, Part IIA, or Part CSE provided by such member registrant. The definition of adjusted net capital must be the same as that prescribed in §1.17(c) for futures commission merchants and introducing brokers, and §5.7(b)(2) of this chapter for futures commission merchants offering or engaging in retail forex transactions and for retail foreign exchange dealers.

(2) In addition to the requirements set forth in paragraph (b)(1) of this section, each self-regulatory organization that has a futures commission merchant member registrant must adopt rules prescribing risk management requirements for futures commission merchant member registrants that shall be the same as, or more stringent than, the requirements contained in §1.11.

(c)(1) Each self-regulatory organization must establish and operate a supervisory program that includes written policies and procedures concerning the application of such supervisory program in the examination of its member registrants for the purpose of assessing whether each member registrant is in compliance with the applicable self-regulatory organization and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements. The supervisory program also must address the following elements:

(i) *Adequate levels and independence of examination staff.* A self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement a supervisory program. Staff of the self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the supervisory program. The self-regulatory organization must provide annual ethics training to all staff with responsibilities for the supervisory program.

(ii) *Ongoing surveillance.* A self-regulatory organization's ongoing surveillance of member registrants must include the review and analysis of financial reports and regulatory notices filed by member registrants with the designated self-regulatory organization.

(iii) *High-risk firms.* A self-regulatory organization's supervisory program must include procedures for identifying member registrants that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory organization and Commission requirements.

(iv) *On-site examinations.* (A) A self-regulatory organization must conduct routine periodic on-site examinations of member registrants. Member futures commission merchants and retail foreign exchange dealers must be subject to on-site examinations no less frequently than once every eighteen months. A self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination; *provided, however*, that the scope of each on-site examination of a futures commission merchant or retail foreign exchange dealer must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, recordkeeping, and reporting requirements.

(B) A self-regulatory organization other than a contract market must establish the frequency of on-site examinations of member introducing brokers that do not operate pursuant to guarantee agreements with futures commission merchants or retail foreign exchange dealers using a risk-based approach, which takes into consideration

the time elapsed since the self-regulatory organization's previous examination of the introducing broker.

(C) A self-regulatory organization must conduct on-site examinations of member registrants in accordance with uniform examination programs and procedures that have been submitted to the Commission.

(v) *Adequate documentation.* A self-regulatory organization must adequately document all aspects of the operation of the supervisory program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(2) In addition to the requirements set forth in paragraph (c)(1) of this section, the supervisory program of a self-regulatory organization that has a registered futures commission merchant member must satisfy the following requirements:

(i) The supervisory program must set forth in writing the examination standards that the self-regulatory organization must apply in its examination of its registered futures commission merchant member. The supervisory program must be based on controls testing and substantive testing, and must address all areas of risk to which the futures commission merchant can reasonably be foreseen to be subject. The supervisory program must be based on an understanding of the internal control environment to determine the nature, timing and extent of the controls and substantive testing to be performed. The determination as to which elements of the supervisory program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant member.

(ii) All aspects of the supervisory program, including the standards pursuant to paragraph (c)(2)(iii) of this section, must, at minimum, conform to auditing standards issued by the Public Company Accounting Oversight Board as such standards would be applicable to a non-financial statement audit. These standards would include the training and proficiency of the auditor, due professional care in the performance of work, consideration of fraud in

an audit, audit risk and materiality in conducting an audit, planning and supervision, understanding the entity and its environment and assessing the risks of material misstatement, performing audit procedures in response to assessed risk and evaluating the audit evidence obtained, auditor's communication with those charged with governance, and communicating internal control matters identified in an audit.

(iii) The supervisory program must, at a minimum, have standards addressing the following:

- (A) The ethics of an examiner;
- (B) The independence of an examiner;
- (C) The supervision, review, and quality control of an examiner's work product;
- (D) The evidence and documentation to be reviewed and retained in connection with an examination;
- (E) The sampling size and techniques used in an examination;
- (F) The examination risk assessment process;
- (G) The examination planning process;
- (H) Materiality assessment;
- (I) Quality control procedures to ensure that the examinations maintain the level of quality expected;
- (J) Communications between an examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the self-regulatory organization of which the futures commission merchant is a member;
- (K) Communications between an examiner and a futures commission merchant's audit committee of the board of directors or other similar governing body;
- (L) Analytical review procedures;
- (M) Record retention; and
- (N) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues. The examination report is intended solely for the information and use of the self-regulatory organizations and the Commission, and is not intended to be and should not be used by any other person or entity.

(iv) A self-regulatory organization must cause an examinations expert to evaluate the supervisory program and

## Commodity Futures Trading Commission

## § 1.52

such self-regulatory organization's application of the supervisory program at least once every three years.

(A) The self-regulatory organization must obtain from such examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants that includes the following:

(1) A statement that the examinations expert has evaluated the supervisory program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(2) A statement that the examinations expert has evaluated the application of the supervisory program by the self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert; and

(3) The examinations expert's report should include an analysis of the supervisory program's design to detect material weaknesses in an entity's internal control environment;

(4) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Institute of Internal Auditors, and The Risk Management Association.

(B) The self-regulatory organization must provide the written report to the Commission no later than thirty days following the receipt thereof. The self-regulatory organization may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the supervisory program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions or comments, or otherwise), the self-regulatory organization shall commence applying such supervisory program as

the standard for examining its registered futures commission merchant members for all examinations conducted with an "as-of" date later than the date of the Commission's written notification.

(v) The supervisory program must require the self-regulatory organization to report to its risk and/or audit committee of the board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the supervisory program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(vi) The initial supervisory program shall be established as follows. Within 180 days following the effective date of this section, or such other time as the Commission may approve, the self-regulatory organization shall submit a proposed supervisory program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (c)(2)(iv)(A)(1) and (3) of this section from an examinations expert who has evaluated the supervisory program. The self-regulatory organization may provide the Commission a written response to any findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the proposed supervisory program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the self-regulatory organizations shall commence applying such supervisory program as the standard for examining its members that are registered as futures commission merchants for all examinations conducted with an "as-of" date later than the date of the Commission's written notification.

(vii) The examinations expert's report, the self-regulatory organization's response, as well as any information concerning the supervisory program or any review conducted pursuant to the program that is obtained by the examinations expert, is confidential. Except

as expressly provided for in this section, such information may not be disclosed to anyone not involved in the review process.

(d)(1) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one such self-regulatory organization, the function of:

(i) Monitoring and examining for compliance with the minimum financial and related reporting requirements and risk management requirements, including policies and procedures relating to the receipt, holding, investing and disbursement of customer funds, adopted by such self-regulatory organizations and the Commission in accordance with paragraphs (b) and (c) of this section; and

(ii) Receiving the financial reports and notices necessitated by such minimum financial and related reporting requirements; *provided, however*, that the self-regulatory organization that delegates the functions set forth in this paragraph (d)(1) shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(2) If a plan established pursuant to paragraph (d)(1) of this section applies to any registered futures commission merchant, then such plan must include the following elements:

(i) *The Joint Audit Committee.* The self-regulatory organizations that choose to participate in the plan shall form a Joint Audit Committee, consisting of all self-regulatory organizations in the plan as members. The members of the Joint Audit Committee shall establish, operate and maintain a Joint Audit Program in accordance with the requirements of this section to ensure an effective and a high quality program for examining futures commission merchants, to designate the designated

self-regulatory organizations that will be responsible for the examinations of futures commission merchants pursuant to the Joint Audit Program, and to satisfy such additional obligations set forth in this section in order to facilitate the examinations of futures commission merchants by their respective designated self-regulatory organizations.

(ii) *The Joint Audit Program.* The Joint Audit Program must, at minimum, satisfy the following requirements.

(A) The purpose of the Joint Audit Program must be to assess whether each registered futures commission merchant member of the Joint Audit Committee self-regulatory organization members is in compliance with the Joint Audit Program and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, including policies and procedures relating to the receipt, holding, investment, and disbursement of customer funds, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements.

(B) The Joint Audit Program must include written policies and procedures concerning the application of the Joint Audit Program in the examination of the registered futures commission merchant members of the Joint Audit Committee self-regulatory organization members.

(C)(1) *Adequate levels and independence of examination staff.* A designated self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement the Joint Audit Program. Staff of the designated self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the Joint Audit Program. The designated self-regulatory organization must provide annual ethics training to all staff with responsibilities for the Joint Audit Program.



(2) *Ongoing surveillance.* A designated self-regulatory organization's ongoing surveillance of futures commission merchant member registrants over which it has oversight responsibilities must include the review and analysis of financial reports and regulatory notices filed by such member registrants with the designated self-regulatory organization.

(3) *High-risk firms.* The Joint Audit Program must include procedures for identifying futures commission merchant member registrants over which it has oversight responsibilities that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory and Commission requirements.

(4) *On-site examinations.* A designated self-regulatory organization must conduct routine periodic on-site examinations of futures commission merchant member registrants over which it has oversight responsibilities. Such member registrants must be subject to on-site examinations no less frequently than once every eighteen months. A designated self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination, *provided, however,* that the scope of each on-site examination of a futures commission merchant must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, record-keeping, and reporting requirements. A designated self-regulatory organization must conduct on-site examinations of futures commission merchant registrants in accordance with the Joint Audit Program.

