

Commodity Futures Trading Commission

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or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

[70 FR 28200, May 17, 2005; 70 FR 32866, June 6, 2005]

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to commodity or option customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of

the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with § 1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

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

[65 FR 78012, Dec. 13, 2000]

§ 1.27 Record of investments.

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

- (1) The date on which such investments were made;
- (2) The name of the person through whom such investments were made;
- (3) The amount of money or current market value of securities so invested;

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(4) A description of the instruments in which such investments were made, including the CUSIP or ISIN numbers;

(5) The identity of the depositories or other places where such instruments are segregated;

(6) The date on which such investments were liquidated or otherwise disposed of and the amount of money or current market value of securities received of such disposition, if any;

(7) The name of the person to or through whom such investments were disposed of; and

(8) Daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.

(b) Each derivatives clearing organization which receives documents from its clearing members representing investment of customer funds shall keep a record showing separately for each clearing member the following:

(1) The date on which such documents were received from the clearing member;

(2) A description of such documents, including the CUSIP or ISIN numbers; and

(3) The date on which such documents were returned to the clearing member or the details of disposition by other means.

(c) Such records shall be retained in accordance with § 1.31. No such investments shall be made except in instruments 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; 65 FR 78013, Dec. 13, 2000; 70 FR 28204, May 17, 2005]

§ 1.28 Appraisal of instruments purchased with customer funds.

Futures commission merchants who invest customer funds in instruments described in § 1.25 of this part shall include such instruments in segregated account records and reports at values which at no time exceed current mar-

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ket value, determined as of the close of the market on the date for which such computation is made.

[58 FR 10953, Feb. 23, 1993, as amended at 65 FR 78013, Dec. 13, 2000]

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

The investment of customer funds in instruments 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, as amended at 65 FR 78013, Dec. 13, 2000]

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

Nothing in these regulations shall prevent a futures commission merchant from lending its own funds to commodity or option customers on securities and property pledged by such commodity or option customers, or from repledging or selling such securities and property pursuant to specific written agreement with such commodity or option customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of commodity or option customers shall be treated and dealt with by a futures commission merchant as belonging to such commodity or option customers, in accordance with and subject to the provisions of section 4d(a)(2) of the Act and these regulations.

[46 FR 54520, Nov. 3, 1981, as amended at 69 FR 41426, July 9, 2004]

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.