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representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records (''Electronic Recordkeeper'') shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant (''Technical Consultant'') who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the ''Representative''), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD-ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in § 1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, written orders required to be kept pursuant to § 1.35(a), (a–1)(1), (a–1)(2) and (d), and paper copies of electronically filed certified Forms 1–FR and FOCUS Reports with the original manually signed certification must be retained in hard-copy for the required time period.

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0022)

[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; 64 FR 28742, May 27, 1999; 71 FR 67465, Nov. 22, 2006; 77 FR 66323, Nov. 2, 2012; 77 FR 75541, Dec. 21, 2012]

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of

each business day, on a currency-by-currency basis:

(1) The total amount of futures customer funds on deposit in segregated accounts on behalf of futures customers;

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

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

(b) In computing the amount of futures customer funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular futures customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.*, ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)), held for the same futures customer's account. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, derivatives clearing organization, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant 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.

[66 FR 41133, Aug. 7, 2001, as amended at 68 FR 5551, Feb. 4, 2003; 77 FR 66323, Nov. 2, 2012]

§ 1.33 Monthly and confirmation statements.

(a) *Monthly statements.* Each futures commission merchant must promptly furnish in writing to each customer, and to each foreign futures or foreign options customer, as defined by § 30.1 of this chapter, 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 contracts 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 futures customer and foreign futures or foreign options customer position—

(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 futures customer funds or foreign futures or foreign options secured amount, as defined by § 1.3(rr), carried with the futures commission merchant.

(2) For each commodity option position and foreign option position—

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

(ii) The open commodity option and foreign option positions carried for such customer or foreign futures or foreign options customer as of the end of the monthly reporting period, identified by underlying futures contract or underlying commodity, 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 related customer funds carried in such customer's account(s) or any related foreign futures or foreign options secured amount carried in the account(s) of a foreign futures or foreign options customer.