(D) The Joint Audit Committee members must adequately document

all aspects of the operation of the Joint Audit Program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(E) The Joint Audit Program must set forth in writing the examination standards that a designated self-regulatory organization must apply in its examination of a registered futures commission merchant. The Joint Audit Program must be based on controls testing and substantive testing, and must address all areas of risk to which the futures commission merchant can reasonably be foreseen to be subject. The Joint Audit Program must be based on an understanding of the internal control environment to determine the nature, timing and extent of the controls and substantive testing to be performed. The determination as to which elements of the Joint Audit Program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant.

(F) All aspects of the Joint Audit Program, including the standards required pursuant to paragraph (d)(2)(ii)(G) of this section, must, at minimum, conform to auditing standards issued by the Public Company Accounting Oversight Board as such standards would be applicable to a non-financial statement audit. These standards would include the training and proficiency of the auditor, due professional care in the performance of work, consideration of fraud in an audit, audit risk and materiality in conducting an audit, planning and supervision, understanding the entity and its environment and assessing the risks of material misstatement, performing audit procedures in response to assessed risk and evaluating the audit evidence obtained, auditor's communication with those charged with governance, and communicating internal control matters identified in an audit.

(G) The Joint Audit Program must have standards addressing those items listed in paragraph (c)(2)(iii) of this section.

(H) The initial Joint Audit Program shall be established as follows. Within

180 days following the effective date of this section, or such other time as the Commission may approve, the Joint Audit Committee members shall submit a proposed initial Joint Audit Program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (d)(2)(ii)(I)(I) and (d)(2)(ii)(I)(3) of this section from an examinations expert who has evaluated the Joint Audit Program. The Joint Audit Committee members may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. Upon resolution of any questions or comments raised by the Commission, and upon written notice from the Commission that it has no further comments or questions on the proposed Joint Audit Program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants for all examinations conducted with an "as-of" date later than the date of the Commission's written notification.

(I) Following the establishment of the Joint Audit Program, no less frequently than once every three years, the Joint Audit Committee members must cause an examinations expert to evaluate the Joint Audit Program and each designated self-regulatory organization's application of the Joint Audit Program. The Joint Audit Committee members must obtain from such examinations expert a written report, and must provide the written report to the Commission no later than forty-five days prior to the annual meeting of the members of the Joint Audit Committee to be held in that year pursuant to paragraph (d)(2)(iii)(A) of this section. The Joint Audit Committee members may also provide to the Commission a response, in writing, to any of the findings, comments or recommendations made by the examinations expert. The examinations expert's written report must include the following:

(1) A statement that the examinations expert has evaluated the Joint

Audit Program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(2) A statement that the examinations expert has evaluated the application of the Joint Audit Program by each designated self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert;

(3) The examinations expert's report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants and should include an analysis of the supervisory program's design to detect material weaknesses in an entities internal control environment; and

(4) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Internal Audit Association and The Risk Management Association.

(J) The examinations expert's report, the Joint Audit Committee's response, as well as any information concerning the supervisory program or any review conducted pursuant to the program that is obtained by the examinations expert, is confidential. Except as expressly provided for in paragraphs (d)(2)(ii)(G) or (d)(2)(ii)(H) of this section, such information may not be disclosed to anyone not involved in the review process.

(K) The Joint Audit Program must require each Joint Audit Committee member to provide to its risk and/or audit committee of the board of directors, or a functionally equivalent committee, with timely reports of the activities and findings of the Joint Audit Program to assist the risk and/or audit committee of the board of directors, or a functionally equivalent committee, in fulfilling its responsibility of overseeing the examination function.

(iii) *Meetings of the Joint Audit Committee.* (A) No less frequently than once every year, the Joint Audit Committee

## Commodity Futures Trading Commission

## § 1.52

members must meet to consider whether changes to the Joint Audit Program are appropriate, and in considering such, in meetings corresponding to the written report obtained from an examinations expert pursuant to paragraph (d)(2)(ii)(I) of this section, the Joint Audit Committee members must consider such written report, including the results of the examinations expert's assessment of the Joint Audit Program and any additional recommendations. The Commission's questions, comments and proposals must also be considered. Upon written notice from the Commission that it has no further comments or questions on the Joint Audit Program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions, comments and proposals, or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants for all examinations conducted with an "as-of" date later than the date of the Commission's written notification.

(B) In addition to the items considered in paragraph (d)(2)(iii)(A) of this section, the Joint Audit Committee members must consider the following items during the annual meeting:

(1) The role of the Joint Audit Committee and its members as it relates to self-regulatory organization responsibilities;

(2) Developing and maintaining the Joint Audit Program for all designated self-regulatory organizations to follow with no exceptions;

(3) Coordinating self-regulatory organization responsibilities with those of independent certified public accountants, the Commission and other regulators and self-regulatory organizations (e.g., the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and others, as the case may be for futures commission merchants subject to regulation by multiple regulators and self-regulatory organizations);

(4) Coordinating and sharing information between the Joint Audit Committee members, including issues and industry concerns in connection with

examinations of futures commission merchants;

(5) Identifying industry regulatory reporting issues and financial and operational internal control issues and modifying the Joint Audit Program accordingly;

(6) Issuing risk alerts for futures commission merchants and/or designated self-regulatory organization examiners on an as-needed basis as issues arise;

(7) Issuing an annual examination alert for certified public accountants and designated self-regulatory organization examiners;

(8) Responding to industry issues;

(9) Providing industry feedback to Commission proposals; and

(10) Developing and maintaining a standard of ethics and independence with which all examination units of the Joint Audit Committee members must comply.

(C) Minutes must be taken of all meetings and distributed to all members on a timely basis.

(D) The Commission must receive timely prior notice of each meeting, have the right to attend and participate in each meeting and receive written copies of the reports and minutes required pursuant to paragraphs (d)(2)(ii)(J) and (d)(2)(iii)(C) of this section, respectively.

(3) The plan referenced in paragraph (d)(1) of this section shall not be effective without Commission approval pursuant to paragraph (h) of this section.

(e) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by designated self-regulatory organizations among the self-regulatory organizations participating in such a plan.

(f) A plan's designated self-regulatory organizations must report to:

(1) That plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor or examine has been delegated to such designated self-regulatory organization under this section; and

(2) The Director of the Division of Swap Dealer and Intermediary Oversight of the Commission any violation of a self-regulatory organization's rules

and regulations or any violation of the Commission's regulations for which the responsibility to monitor, audit, or examine has been delegated to such designated self-regulatory organization under this section.

(g) The Joint Audit Committee members may, among themselves, establish programs to provide access to any necessary financial or related information.

(h) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of customers;

(3) Reduces multiple monitoring and multiple examining for compliance with the minimum financial rules of the Commission and of the self-regulatory organizations submitting the plan of any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(i) After the Commission has approved a plan, or part thereof, under paragraph (h) of this section, a self-regulatory organization delegating the functions described in paragraph (d)(1) of this section must notify each of its members that are subject to such a plan:

(1) Of the limited scope of the delegating self-regulatory organization's responsibility for such a member's compliance with the Commission's and self-regulatory organization's minimum financial and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization that has been delegated responsibility for such a member; *provided, however*, that the self-regulatory organization that delegates, pursuant to paragraph (d) of this section, the functions set forth in paragraphs (b) and (c) of this section shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(j) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan, or part thereof, established under this section, if such plan, or part thereof, ceases to adequately effectuate the purposes of section 4f(b) of the Act or of this section.

(k) Whenever a registered futures commission merchant, a registered retail foreign exchange dealer, or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give electronic notice of that event to the Commission at its Washington, DC, headquarters and send a copy of that notification to such futures commission merchant, retail foreign exchange dealer, or introducing broker.

(l) Nothing in this section shall preclude the Commission from examining any futures commission merchant, retail foreign exchange dealer, or introducing broker for compliance with the minimum financial and related reporting requirements, and the risk management requirements, as applicable, to which such futures commission merchant, retail foreign exchange dealer, or introducing broker is subject.

(m) In the event a plan is not filed and/or approved for each registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization, the

## Commodity Futures Trading Commission

## § 1.55

Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants, retail foreign exchange dealers, or introducing brokers that are not the subject of an approved plan (under paragraph (h) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (d) of this section.

[78 FR 68638, Nov. 14, 2013]

### § 1.53 [Reserved]

### § 1.54 Contract market rules submitted to and approved or not disapproved by the Secretary of Agriculture.

Notwithstanding any provision of these rules, any bylaw, rule, regulation, or resolution of a contract market that was submitted to the Secretary of Agriculture pursuant to § 1.38(a) or § 1.39(a) of these rules, and was either approved by the Secretary or not disapproved by him, as of April 21, 1975, shall continue in full force and effect unless and until disapproved, altered or supplemented by or with the approval of the Commission. The adoption of this rule does not constitute approval by the Commission of any contract market bylaw, rule, regulation or resolution.

(Sec. 411, Pub. L. 93-463, 88 Stat. 1414; 7 U.S.C. 4a note)

[45 FR 2314, Jan. 11, 1980]

### § 1.55 Public disclosures by futures commission merchants.

(a)(1) Except as provided in 1.65, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer, other than for a customer specified in paragraph (f) of this section, unless the futures commission merchant or introducing broker first:

(i) Furnishes the customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section (except for nonsubstantive additions such as captions) or as otherwise approved under paragraph (c) of this section; *Provided, however,* that the disclosure statement may be attached to other

documents as the cover page or the first page of such documents and as the only material on such page; and

(ii) Receives from the customer an acknowledgment signed and dated by the customer that he received and understood the disclosure statement.

