

## Commodity Futures Trading Commission

## § 31.3

agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4(b) of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

[78 FR 68654, Nov. 14, 2013]

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AUTHORITY: 7 U.S.C. 12a and 23, unless otherwise noted.

§§ 31.1–31.2 [Reserved]

### § 31.3 Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed

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or managed in substantially the same manner as such a standardized contract, or (2) the maintenance or carrying of any such contract.

The provisions of this section shall not apply to any transaction expressly prohibited by section 19(a) of the Act.

(Secs. 2(a), 8a, and 19 of the Commodity Exchange Act and secs. 2 and 23 of Pub. L. 95–405 (92 Stat. 865, 870–871); 7 U.S.C. 2 and 12a) [43 FR 58554, Dec. 15, 1978. Redesignated at 49 FR 5526, Feb. 13, 1984]

### § 31.4 Definitions.

For the purposes of this part:

(a)–(b) [Reserved]

(c) *Promotional material* includes:

(1) Any text of a standard oral presentation, or any communication for publication in any newspaper, magazine or similar medium or for broadcast over television, radio, or other electronic medium which is disseminated or directed to a leverage customer or prospective leverage customer;

(2) Any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to a leverage customer or prospective leverage customer; or

(3) Any other written literature or advice disseminated or directed to a leverage customer or prospective leverage customer for the purpose of soliciting the entry into a leverage contract;

(d) *Leverage customer* means any person who, directly or indirectly, enters into, purchases, sells, or otherwise acquires for value any interest in a leverage contract with, from or to a leverage transaction merchant: *Provided, however,* That an owner or holder of a proprietary leverage account as defined in paragraph (e) of this section shall not be deemed to be a customer within the meaning of §§ 31.11(a)–(j) and (l), 31.12 and 31.26, and such an owner or holder of such a proprietary leverage account shall otherwise be deemed to be a leverage customer within the meaning of all other sections of these rules.

(e) *Proprietary leverage account* means a leverage account carried on the books and records of an individual, a partnership, corporation or other type association (1) for one of the following

persons, or (2) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such individual himself, or such partnership, corporation or association itself;

(ii) In the case of a partnership, a general partner in such partnership;

(iii) In the case of a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such partnership,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such partnership, or

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) In the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such individual, partnership, corporation or association whose duties include:

(A) The management of the business of such individual, partnership, corporation or association or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such individual, partnership, corporation or association, or

(D) The signing or co-signing of checks or drafts on behalf of such individual, partnership, corporation or association;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that, directly or indirectly, controls such individual, partnership, corporation or association;

(viii) A business affiliate that, directly or indirectly, is controlled by or

is under common control with, such individual, partnership, corporation or association.

(f) *Commercial leverage account* means an account of a commercial enterprise, such as a producer, processor, dealer or end user of a leverage commodity which is the subject of a leverage contract, or the products or by-products thereof;

(g) *Leverage commodity* means a commodity (gold bullion, silver bullion, bulk gold coins, bulk silver coins, or platinum) which is the subject of a leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects the price for the leverage commodity which the customer can expect to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(2) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(3) The method of pricing; and

(4) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

(h) *Ask price of a leverage contract* means the price at which a leverage transaction merchant sells or is willing to sell a long leverage contract to a leverage customer or the price at which a leverage transaction merchant resells or is willing to resell a short leverage contract to a leverage customer;

(i) *Bid price of a leverage contract* means the price at which a leverage transaction merchant purchases or is willing to purchase a short leverage contract from a leverage customer, or

the price at which a leverage transaction merchant repurchases or is willing to repurchase a long leverage contract from a leverage customer;

(j) *Bid-ask spread of a leverage contract* means the difference between a leverage transaction merchant's ask price and bid price;

(k) *Initial charges for a leverage contract* includes all fees and commissions payable to a leverage transaction merchant which are incurred when a leverage contract is initially entered into by a leverage customer;

(l) *Carrying charges for a leverage contract* includes all service and interest charges paid periodically by a leverage customer to a leverage transaction merchant, or accrued by a leverage transaction merchant, while a long leverage contract remains open, or all service and interest charges paid periodically by a leverage transaction merchant to a leverage customer, or accrued by a leverage customer, while a short leverage contract remains open;

(m) *Termination charges for a leverage contract* includes all fees and commission payable to a leverage transaction merchant which are associated with the liquidation, repurchase, resale or settlement by delivery on a leverage contract;

(n) *Liquidation of a leverage contract* means the unilateral termination of a leverage contract by a leverage transaction merchant due to a leverage customer's failure to meet one or more margin calls or to make other required deposits on a timely basis or as otherwise permitted under §31.18;

(o) *Repurchase or resale of a leverage contract* means the voluntary termination of a leverage contract by mutual agreement between the leverage customer and the leverage transaction merchant, which agreement is effected by entering into a transaction which is the opposite of the initial transaction. A repurchase by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a purchase of a long leverage contract from the leverage transaction merchant, and a resale by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a sale of a short leverage

contract to the leverage transaction merchant;

(p) *Delivery on a leverage contract* means the making (in the case of an initial sale by a leverage customer) or taking (in the case of an initial purchase by a leverage customer) of delivery by a leverage customer of the commodity subject to a leverage contract;

(q) *Initial leverage margin* means the amount of funds, excluding initial charges, which a leverage customer is required to deposit with a leverage transaction merchant when entering into a leverage contract;

(r) *Minimum leverage margin* means the amount of funds which a leverage transaction merchant requires a leverage customer to maintain on deposit for each open leverage contract in the leverage customer's account.

(s) *Maintenance leverage margin* means the level to which the funds in a leverage customer's account must be restored after a margin call to the leverage customer has been effected by the leverage transaction merchant.

