

### § 300.303

(2) At the option of the trustee by the delivery of securities against receipt of the contract price or payment of the contract price against the receipt of the securities at any time within 30 calendar days after settlement date unless the commitment previously has been bought-in or sold-out in accordance with paragraph (a)(1) of this section; or

(3) In the event of the refusal of the other broker or dealer to accept completion of an open contractual commitment in accordance with paragraph (a)(2) of this section, or the failure of the other broker or dealer to promptly buy-in or sell-out a commitment in accordance with paragraph (a)(1) of this section, or in the event of the failure of the other broker or dealer to provide the trustee with appropriate documentation as required by § 300.303, by delivery of securities against receipt of the contract price or payment of the contract price against receipt of securities, or the buy-in or sell-out of the commitment or cancellation of the commitment or otherwise, as may be appropriate, as the trustee in his discretion will most benefit the estate of the debtor.

(b) In the event of a close-out of an open contractual commitment pursuant to paragraph (a)(1) of this section, the money differences resulting from such close-out shall be payable by the other broker or dealer to the trustee or by the trustee to the other broker or dealer, whichever would be entitled to receive such difference under the usual trade practices: *Provided, however*, (1) That prior to the payment of any such money difference by the trustee to such other broker or dealer with respect to transactions executed by such other broker or dealer for any separate customer account, all open contractual commitments with respect to such account which meet the requirements of § 300.301 must have been completed by delivery of securities against receipt of the contract price or by payment of the contract price against receipt of the securities in conformity with paragraph (a)(2) of this section, or by buy-in or sell-out in conformity with paragraph (a)(1) of this section, and (2) that the net amount so payable by the trustee to the other broker or dealer shall not

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exceed \$40,000 with respect to any separate customer account.

#### § 300.303 Report to trustee.

Promptly upon the expiration of 30 calendar days after the filing date, or if by the expiration of such 30-day period notice pursuant to section 8(a) of the Act of the commencement of proceedings has not been published, then as soon as practicable after publication of such notice, a broker or dealer who had executed transactions in securities out of which arose open contractual commitments with the debtor shall furnish to the trustee such information with respect to the buy-in, sell-out or other status of open contractual commitments as called for by Forms 300-A, B and C (§§ 301.300a-301.300c of this chapter) including appropriate supporting documentation and schedules.

#### § 300.304 Retained rights of brokers or dealers.

(a) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to any claim against the debtor's estate, or the right of the trustee to make any claim against a broker or dealer, with respect to a commitment of the debtor which was outstanding on the filing date, but (1) which is not described in § 300.300(c), or (2) which, although described in § 300.300(c), does not meet the requirements specified in § 300.301 or was not closed out or completed in accordance with § 300.302 or was not reported to the trustee in conformity with § 300.303 or was not supported by appropriate documentation.

(b) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to a claim against the debtor's estate for the amount by which the money difference due the broker or dealer upon a buy-in or sell-out may exceed the amount paid by the trustee to such broker or dealer.

#### § 300.305 Excluded contracts.

Notwithstanding the fact that an open contractual commitment described in § 300.300(c) meets the requirements of § 300.301 and the other requirements of these rules, a court shall not

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be precluded from canceling such commitment, awarding damages, or granting such other remedy as it shall deem fair and equitable if, on application of the trustee or SIPC, it determines that such commitment was not entered into in the ordinary course of business or was entered into by the debtor, or the broker or dealer or his customer, for the purposes of creating a commitment in contemplation of a liquidation proceeding under the Act. Such a determination shall be made after notice and opportunity for hearing by the debtor, such broker or dealer, or such customer, and may be made before or after the delivery of securities or payment of the contract price or before or after any buy-in or sell-out of the open contractual commitment, or otherwise.

### **§ 300.306 Completion or closeout pursuant to SIPC direction.**

In its discretion SIPC may, in order to prevent a substantial detrimental impact upon the financial condition of one or more brokers or dealers, direct the closeout or completion of an open contractual commitment, irrespective of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported in conformity with § 300.303 or is supported by appropriate documentation. SIPC shall consult with the Securities and Exchange Commission before SIPC makes any determinations under this section.

### **§ 300.307 Completion with cash or securities of customer.**

The trustee may, if authorized by the court, complete an open contractual commitment of the debtor, regardless of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported to the trustee in conformity with § 300.303, to the extent that such commitment is completed with customer name securities of the customer of the debtor for whose account the commitment was made, or with cash or securities paid or delivered by or for the account of such customer to the debtor or trustee after the filing date.

### **§ 300.400 Satisfaction of customer claims for standardized options.**

(a) For the purpose of sections 7(b)(1), 8 (b) and (d), and 16(11) of the Securities Investor Protection Act (hereinafter referred to as "the Act"), this rule will be applied in determining what a customer will receive in either (1) a liquidation proceeding pursuant to the Act or (2) a direct payment procedure pursuant to section 10 of the Act, in satisfaction of a claim based upon Standardized Options positions.

(b) As promptly as practicable after the initiation of a liquidation proceeding or a direct payment procedure under the Act, the trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall liquidate or cause to be liquidated, by sale or purchase, all Standardized Options positions held for the accounts of customers.

(c) A trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall calculate the dollar amount of all Standardized Options positions held for the account of a customer in accordance with section 16(11) of the Act, and credit or debit, as appropriate, the dollar amount so calculated to the account of such customer.

(d) Notwithstanding paragraph (b) of this section, neither the trustee in a liquidation proceeding nor SIPC in a direct payment procedure shall be required under this rule to liquidate any short position in Standardized Options covered by the deposit of (1) the underlying securities, in the case of a call option, or (2) treasury bills, in the case of a put option, by or on behalf of a customer with a bank or other depository. Any such positions that are not liquidated shall be excluded from the calculation provided for in paragraph (c) of this section.

(e) In no event will Standardized Options positions be delivered to or on behalf of customers in satisfaction of claims pursuant to section 7(b)(1) of the Act.

(f) In no event will Standardized Options be purchased for delivery to customers pursuant to section 8(d) of the Act.

(g) This rule shall not be construed as limiting or restricting in any way