(b) The language set forth in the written disclosure document required by paragraph (a) of this section shall be as follows:

#### RISK DISCLOSURE STATEMENT

The risk of loss in trading commodity futures contracts can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You should be aware of the following points:

(1) You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

(2) The funds you deposit with a futures commission merchant for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated.

(3) The funds you deposit with a futures commission merchant for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the Securities and Exchange Commission as a broker or dealer.

(4) The funds you deposit with a futures commission merchant are generally not guaranteed or insured by a derivatives clearing organization in the event of the bankruptcy or insolvency of the futures commission merchant, or if the futures commission merchant is otherwise unable to refund your funds. Certain derivatives clearing organizations, however, may have programs that provide limited insurance to customers. You should inquire of your futures commission merchant whether your funds will be insured by a derivatives clearing organization and you should understand the benefits and limitations of such insurance programs.

(5) The funds you deposit with a futures commission merchant are not held by the futures commission merchant in a separate account for your individual benefit. Futures

**§ 1.55**

**17 CFR Ch. I (4-1-17 Edition)**

commission merchants commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the futures commission merchant does not have sufficient capital to cover such other customers' trading losses.

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

(7) Futures commission merchants are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your futures commission merchant deposits funds with affiliates and assess whether such deposits by the futures commission merchant with its affiliates increases the risks to your funds.

(8) You should consult your futures commission merchant concerning the nature of the protections available to safeguard funds or property deposited for your account.

(9) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

(10) All futures positions involve risk, and a "spread" position may not be less risky than an outright "long" or "short" position.

(11) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(12) In addition to the risks noted in the paragraphs enumerated above, you should be familiar with the futures commission merchant you select to entrust your funds for trading futures positions. The Commodity Futures Trading Commission requires each futures commission merchant to make publicly available on its Web site firm specific disclosures and financial information to assist you with your assessment and selection of a futures commission merchant. Information regarding this futures commission merchant may be obtained by visiting our Web site, www.[Web site address].

ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:

(13) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(14) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS.

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date \_\_\_\_\_

Signature of Customer \_\_\_\_\_

(c) The Commission may approve for use in lieu of the risk disclosure document required by paragraph (b) of this

## Commodity Futures Trading Commission

## § 1.55

section a risk disclosure statement approved by one or more foreign regulatory agencies or self-regulatory organizations if the Commission determines that such risk disclosure statement is reasonably calculated to provide the disclosure required by paragraph (b) of this section. Notice of risk disclosure statements that may be used to satisfy Commission disclosure requirements, what requirements such statements meet and the jurisdictions which accept each format will be set forth in appendix A to this section; *Provided, however*, that an FCM also provides a customer with the risk disclosure statement required by paragraph (b) of this section and obtains the customer's acknowledgment that it has read and understands the disclosure document.

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by §1.33(g), and by §§33.7 and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgement from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements, consents and elections specified in this section and §1.33(g), and in §§33.7, 155.3(b)(2), 155.4(b)(2), and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement, consent or election that the customer has received and understood such disclosure statement or made such consent or election; and

(2) The acknowledgment referred to in paragraph (d)(1) of this section is ac-

companied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and §1.33(g), and by §§33.7 and 190.06 of this chapter.

(e) The acknowledgment required by paragraph (a) of this section must be retained by the futures commission merchant or introducing broker in accordance with §1.31.

(f) A futures commission merchant or, in the case of an introduced account, an introducing broker, may open a commodity futures account for an "institutional customer" as defined in §1.3(g) without furnishing such institutional customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section §§1.33(g) and 1.65(a)(3), and §§30.6(a), 33.7(a), 155.3(b)(2), 155.4(b)(2) and 190.10(c) of this chapter.

(g) This section does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

(h) Notwithstanding any other provision of this section or §1.65, a person registered or required to be registered with the Commission as a futures commission merchant pursuant to sections 4f(a)(1) or 4f(a)(2) of the Commodity Exchange Act and registered or required to be registered with the Securities and Exchange Commission as a broker or dealer pursuant to sections 15(b)(1) or 15(b)(11) of the Securities Exchange Act of 1934 and rules thereunder must provide to a customer or prospective customer, prior to the acceptance of any order for, or otherwise handling any transaction in or in connection with, a security futures product for a customer, the disclosures set forth in §41.41(b)(1) of this chapter.

(Approved by the Office of Management and Budget under control number 3038-0022)

(Secs. 4b, 4c(b), 4g(1), 4l, 4o, and 8a(5), Commodity Exchange Act, 7 U.S.C. 6b, 6c(b), 6g(1), 6l, 6o, and 12a(5)(1976), and sec. 217, Commodity Futures Trading Act of 1974, 88 Stat. 1405; secs. 2(a)(1), 4b, 4c, 4d, 4f and 8a, Commodity Exchange Act, as amended (7 U.S.C. 2, 6b, 6c, 6f and 12a))

APPENDIX A TO CFTC RULE 1.55 (c) — GENERIC RISK DISCLOSURE STATEMENT

## Risk Disclosure Statement for Futures and Options

*This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.*

### Futures

#### 1. Effect of 'Leverage' or 'Gearing'

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are 'leveraged' or 'geared'. A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

#### 2. Risk-reducing orders or strategies

The placing of certain orders (e.g. 'stop-loss' orders, where permitted under local law, or 'stop-limit' orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as 'spread' and 'straddle' positions may be as risky as taking simple 'long' or 'short' positions.

### Options

#### 3. Variable degree of risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying

interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ('writing' or 'granting') an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is 'covered' by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

### Additional risks common to futures and options

#### 4. Terms and conditions of contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain



circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or restriction of trading and pricing relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or 'circuit breakers') may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge 'fair' value.

6. Deposited cash and property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and other charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

8. Transactions in other jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory

authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

9. Currency risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

10. Trading facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary: you should ask the firm with which you deal for details in this respect.

11. Electronic trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all.

12. Off-exchange transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules and attendant risks.

I hereby acknowledge that I have received and understood this risk disclosure statement.

\_\_\_\_\_
Date

\_\_\_\_\_
Signature of Customer

\* \* \* \* \*

[The following language should be printed on a page other than the pages containing the

disclosure language above and may be omitted from the required disclosure statement]

This disclosure document meets the risk disclosure requirements in the jurisdictions

## § 1.55

## 17 CFR Ch. I (4-1-17 Edition)

identified below ONLY for those instruments which are specified.

United States: Commodity futures, options on commodity futures and options on commodities subject to the Commodity Exchange Act.

United Kingdom: Futures, options on futures, options on commodities and options on equities traded by members of the United Kingdom Securities and Futures Authority pursuant to the Financial Services Act, 1986.

Ireland: Financial futures and options on financial futures traded by members of futures exchanges on exchanges whose rules have been approved by the Central Bank of Ireland under Chapter VIII of the Central Bank Act, 1989.

(i) Notwithstanding any other provision of this section, no futures commission merchant may enter into a customer account agreement or first accept funds from a customer, unless the futures commission merchant discloses to the customer all information about the futures commission merchant, including its business, operations, risk profile, and affiliates, that would be material to the customer's decision to entrust such funds to and otherwise do business with the futures commission merchant and that is otherwise necessary for full and fair disclosure. In connection with the disclosure of such information, the futures commission merchant shall provide material information about the topics described in paragraph (k) of this section, expanding upon such information as necessary to keep such disclosure from being misleading, whether through omission or otherwise. The futures commission merchant shall also disclose the same information required by this paragraph to all customers existing on the effective date of this paragraph even if the futures commission merchant and such existing customers have previously entered into a customer account agreement or the futures commission merchant has already accepted funds from such existing customers. The futures commission merchant shall update the information required by this section as and when necessary, but at least annually, to keep such information accurate and complete and shall promptly disclose such updated information to all of its customers. In connection with such obligation to update information,

the futures commission merchant shall take into account any material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the futures commission merchant since its most recent disclosure pursuant to this paragraph, and for this purpose shall without limitation consider events that require periodic reporting required to be filed pursuant to §1.12. For purposes of this section, the disclosures required pursuant to this paragraph will be referred to as the "Disclosure Documents." The Disclosure Documents shall provide a detailed table of contents referencing and describing the Disclosure Documents.

(j)(1) Each futures commission merchant shall make the Disclosure Documents available to each customer to whom disclosure is required pursuant to paragraph (i) of this section (for purposes of this section, its "FCM Customers") and to the general public.

(2) A futures commission merchant shall make the Disclosure Documents available to FCM Customers and to the general public by posting a copy of the Disclosure Documents on the futures commission merchant's Web site. A futures commission merchant, *however*, may use an electronic means other than its Web site to make the Disclosure Documents available to its FCM Customers; *provided* that:

(i) The electronic version of the Disclosure Documents shall be presented in a format that is readily communicated to the FCM Customers. Information is readily communicated to the FCM Customers if it is accessible to the ordinary computer user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information; and

(ii) A complete paper copy of the Disclosure Documents shall be provided to an FCM Customer upon request.