(t) *Leverage account equity* means:

(1) For all long leverage contracts in a leverage customer's account, the amount equal to the aggregate value of such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current bid prices for such contracts, less the amount owed to the leverage transaction merchant by the leverage customer pursuant to such contracts; and

(2) For all short leverage contracts in a leverage customer's account, the aggregate amount owed to the leverage customer by the leverage transaction merchant pursuant to all such contracts less the amount equal to the value of all such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current ask prices for such contracts;

(u)–(v) [Reserved]

(w) *Leverage contract* means a contract, standardized as to terms and conditions, for the long-term (ten years or longer) purchase ("long leverage contract") or sale ("short leverage contract") by a leverage customer of a leverage commodity which provides for:

(1) Participation by the leverage transaction merchant as a principal in each leverage transaction;

(2) Initial and maintenance margin payments by the leverage customer;

(3) Periodic payment by the leverage customer or accrual by the leverage transaction merchant of a variable carrying charge or fee on the unpaid balance of a long leverage contract, and periodic payment or crediting by the leverage transaction merchant to the leverage customer of a variable carrying charge or fee on the initial value of the contract plus any margin deposits made by the leverage customer in connection with a short leverage contract;

(4) Delivery of a commodity in an amount and form which can be readily purchased and sold in normal commercial or retail channels;

(5) Delivery of the leverage commodity after satisfaction of the balance due on the contract; and

(6) Determination of the contract purchase and repurchase, or sale and resale prices by the leverage transaction merchant; and

(x) *Leverage transaction* means the purchase or sale of any leverage contract, the repurchase or resale of any leverage contract, the delivery of the leverage commodity, or the liquidation or rescission of any such leverage contract by or to the leverage transaction merchant.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5527, Feb. 13, 1984, as amended at 49 FR 25428, June 21, 1984; 50 FR 26, Jan. 2, 1985; 50 FR 36414, Sept. 6, 1985; 54 FR 41078, Oct. 5, 1989]

### §31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

(1) To offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with §31.6;

(2) Except as provided in paragraph (a)(3) of this section, to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless that person is registered with the Commission in accordance with §3.17 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked; or

(3) Except as provided in paragraph (a)(2) of this section, if such person is a natural person, to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order (other than in a clerical capacity) for a leverage contract, or to supervise any person or persons so engaged, unless that person is registered with the Commission in accordance with §3.18 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked.

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the confirmation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with §3.18 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage con-

tract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with §31.6 of this part and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the execution of which was confirmed, before November 10, 1986.

(d) *Denial, suspension, or revocation of registration of a leverage commodity.* The failure or refusal of any leverage transaction merchant to comply with any of the provisions of the Act or any of the Commission's rules, regulations, or orders thereunder shall be cause for refusing to register a leverage commodity, for suspending registration of a leverage commodity for a period not to exceed six months, and for revoking registration of such leverage commodity with respect to that leverage transaction merchant. Any such denial, suspension, or revocation proceedings shall be conducted in accordance with the procedures set forth in sections 6 and 6(b) of the Act.

[49 FR 5528, Feb. 13, 1984, as amended at 54 FR 41078, Oct. 5, 1989; 59 FR 5703, Feb. 8, 1994]

#### **§31.6 Registration of leverage commodities.**

(a) *Registration of leverage commodities.* Each leverage commodity upon which a leverage contract is offered for sale or purchase or is sold or purchased by a particular leverage transaction merchant must be separately registered with the Commission. Registration will be granted only when the following conditions are, and continue to be, met:

(1) The person requesting registration of a leverage commodity is a registered leverage transaction merchant;

(2) The commodity to be registered is a leverage commodity as defined in §31.4(g);

(3) There exists a widely accepted and broadly disseminated commercial or retail cash price series for the commodity;

(4) The commodity can be readily purchased or sold in normal commercial or retail channels by leverage customers making or taking delivery on a leverage contract;

(5) The terms and conditions of the leverage contracts based on the leverage commodity are consistent with the Act and the regulations thereunder, and are not contrary to the public interest; and

(6) The terms and conditions of the leverage contracts based on the leverage commodity do not include substantial characteristics of other interests, such as options, certificates of deposit, or other regulated instruments.

(b) *Application for registration.* Applications to register leverage commodities should be filed with the Commission at its Washington, DC headquarters. Attn: Secretariat. Three copies of each such submission should be filed. The Commission may return any application which does not comply with the form and content requirements of this section. Each applicant must:

(1) Provide evidence that the person applying for registration of the leverage commodity is registered or has applied to the National Futures Association for registration as a leverage transaction merchant;

(2) Provide an explanation of the distinguishing characteristics of the leverage commodity for which registration is sought, including a complete description of the cash market for the leverage commodity, and for the spot, forward, and futures markets for the generic commodity;

(3) Specify a commercial or retail cash price series including prevailing premiums or discounts governing cash market transactions in the quantities specified by the leverage contract and justify the use of such price series with respect to the particular leverage commodity for which registration is sought;

(4) Provide evidence and a complete evaluation of how the distinguishing characteristics of the leverage commodity would be expected to affect the

ability of leverage customers electing to make or take delivery of the commodity at an economic price in normal cash market channels;

(5) Include a description of the commodity inspection and/or certification procedures typically required for commercial or retail sales of the specified commodity. Such description must be accompanied by information regarding the availability of any normally required certification or inspection service at the delivery points including those of the leverage transaction merchant; and

(6) Include copies of all leverage contracts which are to be offered by the leverage transaction merchant on the leverage commodity.

(c) *Continuing registration of leverage commodities.* A registered leverage transaction merchant must submit to the Commission for its review, at least forty-five (45) days before their effective date, any proposed changes in the specifications of the leverage commodity and the terms and conditions of the leverage contract from those submitted as part of the registration application unless such contract specifically provides that such terms and conditions are subject to change. Three copies of each such submission must be furnished to the Commission at its Washington, DC headquarters. Attn: Secretariat. The Commission may return any submission which does not comply with the form and content requirements of this section. Each such submission must, in the following order:

(1) Explain how any such changes might affect the ability of leverage customers to realize the leverage commodity's economic value and how such amendments might affect the ability of leverage customers making or taking delivery to buy or sell the leverage commodity;

(2) Explain the effect of such changes upon the continued appropriateness of the commercial or retail cash price series submitted pursuant to paragraph (b)(3) of this section, or, as an alternative, submit a new price series and a justification of its use; and

(3) Indicate whether, if such changes are applied to existing leverage commodities, there will be a change in the

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economic value of such commodities and, if so, quantify the extent of such changes.

(d) *Authority to disapprove amendments.* The Commission may disapprove, alter, or amend changes to the distinguishing characteristics of the registered leverage commodity, or to the terms and conditions of the leverage contracts offered thereon, after appropriate notice and opportunity for hearing, when the Commission determines that such a change is in violation of any of the provisions of the Act or any of the regulations thereunder, or that it is necessary or appropriate to ensure the financial solvency of leverage transactions or prevent manipulation or fraud. Upon notification by the Commission of its determination to disapprove, alter or amend such changes, the proposed changes will not become effective pending a final determination by the Commission to disapprove, alter, or amend such changes.

(e) *Authority to alter or amend specifications of the registered leverage commodity or the terms and conditions of leverage contract.* The Commission may alter or amend specific distinguishing characteristics of the registered leverage commodity or the terms and conditions of leverage contracts after appropriate notice and opportunity for hearing when the Commission determines that, in light of intervening events, such alterations or amendments would be necessary or appropriate to ensure the financial solvency of leverage transactions or prevent manipulation or fraud.

