

written disclosure statement containing only the language set forth in §1.55(b) of this chapter or as otherwise approved under §155(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with §1.55 of this chapter: *Provided, however*, that the risk 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.

(b) *Commodity pool operators and commodity trading advisors.* (1) With respect to persons who satisfy the requirements of qualified eligible persons, as defined in §4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective qualified eligible person with the Risk Disclosure Statement set forth in §4.24(b)(2) of this chapter and the statement in §4.7(b)(1)(i) of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each qualified eligible person with the Risk Disclosure Statement set forth in §4.34(b)(2) of this chapter and the statement in §4.7(c)(1)(i) of this chapter.

(2) With respect to persons who do not satisfy the requirements of qualified eligible persons, as defined in §4.7(a) of this chapter:

(i) A commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(c) unless the pool operator, at or before the time it engages in such activities, first provides each prospective participant with the Disclosure Document required to be furnished to customers or poten-

tial customers pursuant to §4.21 of this chapter and files the Disclosure Document in accordance with §4.26 of this chapter;

(ii) A commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to §30.5, may not, directly or indirectly, engage in any of the activities described in §30.4(d) unless the trading advisor, at or before the time it engages in such activities, first provides each prospective client with the Disclosure Document required to be furnished customers or potential customers pursuant to §4.31 of this chapter and files the Disclosure Document in accordance with §4.36 of this chapter.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with §1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligations under §33.7 of this chapter: *Provided, however*, That a new disclosure statement is not required to be furnished if the futures commission merchant or introducing broker has previously delivered such statement to the foreign options customer in connection with the opening of a commodity option account under part 33 of this chapter.

(e) This section does not relieve a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor from any other disclosure obligation it may have under applicable law or regulation.

[52 FR 28998, Aug. 5, 1987, as amended at 58 FR 17505, Apr. 5, 1993; 60 FR 38193, July 25, 1995; 63 FR 8571, Feb. 20, 1998; 64 FR 28914, May 28, 1999; 65 FR 47859, Aug. 4, 2000]

### **§ 30.7 Treatment of foreign futures or foreign options secured amount.**

(a) Except as provided in this section, a futures commission merchant must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to foreign futures or foreign

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options customers denominated as the foreign futures or foreign options secured amount. Such money, securities and property may not be commingled with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or used to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant.

(b) A futures commission merchant may deposit together with the secured amount required to be on deposit in the separate account or accounts referred to in paragraph (a) of this section money, securities or property held for or on behalf of other customers of the futures commission merchant for the purpose of entering into foreign futures or foreign options transactions. In such a case, the amount that must be deposited in such separate account or accounts must be no less than the greater of (1) the foreign futures and foreign options secured amount plus the amount that would be required to be on deposit if all such customers were foreign futures or foreign options customers under this part 30, or (2) the foreign futures or foreign options secured amount plus the amount required to be held in a separate account or accounts for or on behalf of customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the customer, as appropriate, is located.

(c) (1) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States;

(ii) A bank or trust company located outside the United States:

(A) That has in excess of \$1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one

of the two highest rating categories by at least one nationally recognized statistical rating organization; or

(C) As designated;

(iii) A futures commission merchant registered as such with the Commission;

(iv) A derivatives clearing organization;

(v) A member of any foreign board of trade; or

(vi) Such member or clearing organization's designated depositories.

(2) Each futures commission merchant must obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from such depository that it was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

(d) In no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.

(e) Each futures commission merchant which invests money, securities or property on behalf of foreign futures or foreign options 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 so invested;

(4) A description of the obligations in which such investments were made;

(5) The identity of the depositories or other places where such obligations are maintained;

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

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

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

(1) The total amount of money, securities and property on deposit in separate account(s) in accordance with this section;

(2) The total amount of money, securities and property required to be on deposit in separate account(s) in accordance with this section; and

(3) The amount of the futures commission merchant's residual interest in money, securities and property on deposit in separate account(s) in accordance with this section. Such computations 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.

[52 FR 28998, Aug. 5, 1987, as amended at 68 FR 5551, Feb. 4, 2003]

#### § 30.8 [Reserved]

#### § 30.9 Fraudulent transactions prohibited.

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or to enter or cause to be entered for any person any false record thereof;

(c) To deceive or attempt to deceive any other person by any means whatsoever in regard to any such account, agreement or transaction or the disposition or execution of any such account, agreement or transaction or in regard to any act of agency performed with respect to such account, agreement or transaction; or

(d) To bucket any order, or to fill any order by offset against the order or orders of any other person or without the prior consent of any person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

#### § 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank branches or divisions if, in conjunction with a petition for confirmation of relief granted under an existing Commission order issued pursuant to this section, it complies with the following conditions:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or foreign options customer to the foreign person or otherwise be involved in the foreign person's business in foreign futures or foreign option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or foreign option business or purchase or sell foreign futures or foreign option contracts on behalf of any foreign futures or foreign option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate Commission registrant;

(4) The foreign person will maintain outside the United States all contract