(k) *Specific topics.* The futures commission merchant shall provide material information about the following specific topics:

## Commodity Futures Trading Commission

## § 1.55

(1) The futures commission merchant's name, address of its principal place of business, phone number, fax number, and email address;

(2) The name, title, business address, business background, areas of responsibility, and the nature of the duties of each person that is defined as a principal of the futures commission merchant pursuant to §3.1 of this chapter;

(3) The significant types of business activities and product lines engaged in by the futures commission merchant, and the approximate percentage of the futures commission merchant's assets and capital that are used in each type of activity;

(4) The futures commission merchant's business on behalf of its customers, including types of customers, markets traded, international businesses, and clearinghouses and carrying brokers used, and the futures commission merchant's policies and procedures concerning the choice of bank depositories, custodians, and counterparties to permitted transactions under §1.25;

(5) The material risks, accompanied by an explanation of how such risks may be material to its customers, of entrusting funds to the futures commission merchant, including, without limitation, the nature of investments made by the futures commission merchant (including credit quality, weighted average maturity, and weighted average coupon); the futures commission merchant's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the futures commission merchant created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments;

(6) The name of the futures commission merchant's designated self-regulatory organization and its Web site address and the location where the annual audited financial statements of the futures commission merchant is made available;

(7) Any material administrative, civil, enforcement, or criminal complaints or actions filed against the FCM where such complaints or actions

have not concluded, and any enforcement complaints or actions filed against the FCM during the last three years;

(8) A basic overview of customer fund segregation, futures commission merchant collateral management and investments, futures commission merchants, and joint futures commission merchant/broker dealers;

(9) Information on how a customer may obtain information regarding filing a complaint about the futures commission merchant with the Commission or with the firm's designated self-regulatory organization; and

(10) The following financial data as of the most recent month-end when the Disclosure Document is prepared:

(i) The futures commission merchant's total equity, regulatory capital, and net worth, all computed in accordance with U.S. Generally Accepted Accounting Principles and §1.17, as applicable;

(ii) The dollar value of the futures commission merchant's proprietary margin requirements as a percentage of the aggregate margin requirement for futures customers, Cleared Swaps Customers, and 30.7 customers;

(iii) The smallest number of futures customers, Cleared Swaps Customers, and 30.7 customers that comprise 50 percent of the futures commission merchant's total funds held for futures customers, Cleared Swaps Customers, and 30.7 customers, respectively;

(iv) The aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the futures commission merchant has entered;

(v) The amount, generic source and purpose of any committed unsecured lines of credit (or similar short-term funding) the futures commission merchant has obtained but not yet drawn upon;

(vi) The aggregated amount of financing the futures commission merchant provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; and

(vii) The percentage of futures customer, Cleared Swaps Customer, and 30.7 customer receivable balances that the futures commission merchant had

to write-off as uncollectable during the past 12-month period, as compared to the current balance of funds held for futures customers, Cleared Swaps Customers, and 30.7 customers; and

(11) A summary of the futures commission merchant's current risk practices, controls and procedures.

(l) In addition to the foregoing, each futures commission merchant shall adopt policies and procedures reasonably designed to ensure that advertising and solicitation activities by each such futures commission merchant and any introducing brokers associated with such futures commission merchant are not misleading to its FCM Customers in connection with their decision to entrust funds to and otherwise do business with such futures commission merchant.

(m) The Disclosure Document required by paragraph (i) of this section is in addition to the Risk Disclosure Statement required under paragraph (a) of this section.

(n) All Disclosure Documents, with each Disclosure Document dated the date of first use, shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of its designated self-regulatory organization, representatives of the Commission, and representatives of applicable prudential regulators.

(o)(1) Each futures commission merchant shall make the following financial information publicly available on its Web site:

(i) The daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges for the most current 12-month period;

(ii) The daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7 for the most current 12-month period;

(iii) The daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act for the most current 12-month period;

(iv) A summary schedule of the futures commission merchant's adjusted net capital, net capital, and excess net

capital, all computed in accordance with § 1.17 and reflecting balances as of the month-end for the 12 most recent months;

(v) The Statement of Financial Condition, the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act, an all related footnotes to the above schedules that are part of the futures commission merchant's most current certified annual report pursuant to § 1.16; and

(vi) The Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, and the Statement of Cleared Swaps Customer Accounts Under Section 4d(f) of the Act that are part of the futures commission merchant's unaudited Form 1-FR-FCM or Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 ("FOCUS Report") for the most current 12-month period.

(2) To the extent any of the financial data identified in paragraph (1) of this section is amended, the FCM must clearly notate that the data has been amended.

(3) Each futures commission merchant must include a statement on its Web site that is available to the public that financial information regarding the futures commission merchant, including how the futures commission merchant invests and holds customer funds, may be obtained from the National Futures Association and include a link to the Web site of the National Futures Association's Basic System where information regarding the futures commission merchant's investment of customer funds is maintained.

(4) Each futures commission merchant must include a statement on its Web site that is available to the public

## Commodity Futures Trading Commission

## § 1.57

that additional financial information on all futures commission merchants is available from the Commodity Futures Trading Commission, and include a link to the Commodity Futures Trading Commission's Web page for financial data for futures commission merchants.

[43 FR 31890, July 24, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.55, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 1.56 Prohibition of guarantees against loss.

(a) [Reserved]

(b) No futures commission merchant or introducing broker may in any way represent that it will, with respect to any commodity interest in any account carried by the futures commission merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect initial and maintenance margin as established by the rules of the applicable board of trade.

(c) No person may in any way represent that a futures commission merchant or introducing broker will engage in any of the acts or practices described in paragraph (b) of this section.

(d) This section shall not be construed to prevent a futures commission merchant or introducing broker from:

(1) Assuming or sharing in the losses resulting from an error or mishandling of an order; or

(2) Participating as a general partner in a commodity pool which is a limited partnership.

(e) This section shall not affect any guarantee entered into prior to January 28, 1982, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

[46 FR 62844, Dec. 29, 1981, as amended at 48 FR 35291, Aug. 3, 1983]

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

(a) Each introducing broker must:

(1) Open and carry each customer's account with a carrying futures com-

mission 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) must open and carry such customer's account with such guarantor futures commission merchant on a fully-disclosed basis; and

(2) Transmit promptly for execution all 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 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 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 if:

(1) The futures commission merchant carrying the 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 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:

## § 1.58

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to customers of the futures commission merchant carrying the 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 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 customers and are being held in accordance with the provisions of the Act and the regulations in this chapter.

[48 FR 35291, Aug. 3, 1983, as amended at 57 FR 23143, June 2, 1992; 77 FR 66330, Nov. 2, 2012]

## § 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with §17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign

## 17 CFR Ch. I (4-1-17 Edition)

broker for which the omnibus account is being carried that each such position is entitled to be so margined.

[61 FR 19187, May 1, 1996]

## § 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 §1.3(ee), and includes the term "clearing organization," as defined in §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, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their 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, 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, non-public information.

(10) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within the meaning of §4.10(d) of this chapter, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which §4.5 of this chapter 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 5c(c) of the Act 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 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

(ii) Employees of the self-regulatory organization from disclosing to any other person any material, non-public

information which such employee obtains as a result of his or her employment at the self-regulatory organization where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; *Provided, however,* That such rules shall not prohibit disclosures made in the course of an employee's duties, or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

(2) Each self-regulatory organization 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 (or, pursuant to section 17(j) of the Act in the case of a registered futures association), which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (b)(1)(i) of this section may be granted; such exemptions are to be administered by the self-regulatory organization on a case-by-case basis. Specifically, such circumstances may include:

(i) Participation by an employee in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles; and

(ii) Trading by an employee under circumstances enumerated by the self-regulatory organization in rules which the self-regulatory organization determines are not contrary to the purposes of this regulation, the Commodity Exchange Act, the public interest, or just and equitable principles of trade.

(c) *Governing board members, committee members, and consultants; Registered futures association rules.* Each registered futures association must maintain in effect rules which have been submitted to the Commission pursuant to section 17(j) of the Act 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-pub-

lic 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.

[58 FR 54973, Oct. 25, 1993, as amended at 65 FR 47847, Aug. 4, 2000; 77 FR 66330, Nov. 2, 2012]

#### § 1.60 Pending legal proceedings.

(a) Every contract market shall submit to the Commission copies of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decisions and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the contract market is a party or its property or assets is subject.

(b) Every futures commission merchant shall submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed, the notice of appeal and such further documents as



## Commodity Futures Trading Commission

## § 1.63

the Commission may thereafter request filed in any material legal proceeding to which the futures commission merchant is a party or its property or assets is subjects.

(c) Every contract market shall submit to the Commission copies of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decisions and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any officer, director, or other official of the contract market arising from conduct in such person's capacity as a contract market official and alleging violations of:

(1) The act or any rule, regulation, or order thereunder;

(2) the constitution, bylaws or rules of the contract market; or

(3) the applicable provisions of state law relating to the duties of officers, directors, or other officials of business organizations.

(d) Every futures commission merchant shall submit to the Commission copies of any dispositive or partially dispositive decision concerning which a notice of appeal has been filed, the notice of appeal, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any person who is a principal of the futures commission merchant (as that term is defined in §3.1(a) of this chapter) arising from conduct in such person's capacity as a principal of the futures commission merchant and alleging violations of: (1) The Act or any rule, regulation, or order thereunder; or (2) provisions of state law relating to a duty or obligation owed by such a principal.