(f)(1) The Commission hereby delegates to the Director of the Division of Market Oversight until such time as the Commission orders otherwise, all functions reserved to the Commission in paragraphs (b) and (c) of this section.

(2) The Director of the Division of Market Oversight may submit any matter which has been delegated to the Director under paragraph (f)(1) of this

section to the Commission for its consideration.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5529, Feb. 13, 1984, as amended at 50 FR 27, Jan. 2, 1985; 50 FR 2283, Jan. 16, 1985; 54 FR 41079, Oct. 5, 1989; 67 FR 62352, Oct. 7, 2002]

### **§ 31.7 Maintenance of minimum financial, cover and segregation requirements by leverage transaction merchants.**

(a) Each person registered as a leverage transaction merchant or who files an application for registration as a leverage transaction merchant, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 31.9, or that its cover at any time is less than the minimum required by § 31.8, or that the amount of leverage customer funds in segregation is less than is required by § 31.12 or by the capital, cover or segregation rules of any designated self-regulatory organization to which such person is subject, if any, must:

(1) Give telegraphic notice as set forth in § 1.12(g) of this chapter that such applicant's or registrant's adjusted net capital is less than is required by § 31.9, or its cover is less than is required by § 31.8, or the amount of leverage customer funds in segregation is less than is required by § 31.12 or by such other capital, cover or segregation rule, identifying the applicable capital, cover or segregation rule. This notice must be given within 24 hours after such applicant or registrant knows or should have known that its adjusted net capital or its cover or the amount of leverage customer funds in segregation is less than is required by any of the aforesaid rules to which such applicant or registrant is subject; and

(2) Within 24 hours after giving such notice file a statement of financial condition, a statement of the computation of the minimum capital requirements pursuant to § 31.9 (computed in accordance with the applicable capital rule), a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, all

as of the date such applicant's or registrant's adjusted net capital or its cover or the amount of leverage customer funds in segregation became less than the minimum required.

(b) Each person registered as a leverage transaction merchant, or who files an application for registration as a leverage transaction merchant, who knows or should have known that its adjusted net capital at any time is less than 120 percent of the amount required by §31.9 must file written notice to that effect as set forth in §1.12(g) of this chapter within five business days of such event. Such applicant or registrant must also file a Form 2-FR or such other financial statement designated by the Commission and/or the designated self-regulatory organization, if any, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three successive months have elapsed during which the applicant's or registrant's adjusted net capital is at all times equal to or in excess of the minimums set forth in this paragraph (b). Each financial report required by this paragraph (b) must be filed within 30 calendar days after the end of the month for which such report is being made.

(c) The requirements of §§1.12(c), 1.12(d), 1.12(e) and 1.12(g) of this chapter shall apply to registered leverage transaction merchants and to persons who have applied for registration as leverage transaction merchants, as if in those paragraphs the term "leverage transaction merchant or applicant therefor" were substituted for the phrase "applicant or registrant."

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5530, Feb. 13, 1984, as amended at 50 FR 28, Jan. 2, 1985; 54 FR 41079, Oct. 5, 1989]

### §31.8 Cover of leverage contracts.

(a)(1) Each leverage transaction merchant must at all times maintain cover of at least 90 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers, and must at all times also maintain cover of at least 90 percent of the amount of phys-

ical commodities subject to open short leverage contracts entered into with leverage customers. At least 25 percent of the amount of physical commodities subject to open long leverage contracts must be covered by the types of permissible cover set forth in paragraphs (a)(2)(i) and (ii) of this section.

(2) Permissible cover for a long leverage contract is limited to:

(i) Warehouse receipts for the leverage commodity subject to the leverage contract held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loan against such warehouse receipts does not exceed 70 percent of the current market value of the commodity represented by each receipt.

(ii) Warehouse receipts for gold bullion in the case of leverage contracts on bulk gold coins, bulk gold coins in the case of leverage contracts on gold bullion, silver bullion in the case of leverage contracts on bulk silver coins, bulk silver coins in the case of leverage contracts on silver bullion, one type of bulk gold coins for leverage contracts involving another type of bulk gold coins on an ounce-for-ounce basis if each type of bulk gold coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under §31.6 of this part, and one type of bulk silver coins for leverage contracts involving another type of bulk silver coins on an ounce-for-ounce basis if each type of bulk silver coins used as cover is the subject of a leverage contract offered by the leverage transaction merchant pursuant to registration under §31.6 of this part, which are held in commercial banks located in the United States or in approved contract market depositories: *Provided*, That the balance of the principal and accrued interest on any loans against such warehouse receipts does not exceed 70 percent of the current market value of the commodity for which it represents cover.

(iii) Purchase, in physical form, of the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, with



settlement within two business days shall be considered permissible cover from the time the purchase order is confirmed, even though the leverage transaction merchant does not have possession or control of a warehouse receipt until settlement: *Provided, however,* That such purchases are not made from an affiliated firm, and such purchases at no time constitute more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14 of this part, detailed records of these transactions which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(iv) A long spot futures contract on the leverage commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, if the leverage transaction merchant has stopped a delivery notice which is non-transferable with respect to that futures contract and has otherwise complied with any procedures, including payment, necessary for taking delivery, even though the leverage transaction merchant does not have possession or control of a warehouse receipt for two business days: *Provided, however,* That the amount of physical commodities subject to such long spot futures contracts at no time constitutes more than 10 percent of the amount of physical commodities subject to open long leverage contracts entered into with leverage customers: *And, provided further,* That the leverage transaction merchant maintains, in accordance with § 31.14 of this part, detailed records of its deliveries on futures contracts, which will be subject to inspection, copying and audit by the Commission and a designated self-regulatory organization.

(v)(A) Purchases for future delivery on or subject to the rules of the contract market of the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section; or

(B) Purchases of call commodity options for the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, on or subject to the rules of a contract market in accordance with the provisions of part 33 of this chapter: *Provided,* That the market value of the actual commodity or futures contract which is the subject of such option is more than the value of the underlying commodity based on the strike price of the option.

(3) Permissible cover for a short leverage contract is limited to:

(i) Sales for future delivery on or subject to the rules of a contract market of the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section; or

(ii) Purchases of put commodity options for the same generic commodity subject to the leverage contract, or of the same alternative commodities provided for in paragraph (a)(2)(ii) of this section, on or subject to the rules of a contract market in accordance with the provisions of part 33 of this chapter: *Provided,* That the market value of the actual commodity or futures contract which is the subject of such option is less than the value of the underlying commodity based on the strike price of the option.

