

## Commodity Futures Trading Commission

## § 1.35

last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying commodity (by option expiration date), and by strike price.

[77 FR 66324, Nov. 2, 2012]

### **§ 1.35 Records of commodity interest and related cash or forward transactions.**

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets or swap execution facilities.*

(1) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, which have been prepared in the course of its business of dealing in commodity interests and related cash or forward transactions. Among such records each member of a designated contract market or swap execution facility must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission, the designated contract market or the swap execution facility. For purposes of this section, such documents are referred to as "original source documents." Such records shall be kept in a form and manner identifiable and searchable by transaction. Also included among the records required to be kept by this paragraph are all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and re-

lated cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media; *Provided, however*, the requirement in this paragraph (a)(1) to record oral communications shall not apply to:

(i) Oral communications that lead solely to the execution of a related cash or forward transaction;

(ii) Oral communications provided or received by a floor broker that do not lead to the purchase or sale for any person other than the floor broker of any commodity for future delivery, security futures product, swap, or commodity option authorized under section 4c of the Commodity Exchange Act;

(iii) An introducing broker that has generated over the preceding three years \$5 million or less in aggregate gross revenues from its activities as an introducing broker;

(iv) A floor trader;

(v) A commodity pool operator;

(vi) A swap dealer;

(vii) A major swap participant; or

(viii) A member of a designated contract market or swap execution facility that is not registered or required to be registered with the Commission in any capacity.

(2) For purposes of paragraph (a)(1) of this section, "related cash or forward transaction" means a purchase or sale for immediate or deferred physical shipment or delivery of an asset related to a commodity interest transaction where the commodity interest transaction and the related cash or forward transaction are used to hedge, mitigate the risk of, or offset one another.

(3) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a designated contract market or swap execution facility shall retain the records required to be kept by this section in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice.

(4)(i) The Commission may in its discretion establish an alternative compliance schedule for the requirement to record oral communications under paragraph (a)(1) of this section that is found to be technologically or economically impracticable for an affected entity that seeks, in good faith, to comply with the requirement to record oral communications under paragraph (a)(1) of this section within a reasonable time period beyond the date on which compliance by such affected entity is otherwise required.

(ii) A request for an alternative compliance schedule under paragraph (a)(4)(i) of this section shall be acted upon within 30 days from the time such a request is received, or it shall be deemed approved.

(iii) The Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or such other employee or employees as the Director may designate from time to time, the authority to exercise the discretion. Notwithstanding such delegation, in any case in which a Commission employee delegated authority under this paragraph believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. The delegation of authority in this paragraph shall not prohibit the Commission, at its election, from exercising the authority set forth in paragraph (a)(4)(i) of this section.

(iv) Relief granted under paragraph (a)(4)(i) of this section shall not cause an affected entity to be out of compliance or deemed in violation of any recordkeeping requirements.

(b) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets and swap execution facilities: Recording of customers' orders.* (1) Each futures commission merchant, each retail foreign exchange dealer, each introducing broker, and each member of a designated contract market or swap execution facility receiving a customer's order that cannot immediately be entered into a trade matching engine shall immediately upon receipt thereof prepare a written record of the order including the ac-

count identification, except as provided in paragraph (b)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for commodity option orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a designated contract market who on the floor of such designated contract market receives a customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such designated contract market, shall immediately upon receipt thereof prepare a written record of the order in non-erasable ink, including the account identification, except as provided in paragraph (b)(5) of this section, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

(ii) Except as provided in paragraph (b)(3) of this section:

(A) Each member of a designated contract market who on the floor of such designated contract market receives an order from another member present on the floor which is not in the form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink including the account identification and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received; or

(B) When a member of a designated contract market present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such designated contract market for execution:

(I) The member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a

sequentially-numbered trading card maintained in accordance with the requirements of paragraph (f) of this section;

(2) The member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (f) of this section; and

(3) The member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to designated contract market personnel or the clearing member.

(3)(i) The requirements of paragraph (b)(2)(ii) of this section will not apply if a designated contract market maintains in effect rules which provide for an exemption where:

(A) A member of a designated contract market places with another member of such designated contract market an order that is part of a spread transaction;

(B) The member placing the order personally executes one or more legs of the spread; and

(C) The member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (f) of this section.

(ii) Each contract market shall, as part of its trade practice surveillance program, conduct surveillance for compliance with the recordkeeping and other requirements under paragraphs (b)(2) and (3) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.

