CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION.

THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIDE MANY BENEFITS TO CUSTOMERS, INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YOUR CONSENT TO THIS ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREEING TO BE BOUND BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIMS WHICH YOU OR [NAME] MAY SUBMIT TO ARBITRATION UNDER THIS AGREEMENT. YOU ARE NOT, HOWEVER, WAIVING YOUR RIGHT TO ELECT INSTEAD TO PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE WHICH MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF [NAME] INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 "REPARATIONS" PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION.

YOU NEED NOT SIGN THIS AGREEMENT TO OPEN AN ACCOUNT WITH [NAME]. SEE 17 CFR 180.1–180.5.

Customer
_____

(7) If the agreement specifies a forum for arbitration other than a contract market or registered futures association, the procedures of such forum must be fair and equitable as defined by § 180.2 of this part.

(c) The procedure established by a contract market pursuant to section 5a(a)(11) of the Act or this part may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (b) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(d) The procedure established by a contract market pursuant to the Act or this part shall not establish any unreasonably short limitation period foreclosing submission of customers' claim or grievances or counterclaims (permitted by § 180.4 or this part) by contract market members or employees thereof.

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

(7 U.S.C. 7a(11), 12a (Supp. V, 1975); secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7(a)(11), 21(b)(10) and 12a(5))

[41 FR 42946, Sept. 29, 1976, as amended at 42 FR 3433, Jan. 18, 1977; 46 FR 63036, Dec. 30, 1981; 48 FR 22143, May 17, 1983; 48 FR 41153, Sept. 14, 1983; 54 FR 1684, Jan. 17, 1989; 58 FR 17505, Apr. 5, 1993; 59 FR 5529, Feb. 7, 1994; 65 FR 47859, Aug. 4, 2000]

§ 180.4 Counterclaims.

A procedure established by a contract market under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third persons over whom the contract market does not have jurisdiction. Other counterclaims are permissible only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation.

(Secs. 5(a)(11), 17(b)(10) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(11), 21(b)(10) and 12a(5))

[48 FR 22143, May 17, 1983]

§ 180.5 Member-to-member settlement procedures.

A contract market may establish a procedure for compulsory settlement of claims and grievances or disputes

which do not involve customers. If adopted, the procedure shall be independent of, and shall not interfere with or delay the resolution of, customers' claims or grievances submitted for resolution under the procedure established pursuant to the Act. Such a procedure shall provide procedural safeguards which must include, at a minimum, fair and equitable procedures conforming to those set forth in §180.2 of this part, except that:

(a) The election of the mixed panel and the prohibition of appeal to any entity within the contract market contained in §180.2 (a) and (f) of this part need not be required; and

(b) The dollar limitation contained in §180.2(d)(1) of this part on a claim or grievance (and any counterclaim applicable thereto) that may be subject to resolution without a hearing through submission of written documents may not exceed $10,000 in the aggregate.

[57 FR 46093, Oct. 7, 1992]

PART 190—BANKRUPTCY

§ 190.01 Definitions.

For purposes of this part:

(a) *Account class* means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts and delivery accounts as defined in §190.05(a)(2): *Provided, however,* That to the extent that the equity balance, as defined in §190.07, of a customer in a commodity option, as defined in §1.3(hh) of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account.

(b) *Allowed net equity* means the amount calculated as allowed net equity in accordance with §190.07(a).

(c) *Bankruptcy Code* means, except as the context of the regulations in this part otherwise requires, those provisions of the Bankruptcy Reform Act of 1978, as amended from time to time, relating to ordinary bankruptcies (chapters 1 through 5) and to liquidations (chapter 7 with the exception of subchapter III), together with the Federal rules of bankruptcy procedure relating thereto.

(d) *Business day* means weekdays, not including Federal holidays.

(e) *Clearing organization* shall have the same meaning as that set forth in section 761(2) of the Bankruptcy Code and shall include any organization which clears commodity options which are traded on or subject to the rules of a contract market or a board of trade.

(f) *Commodity broker* means any person who is registered or required to register as a futures commission merchant under the Act including a person registered or required to be registered as such under parts 32 and 33 of this chapter, and a "commodity options dealer," "foreign futures commission merchant," "clearing organization," and "leverage transaction merchant" with respect to which there is a "customer" as those terms are defined in this section.

(g) *Commodity contract* shall have the same meaning, subject to paragraph (nn) of this section, as that set forth in section 761(4) of the Bankruptcy Code.

(h) *Commodity options dealer* shall have the same meaning as that set