(b) Such leverage transaction merchant must be in compliance with paragraph (a) of this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization. A leverage transaction merchant who is not in compliance with paragraph (a) of this section or is unable to demonstrate such compliance must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph (b) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage

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transaction merchant for non-compliance with any of the provisions of this section.

(c) The amount of cover which is actually maintained by a leverage transaction merchant, and the amount of cover which must be maintained by a leverage transaction merchant in order to comply with the requirements of this section, shall be computed as of the close of each business day by the leverage transaction merchant. A written record of this computation shall be made and kept, together with all supporting data, in accordance with the provisions of § 1.31 of this chapter. This daily computation shall be made by noon on the next business day and shall be computed in a format identical to the Schedule of Coverage Requirements and Coverage Provided contained in Form 2-FR. In computing the amount of cover actually maintained, the leverage transaction merchant shall include only those warehouse receipts which are unencumbered or against which the balance of the principal and accrued interest on cash loans for which such receipts serve as collateral does not exceed 70 percent of the current market value of the commodities underlying such receipts.

(d) A leverage transaction merchant who uses as collateral for cash loans warehouse receipts held as cover for leverage contracts shall maintain a separate record for such loans which contains the following information:

(1) The date on which the loan was made;

(2) The name of the commercial bank or futures commission merchant making such loan;

(3) The purpose for which the loan was made;

(4) The amount of the loan;

(5) The interest rate on the loan;

(6) The loan's maturity date;

(7) The date of any partial or complete liquidation of the loan; and

(8) A description of the warehouse receipt collateralizing such loan including the receipt number, the issuer's name, and the total quantity of the commodity covered by the warehouse receipt. Such loans shall be evidenced in a written agreement executed by the leverage transaction merchant and the lender. The leverage transaction mer-

chant shall retain such agreement and any related notes in accordance with the requirements of § 31.14 of this part.

(e) The requirements of paragraphs (a) through (d) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum cover standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and § 31.28 of this part.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5531, Feb. 13, 1984, as amended at 50 FR 28, Jan. 2, 1985; 54 FR 41079, Oct. 5, 1989]

### § 31.9 Minimum financial requirements.

(a) Each leverage transaction merchant must at all times maintain adjusted net capital equal to or in excess of \$2,500,000, plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the leverage transaction merchant which are uncovered, plus 2½ percent of the market value of the amount of physical commodities subject to short leverage contracts entered into by the leverage transaction merchant which are covered.

(1) For purposes of determining compliance with the provisions of paragraph (a) of this section, each leverage transaction merchant must compute the market value of the physical commodities subject to leverage contracts which it has entered into by using the widely accepted and broadly disseminated commercial or retail cash price series submitted with the leverage transaction merchant's application for registration of the leverage commodity in accordance with § 31.6, and cannot include any mark-ups or discounts of the leverage transaction merchant.

(2) The requirements of paragraph (a) of this section shall not be applicable if the applicant or registrant is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting

requirements set by such designated self-regulatory organization in its by-laws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and §31.28 of this part.

(3) No person applying for registration as a leverage transaction merchant shall be so registered unless such person affirmatively demonstrates to the satisfaction of the Commission that it complies with the financial requirements of this section. Each leverage transaction merchant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission and/or the designated self-regulatory organization.

(4) A leverage transaction merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, must immediately cease engaging in the business of offering to enter into, entering into, or confirming the execution of, any leverage contract until such time as the leverage transaction merchant is able to demonstrate such compliance. Nothing in this paragraph shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a leverage transaction merchant for non-compliance with any of the provisions of this section. Any leverage transaction merchant required immediately to cease doing business under this paragraph shall remain liable on all leverage contracts previously entered into until all rights of and obligations owing to the customers thereunder have been fulfilled.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act rule 15c3-1 (§240.15c3-1 of this title), the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with §240.15c3-1 of this title, unless specifically stated otherwise in this section;

(2)(i) The term “customer” means customer as defined in §31.4(d);

(ii) The term “proprietary account” means a commodity futures, option or

leverage account carried on the books of the applicant or registrant itself, or for general partners of the applicant or registrant; and

(iii) The term “noncustomer account” means a leverage account carried on the books of the applicant or registrant for a person which is not included in the definition of customer (as defined in paragraph (b)(2)(i) of this section) or proprietary account (as defined in paragraph (b)(2)(ii) of this section);

(3) The term “Business day” means any day other than a Saturday, Sunday or legal holiday;

(4) The term “net capital” has the same meaning as in §1.17 of this chapter: *Provided, however*, That the term “leverage transaction merchant” shall be substituted for the term “futures commission merchant” in §1.17 of this chapter. In determining net capital, the provisions set forth in §1.17(c)(1) of this chapter shall apply;

(5) The term “current assets” has the same meaning as in §1.17(c)(2) of this chapter: *Provided*, That the provisions of §1.17(c)(2)(i) of this chapter shall apply to leverage contract accounts as well as commodity futures and option accounts;

(6) The provisions set forth in §1.17(c)(3) of this chapter shall apply;

(7) The term “liabilities” has the same meaning as in §1.17(c)(4) of this chapter;

(8) In computing adjusted net capital, the safety factors set forth in §1.17(c)(5) of this chapter shall apply: *Provided, however*, That the safety factors set forth in §1.17(c)(5)(ii) (B) and (C) of this chapter shall not apply to inventory, to the extent such inventory represents cover for leverage contracts entered into by a leverage transaction merchant; *And, provided further*, That the safety factors set forth in §1.17(c)(5) (x) and (xii) of this chapter shall not apply to any futures contracts or commodity options traded on contract markets held in proprietary accounts which represent cover for leverage contracts entered into by a leverage transaction merchant;

(9) The safety factors set forth in §1.17(c)(5) (viii) and (ix) of this chapter for undermargined commodity futures and commmodity option customer and

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noncustomer accounts shall apply in a like manner to undermargined leverage customer and noncustomer accounts, respectively, and the term “leverage transaction merchant” shall be substituted for the terms “applicable boards of trade” or “clearing organization”; and

(10) The provisions set forth in § 1.17 (d), (e), (f), (h) and (j) of this chapter shall apply.

(c) No person shall be registered as a leverage transaction merchant unless, commencing on the date the person applies for such registration, the person prepares, and keeps current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 2-FR or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(d) Each registered leverage transaction merchant, and each person who has applied for registration as a leverage transaction merchant, must make and keep as a record in accordance with § 31.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission, the designated self-regulatory organization, if any, or the United States Department of Justice in the case of a registrant, within 30 days after the date for which the computations are made, commencing the first month-end after the date the application for registration is filed.

