

reconsideration will not operate to stay the effective date of such ruling.

(c) The Deputy General Counsel for Opinions may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Deputy General Counsel for Opinions under this section.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES

Sec.

180.1 Definitions.

180.2 Fair and equitable procedure.

180.3 Voluntary procedure and compulsory payments.

180.4 Counterclaims.

180.5 Member-to-member settlement procedures.

AUTHORITY: 7 U.S.C. 6c, 6d, 6f, 6k 7a, 12a, and 21, unless otherwise noted.

§180.1 Definitions.

(a) The term *claim or grievance* as used in this part shall mean any dispute which arises out of any transaction on or subject to the rules of a contract market, executed by or effected through a member of that contract market or employee thereof which dispute does not require for adjudication the presence of essential witnesses or third parties over whom the contract market does not have jurisdiction and who are not otherwise available. The term claim or grievance does not include disputes arising from cash market transactions which are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(b) The term *customer* as used in this part includes an option customer (as defined in §1.3(jj) of this chapter) and any person for or on behalf of whom a member of a contract market effects a transaction on such contract market,

except another member of that contract market.

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

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b); secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(11), 21(b)(10) and 12a(5))

[41 FR 42942, Sept. 29, 1976, as amended at 46 FR 63036, Dec. 30, 1981; 47 FR 57020, Dec. 22, 1982; 48 FR 22142, May 17, 1983]

§180.2 Fair and equitable procedure.

Every contract market shall adopt rules which provide for a fair and equitable procedure through arbitration or otherwise for the settlement of customer's claims and grievances against any member or employee thereof which shall include at least the following as *minimum* requirements for a fair and equitable procedure:

(a) The procedure shall be objective and impartial. Customers must be provided with the choice of a panel or other decision-maker composed of one or more persons, of which at least a majority are not members or associated with any member of a contract market, or employee thereof, and are not otherwise associated with a contract market. The rules of a contract market may, with proper notice, require the customer to request such a panel or other such decision-maker at the time of submission of the claim or grievance to the procedure. *Ex parte* contacts by any of the parties with members of any panel or other decision-maker shall not be permitted.

(b) The procedure shall grant each of the parties the right, if desired, to be represented by counsel, at his own expense, in any aspect of the procedure.

(c) The procedure shall provide for the prompt settlement of claims or grievances and counterclaims, if any (permitted by §180.4 of this part). Unnecessary or unreasonable delay by any of the parties shall not be permitted.

(d) The procedure shall require adequate notice to the parties and opportunity for a prompt hearing as follows:

(1) Each of the parties shall be entitled personally to appear at such hearing, unless the contract market shall have adopted a procedure for the written submission of claims or grievances (and any counterclaims applicable thereto) which in the aggregate do not exceed \$5,000. If the claim or grievance (and any counterclaim applicable thereto) in the aggregate does not exceed \$5,000, provision may be made for the claim or grievance to be resolved without a hearing through a submission on the basis of written documents, unless a hearing is required by the panel or other decision-maker or by rule.

(2) The formal rules of evidence need not apply at the hearing. Nevertheless, the procedures established may not be so informal as to deny due process. Each party must be given adequate opportunity to prepare and present all relevant facts in support of the claims and grievances, defenses or counterclaims (permitted by §180.4 of this part), and to present rebuttal evidence to such claims or grievances, defenses or counterclaims made by the other parties.

(3) Each party shall be entitled to examine other parties and any witnesses appearing at the hearing and to examine all relevant documents presented in connection with the claim or grievance, defense or counterclaim applicable thereto.

(4) A verbatim record of the hearing may be required, the cost of which must be reasonable. There shall be no requirement that a verbatim record be transcribed unless requested by a party who shall bear the cost of the transcription, and contract markets shall otherwise seek to minimize the cost associated with such record.

(e) The procedure shall provide adequate notice to the parties in advance of a submission of a claim or grievance, or counterclaim (permitted by §180.4 of this part), of the nature and amount of any fees or costs which may be assessed against customers utilizing the procedure. Fees or costs shall be reasonable, particularly in relation to the complexity and amount of the claim or grievance or counterclaim, if any, presented. Costs may be apportioned among the parties or may be assessed

against the losing party as the panel or other decision-maker, in its discretion, sees fit. The rules of a contract market, however, must provide that a contract market member which is a party to an arbitration proceeding shall pay any incremental fees which may be assessed by a qualified forum for provision of a panel or other decision-maker which conforms to the requirements of paragraph (a) of this subsection, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(f) The procedure shall provide that the settlement award shall be rendered promptly in writing and be final. There shall be no right of appeal to any entity within the contract market which can overturn the settlement-procedure decision; the only right of appeal being as provided under applicable law.

(g) The procedure shall not impose any restrictions on the jurisdiction or venue of any court to enforce an award so rendered.

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

(Secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(11), 21(b)(10) and 12a(5))

[41 FR 27523, July 2, 1976, as amended at 46 FR 63036, Dec. 30, 1981; 48 FR 22142, May 17, 1983; 57 FR 46093, Oct. 7, 1992]

§180.3 Voluntary procedure and compulsory payments.

(a) The use by customers of the dispute settlement procedures established by contract markets pursuant to the Act or this part or of the arbitration or other dispute settlement procedures specified in an agreement under paragraph (b)(3) of this section shall be voluntary. The procedures so established shall prohibit any agreement or understanding pursuant to which customers of members of the contract market agree to submit claims or grievances for settlement under said procedures prior to the time when the claim or grievance arose, except in accordance with paragraph (b) of this section.

