

§ 1.28

(c) Such records shall be retained in accordance with § 1.31. No such investments shall be made except in obligations described in § 1.25.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0024)

[46 FR 54520, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 62 FR 42401, Aug. 7, 1997]

§ 1.28 Appraisal of obligations purchased with customer funds.

Futures commission merchants who invest customer funds in obligations described in § 1.25 of this part shall include such obligations in segregated account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

[58 FR 10953, Feb. 23, 1993]

§ 1.29 Increment or interest resulting from investment of customer funds.

The investment of customer funds in obligations described in § 1.25 shall not prevent the futures commission merchant or clearing organization so investing such funds from receiving and retaining as its own any increment or interest resulting therefrom.

[46 FR 54520, Nov. 3, 1981]

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

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

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provisions of section 4d(2) of the Act and these regulations.

[46 FR 54520, Nov. 3, 1981]

RECORDKEEPING

§ 1.31 Books and records; keeping and inspection.

(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

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

(b) Reproductions on microfilm, microfiche and optical disk may be substituted for hard copy as follows:

(1) Computer, accounting machine or business machine generated records may be immediately produced or reproduced on microfilm or microfiche and kept in that form. Computer generated records may be immediately produced on optical disk in conformity with the requirements of paragraph (d) of this section and kept in that form.

(2) Except as provided herein, for all other books and records, microfilm or microfiche reproductions thereof may be substituted for the hard copies for

the final three years of the 5 year period. Trading cards and written customer orders, required to be kept pursuant to § 1.35(a-1)(1), (a-1)(2) and (d), must be retained in hard-copy form for the full five-year period.

(c) If microfilm, microfiche or optical disk substitution for hard copy is made, the persons required to keep such records shall:

(1) At all times have on their premises and make available upon request to representatives of the Commission or the Department of Justice:

(i) Facilities for easily readable projection of the microfilm or microfiche, or display of information stored on optical disk, that allow immediate examination of their records;

(ii) If the records are preserved on microfilm or microfiche, facilities for immediately producing complete, accurate and easily readable facsimile enlargements of the records; and

(iii) If the records are preserved on optical disk, facilities for immediately producing complete, accurate and easily readable hard copies of the records and the means to provide, immediately upon request, any Commission or Department of Justice representative with copies of the records on Commission compatible machine-readable media as defined in § 15.00(l)(1) of this chapter.

(2) In order to permit the immediate location of any particular record:

(i) Arrange, index and file microfilm or microfiche and preserve the index and file in such a manner as to permit the immediate location of any particular record; and

(ii) Create a directory structure for files of records and an index for records on optical disk, and preserve the files, index and directory structure in such a manner as to permit the immediate location of any particular record. Directory structures must organize and locate computer files and an index must distinguish, identify and locate records in the same file. In addition, persons must maintain on their premises at all times current, accurate and complete hard copies of such directory structures and indices for examination by representatives of the Commission or the Department of Justice. Such hard copies must be preserved for 5 years.

(3) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any hard copy or facsimile enlargement of such records, and for records stored on optical disk, copies of such records on approved machine-readable media as defined in § 15.00(l)(1) of this chapter which any representative of the Commission or U.S. Department of Justice may request. Records on machine-readable media must use a format and coding structure specified in the request; and

(4) Keep only Commission-required records on the same disk. Storage of a non-Commission-required record on the same disk with a Commission-required record shall be deemed a waiver of any privilege, claim of confidentiality, or other objection to disclosure with respect to the non-Commission-required record.

(d) Optical Storage Systems—Any optical storage system used to preserve records under paragraph (b) of this section must allow for the preservation of the records required under this Section using non-rewritable, WORM (write once read many) media. All records preserved on optical media pursuant to paragraph (b) of this section must be preserved on non-rewritable WORM media. The technology must have write-verify capabilities that continuously and automatically verifies the quality and accuracy of the information stored and automatically corrects quality and accuracy defects.

(1) The system must:

(i) Use removable disks;

(ii) Serialize the disks;

(iii) Using a permanent and non-erasable time-date, it must time-date all files of information placed on the disk, reflecting the computer run time of the file of information; and

(iv) Write files in ASCII or EBCDIC format.

(2) Persons using optical storage systems must maintain on their premises, keep current, grant access to and surrender promptly, upon request by representatives of the Commission or the Department of Justice, all information necessary to read, convert to hard copy and download records stored in optical storage units, including directory

structures and indices. This shall include but not be limited to a copy of logical file formats and field formats of all different files written on optical disks, the hardware make and model and operating system software version and release level of the computer system hosting the storage device and identity of the device driver used to write the optical media, including the release level, and if records are written in an ASCII or EBCDIC format other than standard non-compressed ASCII or EBCDIC, documentation of the method used to encode data providing a thorough descriptions of any compression algorithm, including the physical file format and conversion routines to transform the records to a non-compressed ASCII or EBCDIC format.

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[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 22, Jan. 2, 1981; 46 FR 63035, Dec. 30, 1981; 58 FR 27464, 27467, May 10, 1993; 62 FR 24031, May 2, 1997]

§ 1.32 Segregated account; daily computation and record.

Each futures commission merchant must compute as of the close of each business day:

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

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

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

Such computation must be completed prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

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[46 FR 54520, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981]

§ 1.33 Monthly and confirmation statements.

(a) *Monthly statements.* Each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

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

(i) The open contracts with prices at which acquired;

(ii) The net unrealized profits or losses in all open contracts marked to the market; and

(iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign futures transactions in accordance with § 30.7 of this chapter received from or disbursed to such customer and realized profits and losses; and

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

(i) All commodity options and foreign options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any;

(iv) Any customer funds carried in such customer's account(s); and