[49 FR 5531, Feb. 13, 1984; 49 FR 25427, June 21, 1984, as amended at 50 FR 36414, Sept. 6, 1985; 54 FR 41079, Oct. 5, 1989]

### § 31.10 Repurchase and resale of leverage contracts by leverage transaction merchants.

(a) No leverage transaction merchant shall offer to sell or sell a long leverage contract involving a leverage commodity to any leverage customer at any time when such leverage transaction merchant is not offering to repurchase from any of its leverage customers any long leverage contract, and is not offering to resell to any of its leverage customers any short leverage contract, involving the same leverage commodity previously sold or purchased by the leverage transaction merchant to or from a leverage customer.

(b) No leverage transaction merchant shall offer to purchase or purchase a short leverage contract involving a leverage commodity from any leverage customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract, and is not offering to repurchase from any of its leverage customers any long leverage contract, involving the same leverage commodity previously purchased or sold by the leverage transaction merchant from or to a leverage customer.

[50 FR 36414, Sept. 6, 1985]

### § 31.11 Disclosure.

(a) Except as provided in paragraph (i) of this section, prior to the opening of a leverage customer account, a leverage transaction merchant soliciting an order for any leverage contract shall furnish to the prospective leverage customer a dated Disclosure Document and receive from such prospective leverage customer a signed and dated copy of the risk disclosure statement contained in such document which acknowledges that the customer received and understood the Disclosure Document. The Disclosure Document shall contain then current information with respect to the leverage contract being offered by the person soliciting the order therefor, and shall contain:

(1) The following bold-faced risk disclosure statement in at least ten-point type on the first page of the Disclosure Document:

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BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. A FILLED IN VERSION OF THE CUSTOMER CONFIRMATION STATEMENT REFLECTING A SINGLE TRANSACTION IN A REPRESENTATIVE LEVERAGE COMMODITY FOR A LONG LEVERAGE TRANSACTION AND A SHORT LEVERAGE TRANSACTION WHICH INCLUDES A FORMULA FOR CALCULATING AN ESTIMATE OF THE LEVERAGE CONTRACT'S BREAK-EVEN VALUE IS ATTACHED TO THIS DOCUMENT. THIS IS IN THE SAME FORMAT AS THE CONFIRMATION STATEMENT YOU WILL RECEIVE TO CONFIRM YOUR ACTUAL TRANSACTION. BE CERTAIN THAT YOU UNDERSTAND THE INFORMATION PROVIDED BY THIS STATEMENT BEFORE YOU ENTER INTO A LEVERAGE TRANSACTION.

YOU SHOULD ALSO UNDERSTAND THAT THE CHARGES FOR SIMILAR LEVERAGE CONTRACTS WHICH ARE REFLECTED ON THE FILLED-IN CONFIRMATION STATEMENT AS ESTIMATED MAY VARY AMONG LEVERAGE FIRMS, AND THAT SUCH FIRMS HAVE COMPLETE DISCRETION IN SETTING THEIR CHARGES AND THE PRICE OF THE LEVERAGE CONTRACTS THEY OFFER. PRIOR TO ENTERING INTO ANY LEVERAGE CONTRACT A PROSPECTIVE LEVERAGE CUSTOMER SHOULD COMPARE THE CHARGES AND PRICES OF SUCH FIRMS WITH EACH OTHER AND WITH THE COMMISSIONS FOR AND PRICES OF FUTURES CONTRACTS TRADED ON DESIGNATED EXCHANGES.

YOU SHOULD ALSO BE AWARE THAT YOU ARE SUBJECT TO MARGIN CALLS. THE LEVERAGE FIRM RESERVES THE RIGHT TO LIQUIDATE YOUR POSITION IF YOU DO NOT RESPOND TO A MARGIN CALL WITHIN THE TIME SPECIFIED IN YOUR LEVERAGE AGREEMENT. IN ANY EVENT, IF THE EQUITY IN YOUR CONTRACT AT ANY TIME FALLS BELOW 50% OF THE MINIMUM MARGIN, YOUR CONTRACT MAY BE LIQUIDATED WITHOUT PRIOR NOTICE. YOU MUST, HOWEVER, BE

NOTIFIED OF LIQUIDATION WITHIN NO MORE THAN 24 HOURS THEREAFTER AND PERMITTED TO REESTABLISH YOUR CONTRACT FOR A PERIOD OF 5 BUSINESS DAYS. LEVERAGE CONTRACTS PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING BID PRICE AND LEVERAGE CONTRACTS SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING ASK PRICE WITHOUT COMMISSIONS, FEES OR OTHER MARKUPS OR CHARGES UNDER RULES SET BY THE COMMODITY FUTURES TRADING COMMISSION, AS MORE COMPLETELY DESCRIBED IN THIS DISCLOSURE DOCUMENT. IN CASE OF LIQUIDATION, ALL OF YOUR FUNDS MAY BE USED TO SETTLE THE DEFICIT IN THE ACCOUNT, AND YOU MAY BE LIABLE FOR ADDITIONAL FUNDS TO SETTLE IN FULL.

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING THE DAY OF RECEIPT OF THE CONFIRMATION.

YOU SHOULD BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM A LONG LEVERAGE CONTRACT, THE LEVERAGE TRANSACTION MERCHANT WHICH SOLD YOU THE LEVERAGE CONTRACT MUST REPURCHASE IT, OR YOU MUST PAY THE LEVERAGE TRANSACTION MERCHANT THE FULL PURCHASE PRICE FOR THE LEVERAGE CONTRACT, TAKE DELIVERY OF THE LEVERAGE COMMODITY, AND THEN SELL THE LEVERAGE COMMODITY, POSSIBLY AT A LOWER PRICE THAN THE PRICE PAID TO PURCHASE THE LEVERAGE COMMODITY FROM THE LEVERAGE TRANSACTION MERCHANT. YOU SHOULD ALSO BE AWARE THAT IN ORDER TO REALIZE ANY VALUE FROM A SHORT LEVERAGE CONTRACT, THE LEVERAGE TRANSACTION MERCHANT TO WHICH YOU SOLD THE LEVERAGE CONTRACT MUST RESELL IT TO YOU, OR YOU MUST ACQUIRE THE LEVERAGE COMMODITY IN ORDER TO MAKE DELIVERY TO THE LEVERAGE TRANSACTION MERCHANT, POSSIBLY AT A HIGHER PRICE THAN THE PRICE YOU WILL RECEIVE FROM THE LEVERAGE TRANSACTION MERCHANT.

