Commodity Futures Trading Commission

§ 190.03 Operation of the debtor's estate subsequent to the primary liquidation date.

Subsequent to the primary liquidation date, accounts which contain open commodity contracts not required to be liquidated under §190.02(f)(1) shall be operated by the trustee as follows:

(a) Operation of accounts held open for transfer—(1) Establishment of transfer accounts. On the primary liquidation date, the trustee must generate a new statement of account for each class of account of a customer which contains a commodity contract not required to be liquidated under §190.02(f)(1). The opening balance of such statement must be equal to its funded balance, less the value on the date of its transfer or return of any property transferred or returned with respect to the net equity claim for such account prior to the primary liquidation date.

(2) Accounting for transfer accounts. The opening balance of any statement generated on the primary liquidation date in accordance with paragraph (a)(1) of this section must be adjusted for operations on or subsequent to the primary liquidation date in the same manner as the equity in a commodity futures account maintained for or on behalf of a customer would be adjusted in the ordinary course of business prior to the filing date: Provided, however, That such statement of account must also be adjusted to reflect certain adjustments to the funded balance in accordance with §190.07(c)(2), such that the balance in that account will always be equal to the funded balance of the claimant’s net equity claim adjusted for corrections and subsequent operations less the value on the date of transfer or return of any property transferred or returned with respect to that claim prior to the primary liquidation date.

(3) Margin calls. The trustee must promptly issue margin calls with respect to any account referred to under paragraph (a)(1) of this section in which the balance does not equal or exceed 100% of the maintenance margin requirements of the applicable board of trade with respect to the open commodity contracts in such account, or if there are no such maintenance margin requirements, 100% of the clearing organization margin requirements applicable to the open commodity contracts in such account, or if there are no maintenance margin requirements or clearing organization margin requirements, then 50% of the initial margin applicable to the commodity contracts in such account: Provided, That no margin calls need be made to restore initial margin.

(b) Liquidation of open commodity contracts. Commodity contracts held open by the trustee in accordance with paragraph (a)(1) of this section must be liquidated promptly and in an orderly manner if:

(1) Any payment of margin would result in a deficit in the account in which they are held;
§ 190.04 Operation of the debtor’s estate—general.

(a) Compliance with the Act and regulations. Except as specifically provided otherwise in this part, the trustee shall comply with all of the provisions of the Act and of the regulations thereunder as if it were the debtor.

(b) Computation of funded balance. Using the information available, the trustee must compute a funded balance for each customer account which contains open commodity contracts as of the close of business each day subsequent to the order for relief until the final liquidation date. Such computation must be completed prior to noon on the next business day.

(c) Records—(1) Maintenance. Subject to the requirements of the Bankruptcy Code, records of the computations required by this part shall be maintained in accordance with §1.31 of this chapter by the trustee for the greater of the period required by §1.31 of this chapter or for a period of one year after the close of the bankruptcy proceeding for which they were compiled.

(2) Accessibility. The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, parties in interest, the Commission and the U.S. Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the U.S. Department of Justice immediate access to all records of the debtor, including records required to be retained in accordance with §1.31 of this chapter and all other records of the commodity broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

(d) Liquidation—(1) Order of liquidation—(i) Open outcry. Liquidation of open commodity contracts held for a house or a customer account by or on behalf of a commodity broker which is a debtor shall be accomplished in accordance with §1.38 of this chapter: Provided, That to the extent reasonably possible the trustee shall first liquidate all net positions and shall subsequently liquidate all long and short positions in the same commodity in the same delivery month on the same contract market in tandem: and, Provided further, That any covered commodity owned by a debtor shall be liquidated, to the extent reasonably possible, at the same time as its cover.

(ii) Book entry. Notwithstanding paragraph (1), in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit offsetting open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset such trades on the books of the commodity broker using an execution price equal to the weighted average of the liquidation prices for contracts in the same commodity for the same delivery month on