(e) All documents required by this section to be submitted to the Commission shall be mailed via first-class or submitted by other more expeditious means to the Commission's headquarters office in Washington, DC, Attention: Office of the General Counsel. All documents required by this section to be submitted to the Commission as to matters pending on the effective date of the section (May 25, 1984), shall be mailed to the Commission within 45 days of that effective date. Thereafter, all complaints required by this section

to be submitted to the Commission by contract markets shall be mailed to the Commission within 10 days after the initiation of the legal proceedings to which they relate, all decisions required to be submitted by contract markets shall be mailed within 10 days of their date of issuance, all notices of appeal required to be submitted by contract markets shall be mailed within 10 days of the filing or receipt by the contract market of the notice of appeal, and all decisions and notices of appeal required to be submitted by futures commission merchants shall be mailed within 10 days of the filing or receipt by the futures commission merchant of the relevant notice of appeal. For purposes of paragraph (a), (b), (c) and (d) of this rule, a "material legal proceeding" includes but is not limited to actions involving alleged violations of the Commodity Exchange Act or the Commission's regulations. However, a legal proceeding is not "material" for the purposes of this rule if the proceeding is not in a federal or state court or if the Commission is a party.

[49 FR 17750, Apr. 25, 1984]

### §§ 1.61–1.62 [Reserved]

### § 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 §1.3(ee), and includes a "clearing organization" as defined in §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 5c(c) of the Act 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) (i) 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,

## Commodity Futures Trading Commission

## § 1.64

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 post the schedule on the self-regulatory organization's Web site 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.

[55 FR 7890, Mar. 6, 1990, as amended at 58 FR 37653, July 13, 1993; 64 FR 23, Jan. 4, 1999; 77 FR 66331, Nov. 2, 2012]

### **§ 1.64 Composition of various self-regulatory organization governing boards and major disciplinary committees.**

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

(1) *Self-regulatory organization* means "self-regulatory organization" as defined in § 1.3(ee), not including a

"clearing organization" as defined in § 1.3(d).

(2) *Major disciplinary committee* means a committee of persons who are authorized by a self-regulatory organization to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions or to hear appeals thereof in cases involving any violation of the rules of the self-regulatory organization except those which:

(i) Are related to:

(A) Decorum or attire,

(B) Financial requirements, or

(C) Reporting or recordkeeping; and,

(ii) Do not involve fraud, deceit or conversion.

(3) *Regular voting member of a governing board* means any person who is eligible to vote routinely on matters being considered by the board and excludes those members who are only eligible to vote in the case of a tie vote by the board.

(4) *Membership interest* (i) In the case of a contract market, each of the following will be considered a different membership interest:

(A) Floor brokers,

(B) Floor traders,

(C) Futures commission merchants,

(D) Producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market,

(E) Participants in a variety of pits or principal groups of commodities traded on the particular contract market; and,

(F) Other market users or participants; except that with respect to paragraph (c)(2) of this section, a contract market may define membership interests according to the different pits or principal groups of commodities traded on the contract market.

(ii) In the case of a registered futures association, each of the following will be considered a different membership interest:

(A) Futures commission merchants,

(B) Introducing brokers,

(C) Commodity pool operators,

(D) Commodity trading advisors; and,

(E) Associated persons, except that under paragraph (c)(3) of this section an associated person will be deemed to

## § 1.64

## 17 CFR Ch. I (4-1-17 Edition)

represent the same membership interest as its sponsor.

(b) Each self-regulatory organization must maintain in effect standards and procedures with respect to its governing board which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures association, pursuant to section 17(j) of the Act, that ensure:

(1) That twenty percent or more of the regular voting members of the board are persons who:

(i) Are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations; and,

(ii)(A) Are not members of the self-regulatory organization,

(B) Are not currently salaried employees of the self-regulatory organization,

(C) Are not primarily performing services for the self-regulatory organization in a capacity other than as a member of the self-regulatory organization's governing board, or

(D) Are not officers, principals or employees of a firm which holds a membership at the self-regulatory organization either in its own name or through an employee on behalf of the firm;

(2) In the case of a contract market, that ten percent or more of the regular voting members of the governing board be comprised where applicable of persons representing farmers, producers, merchants or exporters of principal commodities underlying a commodity futures or commodity option traded on the contract market; and

(3) That the board's membership includes a diversity of membership interests. The self-regulatory organization must be able to demonstrate that the board membership fairly represents the diversity of interests at such self-regulatory organization and is otherwise consistent with this regulation's composition requirements;

(c) Each self-regulatory organization must maintain in effect rules with respect to its major disciplinary committees which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and § 1.41 or, when applicable to a registered futures

association, pursuant to section 17(j) of the Act, that ensure:

(1) That at least one member of each major disciplinary committee or hearing panel thereof be a person who is not a member of the self-regulatory organization whenever such committee or panel is acting with respect to a disciplinary action in which:

(i) The subject of the action is a member of the self-regulatory organization's:

(A) Governing board, or

(B) Major disciplinary committee; or,

(ii) Any of the charged, alleged or adjudicated contract market rule violations involve:

(A) Manipulation or attempted manipulation of the price of a commodity, a futures contract or an option on a futures contract, or

(B) Conduct which directly results in financial harm to a non-member of the contract market;

(2) In the case of a contract market, that more than fifty percent of each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered;

(3) In the case of a registered futures association, that each major disciplinary committee or hearing panel thereof include persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and,

(4) That each major disciplinary committee or hearing panel thereof include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's responsibilities.

(d) Each self-regulatory organization must submit to the Commission within thirty days after each governing board election a list of the governing board's members, the membership interests they represent and how the composition of the governing board otherwise meets the requirements of § 1.64(b) and the self-regulatory organization's implementing standards and procedures.

[58 FR 37654, July 13, 1993; 59 FR 5082, Feb. 3, 1994]

**§ 1.65 Notice of bulk transfers and disclosure obligations to customers.**

(a) *Notice and Disclosure to Customers.*

(1) Prior to transferring a customer account to another futures commission merchant or introducing broker other than at the request of the customer, a futures commission merchant or introducing broker must obtain the customer's specific consent to the transfer.

(2) If the customer account agreement contains a valid consent by the customer to prospective transfers of the account, the transferor futures commission merchant or introducing broker may transfer the account if the customer is provided with written notice of, and a reasonable opportunity to object to, the transfer and the customer has not asserted an objection to the transfer or given other instructions as to the disposition of the account. The notice to the customer must include:

(i) A clear statement of the reason(s) for the transfer, the name, address and telephone number of the proposed transferee firm and other information material to the transfer;

(ii) A statement that the customer is not required to accept the proposed transfer and may direct the transfer or firm to liquidate the account or transfer the account to a firm of the customer's selection;

(iii) The name, telephone number and address of a contact person at the transferor firm to whom the customer may give instructions as to the disposition of the account;

(iv) Notice that a failure to respond to the letter within a specified time period, which must be a reasonable period in the circumstances, will be deemed consent to the transfer; and

(v) A clear statement as to the means by which the customer may object to or otherwise respond to the notice of proposed transfer.

(3) Where customer accounts are transferred to a futures commission merchant or introducing broker, other than at the customer's request, the transferee introducing broker or futures commission merchant must provide each customer whose account is transferred with the risk disclosure statements and acknowledgments re-

quired by § 1.55 (domestic futures and foreign futures and options trading), and §§ 33.7 (domestic exchange-traded commodity options) and 190.10(c) (non-cash margin—to be furnished by futures commission merchants only) of this chapter and receive the required acknowledgments within sixty days of the transfer of accounts. This requirement shall not apply:

(i) As to customers owning transferred accounts for which the transferee futures commission merchant or introducing broker has clear written evidence that the customer has received and acknowledged the required disclosure documents; or

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the transferring futures commission merchant or introducing broker, or is at the time the account is being transferred, a customer listed in § 1.55(f); or

(iii) If the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) and such futures commission merchant maintains the relevant acknowledgments required by §§ 1.55(a)(1)(ii) and 33.7(a)(1)(ii) of this chapter and can establish compliance with § 190.10(c) of this chapter.

(b) *Notice to the Commission.* Each futures commission merchant or introducing broker shall file with the Commission, at least five business days in advance of the transfer, notice of any transfer of customer accounts carried or introduced by such futures commission merchant or introducing broker that is not initiated at the request of the customer, where the transfer involves the lesser of:

(1) 25 percent of the total number of customer accounts carried or introduced by such firm if that percentage represents at least 100 accounts; or

(2) 50 percent or more of the total number of customer accounts carried or introduced by such firm. The computation of the percentage and number of accounts must be based on the total number of accounts carried by the

## § 1.66

## 17 CFR Ch. I (4–1–17 Edition)

transferor futures commission merchant or introduced by the introducing broker, irrespective of whether such accounts are transferred to a single or multiple transferees.

(c) The notice required by paragraph (b) of this section shall include:

(1) The name, principal business address and telephone number of the transferor futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of each transferee futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of the notice to customers informing them of the proposed transfer and providing an opportunity to object to such transfer; and

(6) A statement of the number of accounts to be transferred and the estimated liquidating equity of the accounts to be transferred.

(d) The notice required by paragraph (b) of this section shall be filed with the Deputy Director, Compliance and Registration Section, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; the National Futures Association Attn: Vice President-Compliance; and the designated self-regulatory organization for the transferor firm.

(e) In the event that the notice required by paragraph (b) of this section cannot be filed with the Commission at least five days prior to the account transfer, the transferee futures commission merchant or introducing broker shall file such notice as soon as practicable and no later than the day of the transfer. Such notice shall include a brief statement explaining the circumstances necessitating the delay in filing.