(4) Each member of a designated contract market reporting the execution from the floor of the designated contract market of a customer's order or the order of another member of the designated contract market received in accordance with paragraphs (b)(2)(i) or (b)(2)(ii)(A) of this section, shall record on a written record of the order, in-

cluding the account identification, except as provided in paragraph (b)(5) of this section, and order number, by time-stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a designated contract market shall submit the written records of customer orders or orders from other designated contract market members to designated contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph. The execution price and other information reported on the order tickets must be written in non-erasable ink.

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders executed on designated contract markets or swap execution facilities need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (b)(5)(i) through (v) of this section are met. Specific customer account identifiers for accounts included in bunched orders involving swaps need not be included in confirmations or acknowledgments provided by swap dealers or major swap participants pursuant to § 23.501(a) of this chapter if the requirements of paragraphs (b)(5)(i) through (v) of this section are met.

(i) *Eligible account managers for orders executed on designated contract markets or swap execution facilities.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed on designated contract markets or swap execution facilities:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration

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under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation;

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter;

(E) A futures commission merchant registered with the Commission pursuant to the Act; or

(F) An introducing broker registered with the Commission pursuant to the Act.

(ii) *Eligible account managers for orders executed bilaterally.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers for trades executed bilaterally:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) of this chapter;

(B) A futures commission merchant registered with the Commission pursuant to the Act; or

(C) An introducing broker registered with the Commission pursuant to the Act.

(iii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable and consistent with §§ 155.3(a)(1) and 155.4(a)(1) of this chapter, any account in which the account manager has an interest.

(iv) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(v) *Records.* (A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (b)(5)(iii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (b)(5)(iv) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants, introducing brokers, or commodity trading advisors that execute orders or that carry accounts eligible for post-execution allocation, and members of designated contract markets or swap execution facilities that execute such

orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (b)(5)(v)(A) or (b)(5)(v)(B) of this section, the Commission may inform in writing any designated contract market, swap execution facility, swap dealer, or major swap participant, and that designated contract market, swap execution facility, swap dealer, or major swap participant shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchant shall accept orders for execution on any designated contract market, swap execution facility, or bilaterally from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (b)(5)(v)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

(c)(1) *Futures commission merchants, introducing brokers, and members of designated contract markets and swap execution facilities.* Upon request of the designated contract market or swap execution facility, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a designated contract market or swap execution facility shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures or swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a designated contract market or swap execution facility shall create, retain, and produce upon request of the designated

contract market or swap execution facility, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures or swaps for cash commodities or exchanges of futures or swaps in connection with cash commodity transactions.

(3) *Contract markets.* Every contract market shall adopt rules which require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.

(4) *Documentation.* For the purposes of this paragraph (c), documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

(d) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* Each futures commission merchant, each retail foreign exchange dealer, and each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility and, for purposes of paragraph (d)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer all charges against and credits to such customer's account, including but not limited to customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future;

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(ii) All retail forex transactions executed for such account, including the date, price, quantity, and currency;

(iii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying commodity, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(iv) All swap transactions executed for such account, including the date, price, quantity, market, commodity, swap, and, if cleared, the derivatives clearing organization; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person who whom such transaction was made;

(iii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery or underlying commodity, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees, and the person for whom the transaction was made;

(iv) All swap transactions executed on that day, including the date, price, quantity, market, commodity, swap, the person for whom such transaction was made, and, if cleared, the derivatives clearing organization; and

(v) In the case of an introducing broker, the record or journal required by this paragraph (d)(3) shall also include the futures commission merchant or retail foreign exchange dealer carrying the account for which each commodity futures, retail forex, commodity option, and swap transaction was executed on that day. *Provided, however,* that where reproductions on microfilm, microfiche or optical disk

are substituted for hard copy in accordance with the provisions of § 1.31(b), the requirements of paragraphs (d)(1) and (d)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity futures, retail forex, commodity option, or swap books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (d)(1) and (d)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

(e) *Members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* In the daily record or journal required to be kept under paragraph (d)(3) of this section, each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall also show the floor broker or floor trader executing each transaction, the opposite floor broker or floor trader, and the opposite clearing member with whom it was made.

(f) *Members of designated contract markets.* (1) Each member of a designated contract market who, in the place provided by the designated contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery, commodity option, or swap on or subject to the rules of such designated contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery, or swap, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the

transaction was executed, and the opposite clearing member (if such opposite clearing member is made known to the member).