THERE IS NO MARKET FOR THE LEVERAGE CONTRACT ITSELF OTHER THAN TO HAVE IT REPURCHASED BY OR RESOLD TO THE LEVERAGE TRANSACTION MERCHANT. A LEVERAGE TRANSACTION MERCHANT IS UNDER NO OBLIGATION TO OFFER TO REPURCHASE OR RESELL A LEVERAGE CONTRACT AT ALL TIMES, ALTHOUGH THE LEVERAGE

TRANSACTION MERCHANT MUST OFFER TO REPURCHASE ANY LONG LEVERAGE CONTRACT PREVIOUSLY PURCHASED BY A LEVERAGE CUSTOMER AND MUST ALSO OFFER TO RESELL ANY SHORT LEVERAGE CONTRACT PREVIOUSLY SOLD BY A LEVERAGE CUSTOMER AT ANY TIME DURING WHICH THE LEVERAGE TRANSACTION MERCHANT IS OFFERING TO ENTER INTO NEW LONG OR SHORT LEVERAGE CONTRACTS WITH CUSTOMERS INVOLVING THE SAME LEVERAGE COMMODITY. AS NOTED ABOVE, HOWEVER, A LEVERAGE TRANSACTION MERCHANT HAS COMPLETE DISCRETION IN SETTING THE PRICE AND ANY CHARGES RELATED THERETO.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF THESE LEVERAGE CONTRACTS AS AN INVESTMENT VEHICLE NOR UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS THEREUNDER.

(2) Immediately following the statement required by paragraph (a)(1) of this section, a section, captioned “Provisions of Leverage Contract” in at least ten point type, containing the terms and conditions of the leverage contract being offered. This information must be provided in the order specified in paragraphs (a)(2) (i) through (xi) of this section, with a clear demarcation or separation between each item according to the paragraph of the section to which it corresponds, and include:

(i) The duration or expiration date of the leverage contract;

(ii) The distinguishing characteristics of the contract and of the leverage commodity, including, in particular, those characteristics of the leverage commodity enumerated in §31.4(g)(1)–(4) of this part;

(iii) A description of the following charges for each leverage contract:

(A) Initial charges;

(B) Carrying charges;

(C) Termination charges;

(iv) A description of the bid and ask prices of each leverage contract;

(v) An explanation of the margins applicable to each leverage contract, including, as required, initial margins, minimum margins and maintenance margins;

(vi) A description of the leverage customer’s responsibilities with respect to margin calls, including the timing of such calls and, if applicable, the circumstances under which, time after which, and the order in which the leverage transaction merchant may, consistent with §31.18 liquidate a customer’s position in the leverage contract;

(vii) A description of the manner in which a leverage customer may seek to have a leverage contract repurchased or resold by the leverage transaction merchant, including an explanation of the procedure to be followed by the leverage transaction merchant to effect such repurchase or resale and the manner in which the repurchase or resale price is determined;

(viii) A statement to the effect that other persons may be unwilling to buy from the leverage customer the leverage commodity that is deliverable on the leverage contract without first requiring an inspection or assay at the expense of the leverage customer; a statement to the effect that the leverage transaction merchant may be unwilling to accept delivery and pay for such leverage commodity without first requiring an inspection or assay at the expense of the leverage customer; and a description of any other requirements for the delivery of a leverage commodity by a leverage customer to a leverage transaction merchant in connection with a short leverage contract;

(ix) A clear explanation of any *force majeure* clauses pertaining to each leverage contract;

(x) A description of any material risks not included in the statements required by paragraph (a)(1) of this section; and

(xi) An identification of the commercial or retail cash price series filed in accordance with §31.6, along with clearly specified premiums and discounts, if applicable, which the leverage customer or prospective leverage customer can use to evaluate a leverage contract and a widely available source from which such price quotes may be obtained on a timely basis.

(3) A filled-in version of the customer Confirmation Statement in the format

specified by the Commission for a representative single long leverage contract and a representative single short leverage contract which includes a formula which can be used to estimate the break-even price.

(4)(i) The name, address of the main business office, main business telephone number and form of organization of the leverage transaction merchant. If the address of the main business office is a post office box number, the leverage transaction merchant must state where its books and records will be kept;

(ii) The name of each principal of the leverage transaction merchant;

(iii) The business background, for the five years preceding the date of the statement, of:

(A) The leverage transaction merchant; and

(B) Each principal of the leverage transaction merchant.

The leverage transaction merchant must include in the description of the business background of each such person the name and main business of that person's employers, business associations or business ventures and the nature of the person's duties performed for the employers or in connection with the associations or ventures.

(5)(i) A statement whether any principal of the leverage transaction merchant has entered into or intends to enter into long or short leverage contracts for his own account and, if so, whether leverage customers will be permitted to inspect the records of that person's trades; and

(ii) If principals of the leverage transaction merchant will not enter into or do not intend to enter into long or short leverage contracts for their own account, the leverage transaction merchant must so state with respect to each principal.

(6)(i) Any material administrative or civil action involving any activity or conduct, or related to any statute, set forth in sections 8a(2) or 8a(3) of the Act, or any material criminal action brought within the five years preceding the date of the document against the leverage transaction merchant or any principal of the leverage transaction merchant; and

(ii) If there has been no such action against any of the foregoing persons, the leverage transaction merchant must make a statement to that effect with respect to each such person.

(b)(1) If the leverage transaction merchant knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing leverage customers within 30 calendar days after the date upon which the leverage transaction merchant first knows or has reason to know of the defect; and

(ii) Each prospective leverage customer prior to opening an account for such person.

The leverage transaction merchant may furnish the correction by means of an amended document, a sticker on the document, a notice in a monthly statement or by other similar means.

(2) The leverage transaction merchant may not use the document until such correction is made.

(c) The leverage transaction merchant must date each document and amendment thereto as of the date it is first used.

(d) Subject to the provisions of paragraph (b) of this section, all information contained in the document must be current as of the date of the document.

(e)(1) The leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, DC headquarters, Attn: Secretariat, one copy of the document for each leverage contract that it offers or that it intends to offer not less than 21 calendar days prior to the date the leverage transaction merchant first intends to furnish the document to a prospective leverage customer. The leverage transaction merchant must specify with the filing the date it first intends to deliver the document to a prospective leverage customer;

(2) Subject to paragraphs (h) and (m) of this section, the leverage transaction merchant must file with the National Futures Association three copies and with the Commission at its Washington, DC headquarters, Attn: Secretariat, one copy of all subsequent

amendments to the document for each leverage contract that it offers or that it intends to offer within 30 calendar days after the date upon which the leverage transaction merchant first knows or has reason to know of the defect requiring the amendment.