(f) The requirements of this section shall not affect the obligations of a futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to transfer of accounts.

(g) If a proposed transfer is not completed in accordance with the notice required to be filed by paragraph (b) of this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

[58 FR 17504, Apr. 5, 1993, as amended at 60 FR 49334, Sept. 25, 1995; 63 FR 8571, Feb. 20, 1998; 67 FR 62351, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

### § 1.66 No-action positions with respect to floor traders.

(a) Notwithstanding any other provision of law, if a contract market submits to the National Futures Association by April 26, 1993 a list of floor traders who were granted trading privileges on that contract market on or before April 26, 1993, and whose floor trading privileges remain in effect, which includes the name, date of birth and social security number of such floor traders, as well as facts regarding such floor traders which are set forth as statutory disqualifications in section 8a(2) of the Act if the contract market knows of such facts, and such list is signed by the chief operating officer of the contract market, the Commission will not commence an enforcement proceeding against a floor trader on that list based solely upon the floor trader's failure to register or receive a temporary license under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 for failing to bar such floor trader from operating as such: *Provided, however,* That for those floor traders listed as to whom the contract market knows of facts set forth as statutory disqualifications in section 8a(2) of the Act, the no-action position contained in paragraph (a) of this section will only apply if the contract market submits a supplemental statement signed by the chief operating officer of the contract market stating that, in light of the Congressional mandate requiring registration of floor traders under the Act, the contract market acknowledges its responsibility to take affirmative action to conduct appropriate surveillance of

such floor traders. These no-action positions shall expire upon the floor's trader being granted or denied registration under the Act, or on June 11, 1993, whichever comes earliest: *Provided, however,* That if the floor trader files an application for registration in accordance with §3.11 of this chapter with the National Futures Association by June 11, 1993, the no-action positions for the floor trader and the contract market as to the registration of such floor trader will be extended until the floor trader is granted or denied registration under the Act, unless an Administrative Law Judge issues an interim order suspending the no-action position as to such floor trader in accordance with paragraph (b) of this section or the application for registration is withdrawn.

(b) *Suspension of no-action position under paragraph (a) of this section pursuant to section 8a(2) of the Act—(1) Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a floor trader whose name appears on a list submitted in accordance with paragraph (a) of this section that:

(i) The Commission alleges and is prepared to prove that such floor trader is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the floor trader is subject to such statutory disqualification; and

(iii) If the floor trader is found to be subject to a statutory disqualification, the no-action status of the floor trader under paragraph (a) of this section may be suspended and the floor trader ordered to show cause why registration should not be denied.

(2) *Written submission.* If the floor trader wishes to challenge the accuracy of the allegations set forth in the notice, the floor trader may submit written evidence limited to the type described in §3.60(b)(1) of this chapter. Such written submission must be served upon the Division of Enforcement and filed with the Proceedings Clerk within twenty days of the date of service of notice to the floor trader.

(3) *Reply.* Within ten days of receipt of any written submission filed by the floor trader, the Division of Enforcement may serve upon the floor trader and file with the Proceedings Clerk a reply.

(4) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the floor trader is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the floor trader in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(5) *Suspension and order to show cause.* (i) If the floor trader is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the floor trader's written submission, if any, and any reply thereto, shall issue an interim order suspending the no-action status of the floor trader under paragraph (a) of this section and requiring the floor trader to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the floor trader should not be denied. The no-action status of the floor trader shall be suspended, effective five days after the order to show cause is served upon the floor trader in accordance with §3.50(a) of this chapter, until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the floor trader is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the floor trader shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the floor trader's no-action status be suspended for a period to exceed six months.

(ii) If the floor trader is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and

## § 1.67

## 17 CFR Ch. I (4–1–17 Edition)

the Proceedings Clerk shall promptly serve a copy of such order on the floor trader, the Division of Swap Dealer and Intermediary Oversight and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the floor trader in accordance with the provisions of § 3.50(a) of this chapter unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (c)(5)(ii) of this section.

(6) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (c)(5)(i) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b) through (j) of this chapter.

[58 FR 19589, Apr. 15, 1993; 58 FR 21776, Apr. 23, 1993, as amended at 60 FR 54801, Oct. 26, 1995; 67 FR 62351, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

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

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

*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.

(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; 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 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) of this chapter shall be deemed to include the principal facts of the disciplinary action thereof.

[77 FR 66331, Nov. 2, 2012]

### **§ 1.68 [Reserved]**

### **§ 1.69 Voting by interested members of self-regulatory organization governing boards and various committees.**

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

(1) *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 in cases involving any violation of the rules of the self-regulatory organization except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or other similar activities.

(2) *Family relationship* of a person means the person's spouse, former



spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) *Governing board* means a self-regulatory organization's board of directors, board of governors, board of managers, or similar body, or any subcommittee thereof, duly authorized, pursuant to a rule of the self-regulatory organization that has been approved by the Commission or has become effective pursuant to either Section 5a(a)(12)(A) or 17(j) of the Act to take action or to recommend the taking of action on behalf of the self-regulatory organization.

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

(5) *Member's affiliated firm* is a firm in which the member is a "principal," as defined in §3.1(a), or an employee.

(6) *Named party in interest* means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

(7) *Self-regulatory organization* means a "self-regulatory organization" as defined in §1.3(ee) and includes a "clearing organization" as defined in §1.3(d), but excludes registered futures associations for the purposes of paragraph (b)(2) of this section.

8) *Significant action* includes any of the following types of self-regulatory organization actions or rule changes that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an "emergency" as defined in §1.41(a)(4)(i) through (iv) and (vi) through (viii); and,

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such self-regulatory organization; but does

not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any contract traded at such self-regulatory organization.

(b) *Self-regulatory organization rules.* Each self-regulatory organization shall maintain in effect rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and §1.41 or, in the case of a registered futures association, pursuant to Section 17(j) of the Act, to address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Such rules must provide for the following:

(1) *Relationship with named party in interest*—(i) *Nature of relationship.* A member of a self-regulatory organization's governing board, disciplinary committee or oversight panel must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) Is a named party in interest;

(B) Is an employer, employee, or fellow employee of a named party in interest;

(C) Is associated with a named party in interest through a "broker association" as defined in §156.1;

(D) Has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing futures or option transactions opposite of each other or to clearing futures or option transactions through the same clearing member; or,

(E) Has a family relationship with a named party in interest.

(ii) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff whether he or she has one of the relationships listed in paragraph (b)(1)(i) of this section with a named party in interest.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing

board, disciplinary committees or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Taking into consideration the exigency of the committee action, such determinations should be based upon:

(A) Information provided by the member pursuant to paragraph (b)(1)(ii) of this section; and

(B) Any other source of information that is held by and reasonably available to the self-regulatory organization.

(2) *Financial interest in a significant action*—(i) *Nature of interest.* A member of a self-regulatory organization’s governing board, disciplinary committee or oversight panel must abstain from such body’s deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action.

(ii) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a self-regulatory organization governing board, disciplinary committee or oversight panel must disclose to the appropriate self-regulatory organization staff the position information referred to in paragraph (b)(2)(iii) of this section that is known to him or her. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(iii) *Procedure for determination.* Each self-regulatory organization must establish procedures for determining whether any member of its governing board, disciplinary committees or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of:

(A) Gross positions held at that self-regulatory organization in the member’s personal accounts or “controlled accounts,” as defined in § 1.3(j);

(B) Gross positions held at that self-regulatory organization in proprietary accounts, as defined in § 1.17(b)(3), at the member’s affiliated firm;

(C) Gross positions held at that self-regulatory organization in accounts in

which the member is a principal, as defined in § 3.1(a);

(D) Net positions held at that self-regulatory organization in “customer” accounts, as defined in § 1.17(b)(2), at the member’s affiliated firm; and,

(E) Any other types of positions, whether maintained at that self-regulatory organization or elsewhere, held in the member’s personal accounts or the proprietary accounts of the member’s affiliated firm that the self-regulatory organization reasonably expects could be affected by the significant action.

(iv) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

(A) The most recent large trader reports and clearing records available to the self-regulatory organization;

(B) Information provided by the member with respect to positions pursuant to paragraph (b)(2)(ii) of this section; and,

(C) Any other source of information that is held by and reasonably available to the self-regulatory organization.

(3) *Participation in deliberations.* (i) Under the rules required by this section, a self-regulatory organization governing board, disciplinary committee or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which he or she otherwise would be required to abstain, pursuant to paragraph (b)(2) of this section, if such participation would be consistent with the public interest and the member recuses himself or herself from voting on such action.

(ii) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which he or she otherwise would be required to abstain, the deliberating body shall consider the following factors:

(A) Whether the member’s participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(B) Whether the member has unique or special expertise, knowledge or experience in the matter under consideration.

## Commodity Futures Trading Commission

## § 1.70

(iii) Prior to any determination pursuant to paragraph (b)(3)(i) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (b)(2) of this section.

(4) *Documentation of determination.* Self-regulatory organization governing boards, disciplinary committees, and oversight panels must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(i) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) The name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(iii) Information on the position information that was reviewed for each member.

