

§ 1.65

17 CFR Ch. I (4–1–13 Edition)

they represent and how the composition of the governing board otherwise meets the requirements of § 1.64(b) and the self-regulatory organization's implementing standards and procedures.

[58 FR 37654, July 13, 1993; 59 FR 5082, Feb. 3, 1994]

§ 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) *Notice and Disclosure to Customers.*

(1) Prior to transferring a customer account to another futures commission merchant or introducing broker other than at the request of the customer, a futures commission merchant or introducing broker must obtain the customer's specific consent to the transfer.

(2) If the customer account agreement contains a valid consent by the customer to prospective transfers of the account, the transferor futures commission merchant or introducing broker may transfer the account if the customer is provided with written notice of, and a reasonable opportunity to object to, the transfer and the customer has not asserted an objection to the transfer or given other instructions as to the disposition of the account. The notice to the customer must include:

(i) A clear statement of the reason(s) for the transfer, the name, address and telephone number of the proposed transferee firm and other information material to the transfer;

(ii) A statement that the customer is not required to accept the proposed transfer and may direct the transfer or firm to liquidate the account or transfer the account to a firm of the customer's selection;

(iii) The name, telephone number and address of a contact person at the transferor firm to whom the customer may give instructions as to the disposition of the account;

(iv) Notice that a failure to respond to the letter within a specified time period, which must be a reasonable period in the circumstances, will be deemed consent to the transfer; and

(v) A clear statement as to the means by which the customer may object to or otherwise respond to the notice of proposed transfer.

(3) Where customer accounts are transferred to a futures commission merchant or introducing broker, other than at the customer's request, the transferee introducing broker or futures commission merchant must provide each customer whose account is transferred with the risk disclosure statements and acknowledgments required by § 1.55 (domestic futures and foreign futures and options trading), and §§ 33.7 (domestic exchange-traded commodity options) and 190.10(c) (non-cash margin—to be furnished by futures commission merchants only) of this chapter and receive the required acknowledgments within sixty days of the transfer of accounts. This requirement shall not apply:

(i) As to customers owning transferred accounts for which the transferee futures commission merchant or introducing broker has clear written evidence that the customer has received and acknowledged the required disclosure documents; or

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the transferring futures commission merchant or introducing broker, or is at the time the account is being transferred, a customer listed in § 1.55(f); or

(iii) If the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) and such futures commission merchant maintains the relevant acknowledgments required by §§ 1.55(a)(1)(ii) and 33.7(a)(1)(ii) of this chapter and can establish compliance with § 190.10(c) of this chapter.

(b) *Notice to the Commission.* Each futures commission merchant or introducing broker shall file with the Commission, at least five business days in advance of the transfer, notice of any transfer of customer accounts carried or introduced by such futures commission merchant or introducing broker that is not initiated at the request of the customer, where the transfer involves the lesser of:

Commodity Futures Trading Commission

§ 1.66

(1) 25 percent of the total number of customer accounts carried or introduced by such firm if that percentage represents at least 100 accounts; or

(2) 50 percent or more of the total number of customer accounts carried or introduced by such firm. The computation of the percentage and number of accounts must be based on the total number of accounts carried by the transferor futures commission merchant or introduced by the introducing broker, irrespective of whether such accounts are transferred to a single or multiple transferees.

(c) The notice required by paragraph (b) of this section shall include:

(1) The name, principal business address and telephone number of the transferor futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of each transferee futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of the notice to customers informing them of the proposed transfer and providing an opportunity to object to such transfer; and

(6) A statement of the number of accounts to be transferred and the estimated liquidating equity of the accounts to be transferred.

(d) The notice required by paragraph (b) of this section shall be filed with the Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; the National Futures Association Attn: Vice President-Compliance; and the designated self-regulatory organization for the transferor firm.

(e) In the event that the notice required by paragraph (b) of this section cannot be filed with the Commission at least five days prior to the account transfer, the transferee futures commission merchant or introducing broker shall file such notice as soon as practicable and no later than the day of the transfer. Such notice shall in-

clude a brief statement explaining the circumstances necessitating the delay in filing.

(f) The requirements of this section shall not affect the obligations of a futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to transfer of accounts.

(g) If a proposed transfer is not completed in accordance with the notice required to be filed by paragraph (b) of this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

[58 FR 17504, Apr. 5, 1993, as amended at 60 FR 49334, Sept. 25, 1995; 63 FR 8571, Feb. 20, 1998; 67 FR 62351, Oct. 7, 2002]

§ 1.66 No-action positions with respect to floor traders.

(a) Notwithstanding any other provision of law, if a contract market submits to the National Futures Association by April 26, 1993 a list of floor traders who were granted trading privileges on that contract market on or before April 26, 1993, and whose floor trading privileges remain in effect, which includes the name, date of birth and social security number of such floor traders, as well as facts regarding such floor traders which are set forth as statutory disqualifications in section 8a(2) of the Act if the contract market knows of such facts, and such list is signed by the chief operating officer of the contract market, the Commission will not commence an enforcement proceeding against a floor trader on that list based solely upon the floor trader's failure to register or receive a temporary license under section 4f of the Act and §3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under §1.62 for failing to bar such floor trader from operating as such: *Provided, however,* That for those floor traders listed as to whom the contract market knows of facts set forth as statutory disqualifications in section 8a(2) of the Act, the no-action position contained in paragraph (a) of this section will only apply if the contract market submits a supplemental