(f) This section does not relieve a leverage transaction merchant from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective leverage customers even if the information is not specifically required by this section.

(g) If any contract term set forth in accordance with paragraph (a)(2) of this section provides that such term is subject to change, the leverage transaction merchant must ensure that this fact, the conditions under which the change may take place, and the foreseeable consequences of the change are clearly stated in the Disclosure Document, in describing that contract term.

(h) A leverage transaction merchant must transmit a notification to each leverage customer within 24 hours of making any change not otherwise permitted under the contract terms set forth in accordance with paragraph (a)(2) of this section. A notification of any change in the interest rate charged by the leverage transaction merchant must also be transmitted to each leverage customer within twenty-four hours of each change: *Provided, however*, That no notification is required if the change in interest rate is one percent or less as compared to the rate charged at the prior month-end and the new interest rate is made available to customers by means of a toll-free telephone call, and such availability is set forth in the Disclosure Document. The notification required by this paragraph must be transmitted by first class mail or other, at least equivalent, means of communication.

(i) A person soliciting or accepting an order for a leverage contract is not required to deliver a Disclosure Document leverage to a leverage customer, as required by paragraph (a) of this section, if a disclosure document meeting all of the requirements of this section previously has been delivered by the person to the leverage customer: *Pro-*

*vided, however*, That such a Disclosure Document must be delivered:

(1) Upon the request of a leverage customer, or

(2) If the previously delivered Disclosure Document has become outdated or has become inaccurate in any material respect.

(j) Prior to the entry into a leverage contract, the person soliciting the order therefor shall inform the leverage customer or the prospective leverage customer, to the extent these amounts are known or can reasonably be approximated, of all charges for the initiation, carrying and termination of a leverage contract and the leverage transaction merchant's bid-ask spread on the leverage contract as set forth in paragraph (a)(2)(iii) and (a)(2)(iv), respectively, of this section and the margins applicable to such contracts as set forth in paragraph (a)(2)(v) and (a)(2)(vi) of this section.

(k)(1) Not later than the next business day after the entry into a long leverage contract with a customer, each leverage transaction merchant shall furnish to such customer, by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(i) For a leverage customer's first leverage transaction, the following bold-faced statement in at least ten-point type:

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE ASK PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCISSION FROM THE ASK PRICE AT WHICH THE LEVERAGE CONTRACT WAS PURCHASED AND WHICH APPEARS ON THIS CONFIRMATION. TO RESCIND THIS CONTRACT SEND A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY



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TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE; and

(ii) For every leverage transaction, the following information:

(A) The date the leverage contract was entered into;

(B) The transaction identification number;

(C) The name of the leverage commodity;

(D) The expiration date of the leverage contract;

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transaction merchant's ask price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total unpaid balance for this transaction;

(G) The total initial charges for the transaction;

(H) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(I) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(J) The current equity in the individual customer's account as of the date of this transaction, but excluding this transaction;

(K) The total variable carrying charges to be billed each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(L) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(M) The total termination charges incurred if the contract is repurchased, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(N) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(O) Any special charges associated with liquidating the transaction, based on charges prevailing at the time the contract is entered into;

(P) The total delivery charges incurred if the customer takes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(Q) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus the bid-ask spread plus the initial charges plus any other charges plus the termination charges plus the carrying charges for the period the contract is intended to be held open;

(R) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(T) The commercial or retail cash price series filed in accordance with §31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis; and

(2) Not later than the next business day after entry into a short leverage contract with a customer, each leverage transaction merchant shall furnish to such customer by first-class mail or other, at least equivalent, means of communication, a written Confirmation Statement in a format specified by the Commission containing:

(i) For a leverage customer's first leverage transaction, the following bold-faced statement in at least ten-point type:

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR FIRST LEVERAGE TRANSACTION SUBJECT ONLY TO ACTUAL PRICE LOSSES BUT OTHERWISE WITHOUT PENALTY FOR THREE BUSINESS DAYS FOLLOWING AND INCLUDING RECEIPT OF THIS CONFIRMATION. ACTUAL LOSSES ON A LEVERAGE CONTRACT SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE CALCULATED BY SUBTRACTING THE BID PRICE AT WHICH THE CONTRACT WAS SOLD TO THE LEVERAGE TRANSACTION MERCHANT AND WHICH APPEARS ON THIS CONFIRMATION FROM THE BID PRICE OF THE LEVERAGE CONTRACT AT THE TIME OF THE CUSTOMER'S RESCISION. TO RESCIND THIS CONTRACT SEND

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A TELEGRAM TO (name and address of LTM) OR YOU MAY TELEPHONE (name of LTM) AT (telephone number). IF YOU RESCIND BY TELEPHONE, YOU MUST ALSO SEND IMMEDIATE WRITTEN AFFIRMATION BY TELEGRAM, CERTIFIED LETTER OR BY AT LEAST EQUIVALENT MEANS TO THE ADDRESS PROVIDED ABOVE: and

(ii) For every leverage transaction, the following information:

(A) The date the leverage contract was entered into;

(B) The transaction identification number;

(C) The name of the leverage commodity;

(D) The expiration date of the leverage contract;

(E) The total cost of the leverage contracts covered in the Confirmation Statement, which equals the leverage transaction merchant's bid price in dollars per unit multiplied by the number of units multiplied by the number of contracts;

(F) The total initial charges for the transaction;

(G) The total initial margin for the transaction, in dollars and as a percentage of the contract price;

(H) The total amount due (or paid) to initiate the transaction, which equals the total initial charges plus the total initial margin in dollars;

(I) The current equity in the individual customer's account as of the date of this transaction, but excluding this transaction;

(J) The total variable carrying charges to be credited each period, in dollars and as an annual percentage rate, based on the carrying charge rate prevailing at the time the contract is entered into;

(K) The total bid/ask spread, based on prices prevailing at the time the contract is entered into;

(L) The total termination charges incurred if the contract is resold, liquidated by the leverage transaction merchant or settled by delivery, based on charges prevailing at the time the contract is entered into;

(M) Any other charges associated with terminating the transaction, based on charges prevailing at the time the contract is entered into;

(N) Any special charges associated with liquidating the transaction, based

on charges prevailing at the time the contract is entered into;

(O) The total delivery (including assay) charges incurred if the customer makes delivery on the contract, based on charges prevailing at the time the contract is entered into;

(P) The following formula enabling a customer to calculate the estimated total contract value to break-even: Initial contract value plus carrying charges for the period the contract is intended to be held open, minus the bid-ask spread, minus the initial charges, minus any other charges, minus the termination charges;

(Q) The total minimum margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(R) The total maintenance margin, in dollars and as a percentage of contract price, based on the rate prevailing at the time the contract is entered into;

(S) The commercial or retail cash price series filed in accordance with §31.6 available to the leverage customer to evaluate the leverage contract (including any applicable premiums or discounts), and where quotes of this series can be obtained on a timely basis.