[64 FR 23, Jan. 4, 1999; 64 FR 3340, Jan. 21, 1999]

### **§ 1.70 Notification of State enforcement actions brought under the Commodity Exchange Act.**

(a) Immediately upon instituting any proceeding in any Federal district court for violation of the Act or any rule, regulation or order thereunder against any person who is subject to suit pursuant to sections 6d(1)–(6) of the Act, the authorized State official of the State instituting the proceeding shall submit to the Commission a copy of the complaint filed in the proceeding, together with a written notice which:

(1) Indicates the names of parties to the proceeding;

(2) Indicates the provision of the Act or the rule, regulation or order thereunder which is alleged to have been violated.

The complaint and written notice must be sent by first-class U.S. mail or personally delivered to the Secretary, Commodity Futures Trading Commis-

sion, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(b) Prior to instituting any proceeding in a State court for the alleged violation of any antifraud provisions of the Act or any antifraud rule, regulation or order thereunder against any person registered with the Commission who is subject to suit pursuant to the provisions of section 6d(8) of the Act, the authorized State official of the State intending to institute the proceeding shall submit to the Commission written notice which:

(1) Indicates the names of parties to the proposed proceeding;

(2) Indicates the provision of the Act or the rule, regulation or order thereunder which will be alleged to have been violated;

(3) Contains a brief statement of the facts on which the proposed action will be based.

Except as provided in paragraph (c), this written notice must be sent by first-class U.S. mail or personally delivered to the Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 not less than 5 business days prior to instituting the proceeding in State court.

(c) Where it is impracticable to provide the Commission with written notice within the time period specified in paragraph (b) of this section, the authorized state official must inform the Secretary of the Commission by telephone as soon as practicable to institute a proceeding in state court and must send the written notice required in paragraph (b)(1) through (b)(3) of this section by facsimile or other similarly expeditious means of written communication to the Secretary of the Commission, prior to instituting the proceeding in state court.

(d) Immediately upon instituting any proceeding in a State court pursuant to the provisions of section 6d(8) of the Act for alleged violation of any antifraud provisions of the Act or any antifraud rule, regulation or order thereunder, the authorized State official instituting the proceeding shall submit to the Commission a copy of the complaint filed in the proceeding. The copy of the complaint must be sent by first class U.S. mail or personally delivered

## § 1.71

## 17 CFR Ch. I (4-1-17 Edition)

to the Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

[48 FR 49503, Oct. 26, 1983, as amended at 60 FR 49334, Sept. 25, 1995]

### **§ 1.71 Conflicts of interest policies and procedures by futures commission merchants and introducing brokers.**

(a) *Definitions.* For purposes of this section, the following terms shall be defined as provided.

(1) *Affiliate.* This term means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

(2) *Business trading unit.* This term means any department, division, group, or personnel of a futures commission merchant or introducing broker or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any pricing (excluding price verification for risk management purposes), trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of a futures commission merchant or introducing broker or any of its affiliates.

(3) *Clearing unit.* This term means any department, division, group, or personnel of a futures commission merchant or any of its affiliates, whether or not identified as such, that performs, or personnel exercising direct supervisory authority over the performance of, any proprietary or customer clearing activities on behalf of a futures commission merchant or any of its affiliates.

(4) *Derivative.* This term means:

(i) A contract for the purchase or sale of a commodity for future delivery;

(ii) A security futures product;

(iii) A swap;

(iv) Any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act; and

(v) Any commodity option authorized under section 4c of the Act; and (vi) any leverage transaction authorized under section 19 of the Act.

(5) *Non-research personnel.* This term means any employee of the business trading unit or clearing unit, or any

other employee of the futures commission merchant or introducing broker, other than an employee performing a legal or compliance function, who is not directly responsible for, or otherwise not directly involved in, research or analysis intended for inclusion in a research report.

(6) *Public appearance.* This term means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons (individuals or entities), or interview or appearance before one or more representatives of the media, radio, television or print media, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning a derivatives transaction. This term does not include a password-protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading, or no longer applicable.

(7) *Research analyst.* This term means the employee of a futures commission merchant or introducing broker who is primarily responsible for, and any employee who reports directly or indirectly to such research analyst in connection with, preparation of the substance of a research report relating to any derivative, whether or not any such person has the job title of "research analyst."

(8) *Research department.* This term means any department or division that is principally responsible for preparing the substance of a research report relating to any derivative on behalf of a futures commission merchant or introducing broker, including a department or division contained in an affiliate of a futures commission merchant or introducing broker.

(9) *Research report.* This term means any written communication (including electronic) that includes an analysis of

## Commodity Futures Trading Commission

## § 1.71

the price or market for any derivative, and that provides information reasonably sufficient upon which to base a decision to enter into a derivatives transaction. This term does not include:

(i) Communications distributed to fewer than 15 persons;

(ii) Commentaries on economic, political or market conditions;

(iii) Statistical summaries of multiple companies' financial data, including listings of current ratings;

(iv) Periodic reports or other communications prepared for investment company shareholders or commodity pool participants that discuss individual derivatives positions in the context of a fund's past performance or the basis for previously-made discretionary decisions;

(v) Any communications generated by an employee of the business trading unit that is conveyed as a solicitation for entering into a derivatives transaction, and is conspicuously identified as such; and

(vi) Internal communications that are not given to current or prospective customers.

(b) *Policies and procedures.* (1) Except as provided in paragraph (b)(2) of this section, each futures commission merchant and introducing broker subject to this rule must adopt and implement written policies and procedures reasonably designed to ensure that the futures commission merchant or introducing broker and its employees comply with the provisions of this rule.

(2) *Small Introducing Brokers.* An introducing broker that has generated, over the preceding 3 years, \$5 million or less in aggregate gross revenues from its activities as an introducing broker must establish structural and institutional safeguards reasonably designed to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or derivative are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons.

(c) *Research analysts and research reports—(1) Restrictions on relationship*

*with research department.* (i) Non-research personnel shall not direct a research analyst's decision to publish a research report of the futures commission merchant or introducing broker, and non-research personnel shall not direct the views and opinions expressed in a research report of the futures commission merchant or introducing broker.

(ii) No research analyst may be subject to the supervision or control of any employee of the futures commission merchant's or introducing broker's business trading unit or clearing unit, and no employee of the business trading unit or clearing unit may have any influence or control over the evaluation or compensation of a research analyst.

(iii) Except as provided in paragraph (c)(1)(iv) of this section, non-research personnel, other than the board of directors and any committee thereof, shall not review or approve a research report of the futures commission merchant or introducing broker before its publication.

(iv) Non-research personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report, to provide for non-substantive editing, to format the layout or style of the research report, or to identify any potential conflicts of interest, provided that:

(A) Any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the futures commission merchant or introducing broker or in a transmission copied to such personnel; and

(B) Any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as an intermediary or in a conversation conducted in the presence of such personnel.

(2) *Restrictions on communications.* Any written or oral communication by

a research analyst to a current or prospective customer relating to any derivative must not omit any material fact or qualification that would cause the communication to be misleading to a reasonable person.

(3) *Restrictions on research analyst compensation.* A futures commission merchant or introducing broker may not consider as a factor in reviewing or approving a research analyst's compensation his or her contributions to the futures commission merchant's or introducing broker's trading or clearing business. Except for communicating client or customer feedback, ratings and other indicators of research analyst performance to research department management, no employee of the business trading unit or clearing unit of the futures commission merchant or introducing broker may influence the review or approval of a research analyst's compensation.

(4) *Prohibition of promise of favorable research.* No futures commission merchant or introducing broker may directly or indirectly offer favorable research, or threaten to change research, to an existing or prospective customer as consideration or inducement for the receipt of business or compensation.

(5) *Disclosure requirements—(i) Ownership and material conflicts of interest.* A futures commission merchant or introducing broker must disclose in research reports and a research analyst must disclose in public appearances whether the research analyst maintains a financial interest in any derivative of a type, class, or category that the research analyst follows, and the general nature of the financial interest.

(ii) *Prominence of disclosure.* Disclosures and references to disclosures must be clear, comprehensive, and prominent. With respect to public appearances by research analysts, the disclosures required by paragraph (c)(5) of this section must be conspicuous.

(iii) *Records of public appearances.* Each futures commission merchant and introducing broker must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure

requirements under paragraph (c)(5) of this section.

(iv) *Third-party research reports.* (A) For the purposes of paragraph (c)(5)(iv) of this section, “independent third-party research report” shall mean a research report, in respect of which the person or entity producing the report:

(1) Has no affiliation or business or contractual relationship with the distributing futures commission merchant or introducing broker, or that futures commission merchant's or introducing broker's affiliates, that is reasonably likely to inform the content of its research reports; and

(2) Makes content determinations without any input from the distributing futures commission merchant or introducing broker or from the futures commission merchant's or introducing broker's affiliates.

(B) Subject to paragraph (c)(5)(iv)(C) of this section, if a futures commission merchant or introducing broker distributes or makes available any independent third-party research report, the futures commission merchant or introducing broker must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the futures commission merchant or introducing broker, required by this section. Each futures commission merchant and introducing broker must establish written policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(C) The requirements of paragraph (c)(5)(iv)(B) of this section shall not apply to independent third-party research reports made available by a futures commission merchant or introducing broker to its customers:

(1) Upon request; or

(2) Through a Web site maintained by the futures commission merchant or introducing broker.