(2) Each member of a designated contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; *Provided, however,* That if lines remain after the last execution recorded on a trading card, the remaining lines must be marked through.

(3) Each member of a designated contract market must identify on his or her trading cards the purchases and sales executed during the opening and closing periods designated by the designated contract market.

(4) Trading cards prepared by a member of a designated contract market must contain:

(i) Pre-printed member identification or other unique identifying information which would permit the trading cards of one member to be distinguished from those of all other members;

(ii) Pre-printed sequence numbers to permit the intra-day sequencing of the cards; and

(iii) Unique and pre-printed identifying information which would distinguish each of the trading cards prepared by the member from other such trading cards for no less than a one-week period.

(5) Trading cards prepared by a member of a designated contract market and submitted pursuant to paragraph (f)(7)(i) of this section must be time-stamped promptly to the nearest minute upon collection by either the designated contract market or the relevant clearing member.

(6) Each member of a designated contract market shall be accountable for all trading cards prepared in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) Trading records prepared by a member of a designated contract market must:

(i) Be submitted to designated contract market personnel or the clearing member within 15 minutes of des-

ignated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period for submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be submitted as often as is practicable to the designated contract market or relevant clearing member; and

(ii) Be completed in non-erasable ink. A member may correct any errors by crossing out erroneous information without obliterating or otherwise making illegible any of the originally recorded information. With regard to trading cards only, a member may correct erroneous information by rewriting the trading card; *Provided, however,* that the member must submit a ply of the trading card, or in the absence of plies the original trading card, that is subsequently rewritten in accordance with the collection schedule for trading cards and *provided further,* that the member is accountable for any trading card that subsequently is rewritten pursuant to paragraph (f)(6) of this section.

(8) Each member of a designated contract market must use a new trading card at the beginning of each designated 30-minute interval (or such lesser interval as may be determined appropriate) or as may be required pursuant hereto.

(g) *Members of derivatives clearing organizations clearing trades executed on designated contract markets and swap execution facilities.* (1) Each member of a derivatives clearing organization clearing trades executed on a designated contract market or swap execution facility shall maintain a single record which shall show for each futures, option, or swap trade: the transaction date, time, quantity, and, as applicable, underlying commodity, contract for future delivery, or swap, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer types. The customer type indicator shall show, with respect

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to each person executing the trade, whether such person:

(i) Was trading for his or her own account, or an account for which he or she has discretion;

(ii) Was trading for his or her clearing member's house account;

(iii) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(iv) Was trading for any other type of customer.

(2) The record required by this paragraph (g) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with the provisions of subpart J of part 38 of this chapter, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (g) shall be maintained in a format and coding structure approved by the Commission—

(i) In hard copy or on microfilm as specified in § 1.31, and

(ii) For 60 days in computer-readable form on compatible magnetic tapes or discs.

[77 FR 66324, Nov. 2, 2012, as amended at 77 FR 75541, Dec. 21, 2012]

#### **§ 1.36 Record of securities and property received from customers.**

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in § 1.31, a record of all securities and property received from customers or retail forex customers in lieu of money to margin, purchase, guarantee, or secure the commodity interests of such customers or retail forex customers. Such record shall show separately for each customer or retail forex customer: A description of the securities or property received; the name and address of such customer or retail forex customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer or retail

forex customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with a derivatives clearing organization, directly or with a bank or trust company acting as custodian for such derivatives clearing organization, securities and/or property which belong to a particular customer, such futures commission merchant shall obtain written acknowledgment from such derivatives clearing organization that it was informed that such securities or property belong to customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in § 1.31.

(b) Each derivatives clearing organization which receives from members securities or property belonging to particular customers of such members in lieu of money to margin, purchase, guarantee, or secure the commodity interests of such customers, or receives notice that any such securities or property have been received by a bank or trust company acting as custodian for such derivatives clearing organization, shall maintain, as provided in § 1.31, a record which will show separately for each member, the dates when such securities or property were received, the identity of the depositories or other places where such securities or property are segregated, the dates such securities or property were returned to the member, or otherwise disposed of, together with the facts and circumstances of such other disposition including the authorization therefor.

[77 FR 66328, Nov. 2, 2012]

#### **§ 1.37 Customer's name, address, and occupation recorded; record of guarantor or controller of account.**

(a) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity interest account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such