

### § 1.34

### 17 CFR Ch. I (4–1–15 Edition)

(d) *Controlled accounts.* With respect to any account controlled by any person other than the customer for whom such account is carried, each futures commission merchant shall:

(1) Promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section;

(2) [Reserved]

(3) Promptly furnish in writing to such other person a copy of the statement required by § 1.46: *Provided, however,* That the provisions of this paragraph (d) shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

(e) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with § 1.31, a copy of each monthly statement and confirmation required by this section.

(f) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the futures commission merchant is providing the statement was introduced by an introducing broker and the names of the futures commission merchant and introducing broker.

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so consents, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an “institutional customer” as defined in § 1.3(g), a futures commission merchant must obtain the customer’s signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any

statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

(Approved by the Office of Management and Budget under control numbers 3038–0007 and 3038–0024; the information collection requirements in paragraph (c) were approved under control number 3038–0005)

[46 FR 54520, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57008, Dec. 22, 1982; 48 FR 1185, Jan. 11, 1983; 48 FR 35289, Aug. 3, 1983; 52 FR 28997, Aug. 5, 1987; 66 FR 53517, Oct. 23, 2001; 77 FR 66323, Nov. 2, 2012]

#### § 1.34 Monthly record, “point balance”.

(a) With respect to commodity futures transactions, each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a statement commonly known as a “point balance,” which accrues or brings to the official closing price, or settlement price fixed by the clearing organization, all open contracts of customers as of the last business day of each month or of any regular monthly date selected: *Provided, however,* That a futures commission merchant who carries part or all of customers’ open contracts with other futures commission merchants on an “instruct basis” will be deemed to have met the requirements of this section as to open contracts so carried if a monthly statement is prepared which shows that the prices and amounts of such contracts long and short in the customers’ accounts are in balance with those in the carrying futures commission merchants’ accounts, and such statements are retained in accordance with the requirements of § 1.31.

(b) With respect to commodity option transactions, each futures commission merchant shall prepare, and retain in accordance with the requirements of

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§1.31, a listing in which all open commodity option positions carried for customers are marked to the market. Such listing shall be prepared as of the 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 con-

cerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and related 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