

Commodity Futures Trading Commission

§ 1.59

(2) The check is payable to the futures commission merchant carrying the customer's or option customer's account;

(3) The check is deposited by the introducing broker, on the same day upon which it is received, in a bank or trust company located in the United States in a qualifying account, or the check is mailed or otherwise transmitted by the introducing broker to the futures commission merchant on the same day upon which it is received;

(4) For purposes of this paragraph (c), a qualifying account shall be deemed to be an account:

(i) Which is maintained in an account name which clearly identifies the funds therein as belonging to commodity or option customers of the futures commission merchant carrying the customer's or option customer's account;

(ii) For which the bank or trust company restricts withdrawals to withdrawals by the carrying futures commission merchant;

(iii) For which the bank or trust company prohibits the introducing broker or anyone acting upon its behalf from withdrawing funds; and

(iv) For which the bank or trust company provides the futures commission merchant carrying the customer's or option customer's account with a written acknowledgment, which the futures commission merchant must retain in its files in accordance with § 1.31, that it was informed that the funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and these regulations.

[48 FR 35291, Aug. 3, 1983, as amended at 57 FR 23143, June 2, 1992]

§ 1.58 Gross collection of exchange-set margins.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis must collect, and each futures commission merchant and foreign broker for which an omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that

established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant or for a foreign broker on an omnibus basis allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying futures commission merchant must obtain and retain a written representation from the futures commission merchant or from the foreign broker for which the omnibus account is being carried that each such position is entitled to be so margined.

[61 FR 19187, May 1, 1996]

§ 1.59 Activities of self-regulatory organization employees, governing board members, committee members, and consultants.

(a) *Definitions.* For purposes of this section:

(1) *Self-regulatory organization* means "self-regulatory organization," as defined in Commission regulation 1.3(ee), and includes the term "clearing organization," as defined in Commission regulation 1.3(d).

(2) *Governing board member* means a member, or functional equivalent thereof, of the board of governors of a self-regulatory organization.

(3) *Committee member* means a member, or functional equivalent thereof, of any committee of a self-regulatory organization.

(4) *Employee* means any person hired or otherwise employed on a salaried or contract basis by a self-regulatory organization, but does not include:

(i) Any governing board member compensated by a self-regulatory organization solely for governing board activities; or

(ii) Any committee member compensated by a self-regulatory organization solely for committee activities; or

(iii) Any consultant hired by a self-regulatory organization.

(5) *Material information* means information which, if such information were publicly known, would be considered important by a reasonable person in deciding whether to trade a particular

commodity interest on a contract market. As used in this section, “material information” includes, but is not limited to, information relating to present or anticipated cash, futures, or option positions, trading strategies, the financial condition of members of self-regulatory organizations or members of linked exchanges or their customers or option customers, or the regulatory actions or proposed regulatory actions of a self-regulatory organization or a linked exchange.

(6) *Non-public information* means information which has not been disseminated in a manner which makes it generally available to the trading public.

(7) *Linked exchange* means: (i) any board of trade, exchange or market outside the United States, its territories or possessions, which has an agreement with a contract market in the United States that permits positions in a commodity interest which have been established on one of the two markets to be liquidated on the other market; (ii) any board of trade, exchange or market outside the United States, its territories or possessions, the products of which are listed on a United States contract market or a trading facility thereof; (iii) any securities exchange, the products of which are held as margin in a commodity account or cleared by a securities clearing organization pursuant to a cross-margining arrangement with a futures clearing organization; or (iv) any clearing organization which clears the products of any of the foregoing markets.

(8) *Commodity interest* means any commodity futures or commodity option contract traded on or subject to the rules of a contract market or linked exchange, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market.

(9) *Related commodity interest* means any commodity interest which is traded on or subject to the rules of a contract market, linked exchange, or other board of trade, exchange or market, other than the self-regulatory organization by which a person is employed, and with respect to which:

(i) Such employing self-regulatory organization has recognized or established intermarket spread margins or

other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or

(ii) Such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, non-public information.

(10) *Pooled investment vehicle* means a trading vehicle organized and operated as a commodity pool within regulation 4.10(d), and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which regulation 4.5 makes available relief from regulation as a commodity pool operator, *i.e.*, registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans.

(b) *Employees of self-regulatory organizations; Self-regulatory organization rules.* (1) Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and §1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association) that, at a minimum, prohibit:

(i) Employees of the self-regulatory organization from:

(A) Trading, directly or indirectly, in any commodity interest traded on or cleared by the employing contract market or clearing organization;

(B) Trading, directly or indirectly, in any related commodity interest;

(C) Trading, directly or indirectly, in a commodity interest traded on or cleared by contract markets or clearing organizations other than the employing self-regulatory organization if the employee has access to material, non-public information concerning such commodity interest;

(D) Trading, directly or indirectly, in a commodity interest traded on or cleared by a linked exchange if the employee has access to material, non-public information concerning such commodity interest; and

(ii) Employees of the self-regulatory organization from disclosing to any

other person any material, non-public information which such employee obtains as a result of his or her employment at the self-regulatory organization where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; *Provided, however*, That such rules shall not prohibit disclosures made in the course of an employee's duties, or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

(2) Each self-regulatory organization may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission regulation 1.41 (or, pursuant to section 17(j) of the Act in the case of a registered futures association), which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (b)(1)(i) of this section may be granted; such exemptions are to be administered by the self-regulatory organization on a case-by-case basis. Specifically, such circumstances may include:

(i) Participation by an employee in pooled investment vehicles where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicles; and

(ii) Trading by an employee under circumstances enumerated by the self-regulatory organization in rules which the self-regulatory organization determines are not contrary to the purposes of this regulation, the Commodity Exchange Act, the public interest, or just and equitable principles of trade.

(c) *Governing board members, committee members, and consultants; Self-regulatory organization rules.* Each self-regulatory organization must maintain in effect rules which have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and §1.41 (or, pursuant to Section 17(j) of the Act in the case of a registered futures association) which provide that no governing board member, committee member, or consultant shall use or disclose—for

any purpose other than the performance of official duties as a governing board member, committee member, or consultant—material, non-public information obtained as a result of the performance of such person's official duties.

(d) *Prohibited conduct.* (1) No employee, governing board member, committee member, or consultant shall:

(i) Trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(ii) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(2) No person shall trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (d)(1) of this section from an employee, governing board member, committee member, or consultant.

[58 FR 54973, Oct. 25, 1993, as amended at 65 FR 47847, Aug. 4, 2000]

§ 1.60 Pending legal proceedings.

(a) Every contract market shall submit to the Commission copies of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decisions and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the contract market is a party or its property or assets is subject.

(b) Every futures commission merchant shall submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed, the notice of appeal and such further documents as