(6) *Prohibition of retaliation against research analysts.* No futures commission merchant or introducing broker, and no employee of a futures commission merchant or introducing broker who is involved with the futures commission merchant's or introducing broker's trading or clearing activities, may, directly or indirectly, retaliate against

## Commodity Futures Trading Commission

## § 1.71

or threaten to retaliate against any research analyst employed by the futures commission merchant or introducing broker or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made, in good faith, by the research analyst that may adversely affect the futures commission merchant's or introducing broker's present or prospective trading or clearing activities.

(7) *Small Introducing Brokers.* An introducing broker that has generated, over the preceding 3 years, \$5 million or less in aggregate gross revenues from its activities as an introducing broker is exempt from the requirements set forth in this paragraph (c).

(d) *Clearing activities.* (1) No futures commission merchant shall permit any affiliated swap dealer or major swap participant to directly or indirectly interfere with, or attempt to influence, the decision of the clearing unit personnel of the futures commission merchant to provide clearing services and activities to a particular customer, including but not limited to a decision relating to the following:

- (i) Whether to offer clearing services and activities to a particular customer;
- (ii) Whether to accept a particular customer for the purposes of clearing derivatives;
- (iii) Whether to submit a customer's transaction to a particular derivatives clearing organization;
- (iv) Whether to set or adjust risk tolerance levels for a particular customer;
- (v) Whether to accept certain forms of collateral from a particular customer; or
- (vi) Whether to set a particular customer's fees for clearing services based upon criteria that are not generally available and applicable to other customers of the futures commission merchant.

(2) Each futures commission merchant shall create and maintain an appropriate informational partition between business trading units of an affiliated swap dealer or major swap participant and clearing unit personnel of the futures commission merchant to reasonably ensure compliance with the Act and the prohibitions specified in paragraph (d)(1) of this section. At a

minimum, such informational partitions shall require that:

(i) No employee of a business trading unit of an affiliated swap dealer or major swap participant may review or approve the provision of clearing services and activities by clearing unit personnel of the futures commission merchant, make any determination regarding whether the futures commission merchant accepts clearing customers, or in any way condition or tie the provision of trading services upon or to the provision of clearing services or otherwise participate in the provision of clearing services by improperly incentivizing or encouraging the use of the affiliated futures commission merchant. Any employee of a business trading unit of an affiliated swap dealer or major swap participant may participate in the activities of the futures commission merchant as necessary for (A) participating in default management undertaken by a derivatives clearing organization during an event of default; and (B) transferring, liquidating, or hedging any proprietary or customer positions during an event of default;

(ii) No employee of a business trading unit of an affiliated swap dealer or major swap participant shall supervise, control, or influence any employee of a clearing unit of the futures commission merchant; and

(iii) No employee of the business trading unit of an affiliated swap dealer or major swap participant shall influence or control compensation or evaluation of any employee of the clearing unit of the futures commission merchant.

(e) *Undue influence on customers.* Each futures commission merchant and introducing broker must adopt and implement written policies and procedures that mandate the disclosure to its customers of any material incentives and any material conflicts of interest regarding the decision of a customer as to the trade execution and/or clearing of the derivatives transaction.

(f) *Records.* All records that a futures commission merchant or introducing broker is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation §1.31 and shall be made

## § 1.72

## 17 CFR Ch. I (4–1–17 Edition)

available promptly upon request to representatives of the Commission.

[77 FR 20198, Apr. 3, 2012]

### § 1.72 Restrictions on customer clearing arrangements.

No futures commission merchant providing clearing services to customers shall enter into an arrangement that:

(a) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(b) Limits the number of counterparties with whom a customer may enter into a trade;

(c) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the futures commission merchant;

(d) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(e) Prevents compliance with the timeframes set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

[77 FR 21306, Apr. 9, 2012]

### § 1.73 Clearing futures commission merchant risk management.

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

(1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors;

(2) Screen orders for compliance with the risk-based limits in accordance with the following:

(i) When a clearing futures commission merchant provides electronic market access or accepts orders for automated execution, it shall use automated means to screen orders for compliance with the limits;

(ii) When a clearing futures commission merchant accepts orders for non-automated execution, it shall establish and maintain systems of risk controls

reasonably designed to ensure compliance with the limits;

(iii) When a clearing futures commission merchant accepts transactions that were executed bilaterally and then submitted for clearing, it shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits;

(iv) When a firm executes an order on behalf of a customer but gives it up to another firm for clearing,

(A) The clearing futures commission merchant shall establish risk-based limits for the customer, and enter into an agreement in advance with the executing firm that requires the executing firm to screen orders for compliance with those limits in accordance with paragraph (a)(2)(i) or (ii) as applicable; and

(B) The clearing futures commission merchant shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits.

(v) When an account manager bunches orders on behalf of multiple customers for execution as a block and post-trade allocation to individual accounts for clearing:

(A) The futures commission merchant that initially clears the block shall establish risk-based limits for the block account and screen the order in accordance with paragraph (a)(2)(i) or (ii) as applicable;

(B) The futures commission merchants that clear the allocated trades on behalf of customers shall establish risk-based limits for each customer and enter into an agreement in advance with the account manager that requires the account manager to screen orders for compliance with those limits; and

(C) The futures commission merchants that clear the allocated trades on behalf of customers shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits.

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each customer account that could pose material risk to the futures



## Commodity Futures Trading Commission

## § 1.75

commission merchant at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Evaluate its ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation at least once per quarter; and

(8) Test all lines of credit at least once per year.

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

(1) Establish written procedures to comply with this regulation; and

(2) Keep full, complete, and systematic records documenting its compliance with this regulation.

(3) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation 1.31 (17 CFR 1.31) and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

[77 FR 21306, Apr. 9, 2012]

### § 1.74 Futures commission merchant acceptance for clearing.

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall coordinate with each derivatives clearing organization on which it clears to establish systems that enable the futures commission merchant, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the futures commission merchant or a customer of the futures commission merchant as quickly as would be technologically practicable if fully automated systems were used; and

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall accept or reject each trade submitted by or for it or its customers as quickly as would be technologically practicable if fully automated systems were used; a

clearing futures commission merchant may meet this requirement by:

(1) Establishing systems to pre-screen orders for compliance with criteria specified by the clearing futures commission merchant;

(2) Establishing systems that authorize a derivatives clearing organization to accept or reject on its behalf trades that meet, or fail to meet, criteria specified by the clearing futures commission merchant; or

(3) Establishing systems that enable the clearing futures commission merchant to communicate to the derivatives clearing organization acceptance or rejection of each trade as quickly as would be technologically practicable if fully automated systems were used.

[77 FR 21307, Apr. 9, 2012]

### § 1.75 Delegation of authority to the Director of the Division of Clearing and Risk to establish an alternative compliance schedule to comply with futures commission merchant acceptance for clearing.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, the authority to establish an alternative compliance schedule for requirements of § 1.74 for swaps that are found to be technologically or economically impracticable for an affected futures commission merchant that seeks, in good faith, to comply with the requirements of § 1.74 within a reasonable time period beyond the date on which compliance by such futures commission merchant is otherwise required.

(b) A request for an alternative compliance schedule under this section shall be acted upon by the Director of the Division of Clearing and Risk within 30 days from the time such a request is received, or it shall be deemed approved.

(c) An exception granted under this section shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

(d) Notwithstanding any other provision 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 an alternative compliance schedule should be established. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section.

[77 FR 21307, Apr. 9, 2012]

APPENDIX A TO PART 1 [RESERVED]

APPENDIX B TO PART 1—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 charged to exchanges based upon a formula 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.

[50 FR 930, Jan. 8, 1985, as amended at 52 FR 46072, Dec. 4, 1987; 58 FR 42645, Aug. 11, 1993; 60 FR 49334, Sept. 25, 1995; 77 FR 66332, Nov. 2, 2012]

APPENDIX C TO PART 1 [RESERVED]

**PART 2—OFFICIAL SEAL**

Sec.

- 2.1 Description.
- 2.2 Authority to affix seal.
- 2.3 Prohibitions against misuse of seal.
- 2.4 Employee Recreation Association's use of Commission seal.

AUTHORITY: 7 U.S.C. 2a(11).

**§ 2.1 Description.**

Pursuant to section 2(a)(10) of the Commodity Exchange Act, as amended, 7 U.S.C. 4(i), the Commodity Futures Trading Commission has adopted an official seal (the "Seal"), the description of which is as follows:

(a) An American bald eagle in black and white holding the scales of balanced interests over a black and white wheel of commerce and a farmer's plow, also in black and white. These symbols are enclosed with an inner red octagon and a blue outer octagon representing traditional futures contract trading pits. Around the outside of the octagons are the words "Commodity Futures Trading Commission" separated by two stars from the year "1975," the first year of the Commission's existence.

(b) The Seal of the Commodity Futures Trading Commission is illustrated as follows:



**§ 2.2 Authority to affix seal.**

(a) The following officials of the Commodity Futures Trading Commission are authorized to affix the Seal to appropriate documents and other materials of the Commission for all purposes including those authorized by 28 U.S.C. 1733(b) (relating to authenticated copies of agency documents used as evidence): The Chairman and all Commissioners, the General Counsel, the Executive Director, the Directors of Divisions, and the Secretariat.

(b) The officials named in paragraph (a) of this section, may redelegate, and authorize redelegation of this authority, except that the Secretary may redelegate this authority only to the Deputy Secretary.

[41 FR 9552, Mar. 5, 1976, as amended at 51 FR 37177, Oct. 20, 1986]