(b) No futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person shall

enter into any agreement or understanding with a customer in which the customer agrees, prior to the time the claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. Such futures commission merchant or introducing broker may obtain such endorsement as provided in §1.55(d) of this chapter for the following classes of customers only:

(i) An investment company registered under the Investment Company Act of 1940;

(ii) An insurance company subject to regulation by any State;

(iii) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States;

(iv) A pension plan subject to title I of the Employee Retirement Income Security Act of 1974, an employee welfare benefit plan subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974, and a plan defined as a government plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974;

(v) A foreign entity that is regulated in a manner comparable to the entities specified in paragraphs (b)(2)(i)-(iv) of this section; or

(vi) A person who is a "qualified eligible participant" as defined in §4.7(a)(1)(ii) of this chapter.

(3) The agreement may not require the customer to waive the right to seek reparations under section 14 of the Act and part 12 of these regulations. Accordingly, the customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the futures commission mer-

chant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when such person notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the preexisting arbitration agreement and must also be advised that aspects of the claims or grievances that are not subject to the reparations procedure (i.e. do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the preexisting arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(i) In the case of a future commission merchant, introducing broker, commodity pool operator, commodity trading advisor or associated person, within ten business days after receipt of such notice from the customer, or at the time such a registrant so notifies the customer, the futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor or associated person must provide the customer with a list of organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of §180.2 of this part, together with a copy of the rules of each forum listed. The list must include:

(A) The contract market, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization which will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and which will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of a contract market or employee thereof, and which are not otherwise associated with a contract market (mixed panel).

(ii) A floor broker, within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time the floor broker notifies the customer of his or her intent to submit a claim to arbitration, must provide the customer with a list of organizations whose procedures qualify them to conduct arbitrations in accordance with the requirements of §180.2 of this part, together with a copy of the rules of each forum listed. The list must include the organizations specified in paragraphs (b)(4)(i)(A) and (b)(4)(i)(C) of this section.

The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(5) The agreement must acknowledge that the futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor or associated person will pay any incremental fees which may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(6) The agreement must include the following language printed in large boldface type:

THREE FORUMS EXIST FOR THE RESOLUTION OF COMMODITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING

COMMISSION (CFTC) AND ARBITRATION CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION.

THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIDE MANY BENEFITS TO CUSTOMERS, INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YOUR CONSENT TO THIS ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREEING TO BE BOUND BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIMS WHICH YOU OR [NAME] MAY SUBMIT TO ARBITRATION UNDER THIS AGREEMENT. YOU ARE NOT, HOWEVER, WAIVING YOUR RIGHT TO ELECT INSTEAD TO PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE WHICH MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF [NAME] INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION.

YOU NEED NOT SIGN THIS AGREEMENT TO OPEN AN ACCOUNT WITH [NAME]. SEE 17 CFR 180.1-180.5.

Customer

(7) If the agreement specifies a forum for arbitration other than a contract market or registered futures association, the procedures of such forum must be fair and equitable as defined by §180.2 of this part.

(c) The procedure established by a contract market pursuant to section 5a(a)(11) of the Act or this part may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (b) of this section or that the agreement to submit the claim or

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grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(d) The procedure established by a contract market pursuant to the Act or this part shall not establish any unreasonably short limitation period foreclosing submission of customers' claim or grievances or counterclaims (permitted by §180.4 or this part) by contract market members or employees thereof.

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

(7 U.S.C. 7a(11), 12a (Supp. V, 1975); secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7(a)(11), 21(b)(10) and 12a(5))

[41 FR 42946, Sept. 29, 1976, as amended at 42 FR 3433, Jan. 18, 1977; 46 FR 63036, Dec. 30, 1981; 48 FR 22143, May 17, 1983; 48 FR 41153, Sept. 14, 1983; 54 FR 1684, Jan. 17, 1989; 58 FR 17505, Apr. 5, 1993; 59 FR 5529, Feb. 7, 1994]

§ 180.4 Counterclaims.

A procedure established by a contract market under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third persons over whom the contract market does not have jurisdiction. Other counterclaims are permissible only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation.

(Secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(11), 21(b)(10) and 12a(5))

[48 FR 22143, May 17, 1983]

§ 180.5 Member-to-member settlement procedures.

A contract market may establish a procedure for compulsory settlement of claims and grievances or disputes

which do not involve customers. If adopted, the procedure shall be independent of, and shall not interfere with or delay the resolution of, customers' claims or grievances submitted for resolution under the procedure established pursuant to the Act. Such a procedure shall provide procedural safeguards which must include, at a minimum, fair and equitable procedures conforming to those set forth in §180.2 of this part, except that:

(a) The election of the mixed panel and the prohibition of appeal to any entity within the contract market contained in §180.2 (a) and (f) of this part need not be required; and

(b) The dollar limitation contained in §180.2(d)(1) of this part on a claim or grievance (and any counterclaim applicable thereto) that may be subject to resolution without a hearing through submission of written documents may not exceed \$10,000 in the aggregate.

[57 FR 46093, Oct. 7, 1992]

PART 190—BANKRUPTCY

Sec.

190.01 Definitions.

190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.

190.03 Operation of the debtor's estate subsequent to the primary liquidation date.

190.04 Operation of the debtor's estate—general.

190.05 Making and taking delivery on commodity contracts.

190.06 Transfers.

190.07 Calculation of allowed net equity.

190.08 Allocation of property and allowance of claims.

190.09 Member property.

190.10 General.

APPENDIX A TO PART 190—BANKRUPTCY FORMS

APPENDIX B TO PART 190—SPECIAL BANKRUPTCY DISTRIBUTIONS

AUTHORITY: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761-766, unless otherwise noted.

SOURCE: 48 FR 8739, Mar. 1, 1983, unless otherwise noted.

§ 190.01 Definitions.

For purposes of this part:

(a) *Account class* means each of the following types of customer accounts which must be recognized as a separate