(I) Each leverage transaction merchant shall furnish, upon request, by first-class mail or other generally accepted means of communication, to all leverage customers with open leverage contracts and to prospective leverage customers who are being solicited to enter leverage contracts with it, a true copy of portions of the quarterly unaudited or annual audited financial statement most recently filed with the Commission pursuant to §31.13, except that the portions of those statements which will generally be accorded non-public treatment by the Commission need not be so furnished.

(m)(1) Notwithstanding any other provision in this section, if a leverage transaction merchant is not offering to enter into, entering into or confirming the execution of, soliciting or accepting a leverage customer's order for, or accepting any leverage customer funds from a leverage customer to enter into

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or maintain any short leverage contract, the leverage transaction merchant may delete or disregard references to short leverage contracts in its Disclosure Document as follows:

(i) The third sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(ii) The words “and a short leverage transaction” in the fourth sentence of the first paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iii) The words “and leverage contracts sold to a leverage transaction merchant are re-established at the then prevailing ask price” in the fifth sentence of the third paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(iv) The second sentence of the fifth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(v) The words “or resold to” in the first sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vi) The words “or resell,” “and must also offer to resell any short leverage contract previously sold by a leverage customer,” and “or short” in the second sentence of the sixth paragraph of the required bold-faced risk disclosure statement in paragraph (a)(1) of this section;

(vii) The words “or resold” and “or resale” (twice) in paragraph (a)(2)(vii) of this section;

(viii) All of the words following the first semicolon in paragraph (a)(2)(viii) of this section;

(ix) The words “and a representative single short leverage contract” in paragraph (a)(3) of this section; and

(x) The words “or short” in paragraphs (a)(5)(i) and (a)(5)(ii) of this section.

(2) Any leverage transaction merchant using a Disclosure Document that deletes or disregards references to short leverage contracts as permitted by paragraph (m)(1) of this section must file, in accordance with the provisions of paragraph (e)(2) of this section, a new Disclosure Document meeting all

of the requirements of paragraphs (a) through (i) of this section at least 30 calendar days before it begins to offer any short leverage contract.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5532, Feb. 13, 1984; 49 FR 25427, June 21, 1984, as amended at 50 FR 29, Jan. 2, 1985; 50 FR 36415, Sept. 6, 1985; 54 FR 41080, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

### § 31.12 Segregation.

(a) Any person that accepts leverage customer funds from a leverage customer to enter into or maintain a leverage contract shall treat and deal with such leverage customer funds as belonging to that leverage customer. Such leverage customer funds: (1) Shall be separately accounted for and segregated as belonging to the leverage customer, (2) shall be kept in the United States, (3) shall not be commingled with the funds of any other person, and (4) shall not be used to secure or extend the credit of any leverage customer or person other than the one for whom the leverage customer funds are held: *Provided, however*, That the leverage customer funds treated as belonging to a leverage customer may for convenience be commingled with other leverage customer funds and deposited in the same account or accounts with a futures commission merchant or with a bank or trust company located in the United States under conditions set forth in paragraph (b) of this section. Any leverage customer funds when so deposited with a futures commission merchant, bank or trust company, shall be deposited under an account name which clearly indicates that the account contains leverage customer funds that are segregated as required by this section. Each person so depositing any leverage customer funds shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from the futures commission merchant, bank or trust company wherein the leverage customer funds have been deposited that the futures commission merchant, bank or trust company has been informed that the leverage customer funds deposited with it are being treated by the depositing person as belonging to leverage

customers and are being held in accordance with the provisions of this section. The futures commission merchant, bank or trust company shall allow inspection of such segregated accounts, including all documents pertaining thereto, at any reasonable time by any representative of the Commission or designated self-regulatory organization, if any. Notwithstanding the foregoing, a leverage transaction merchant may exclude from its segregation requirements commissions and other charges lawfully accruing in connection with leverage contracts provided such charges have actually been made to leverage customers' accounts and are shown on the customers' statements.

(b) No leverage customer funds deposited in accordance with paragraph (a) of this section shall be held, disposed of, used or treated as belonging to the depositing person or any person other than the leverage customers from whom the leverage customer funds were received: *Provided, however*, That leverage customer funds may be used to purchase obligations of the United States, general obligations of any state or of any political subdivision thereof, obligations fully guaranteed as to principal and interest by the United States, or unencumbered warehouse receipts for inventory held in approved contract market depositories or in commercial banks located in the United States which represent cover for leverage contracts purchased by such leverage customers, or may be deposited in a commodity account with a futures commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which are permissible cover as described in §31.8(a) (2) and (3) for leverage contracts entered into by such leverage customers. Any use of leverage customer funds as described in this paragraph (b) shall be made through an account or accounts used for the deposit of leverage customer funds, and proceeds from any sale, liquidation or other disposition of obligations or warehouse receipts obtained by such use shall be redeposited in these accounts. Each person that uses leverage customer funds to purchase obligations or warehouse receipts

of the type described in this paragraph (b) shall separately account for and segregate the obligations or warehouse receipts as belonging to leverage customers. The obligations or warehouse receipts shall be deposited with a futures commission merchant, bank or trust company in the United States and shall be deposited under an account name which clearly indicates that it contains obligations or warehouse receipts treated as belonging to leverage customers, segregated as required by this section. Each person so depositing any obligations or warehouse receipts shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from the futures commission merchant, bank or trust company wherein the obligations or warehouse receipts have been deposited that the futures commission merchant, bank or trust company has been informed that the obligations or warehouse receipts are being treated by the depositing person as belonging to leverage customers and are being held in accordance with the provisions of this section. The futures commission merchant, bank or trust company shall allow inspection of such obligations or warehouse receipts at any reasonable time by any representative of the Commission or designated self-regulatory organization, if any. Each person that uses leverage customer funds to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall use a commodity account separate from any other commodity account containing futures contracts which do not represent cover. The leverage customer funds deposited in a commodity account with a futures commission merchant to margin futures contracts or to purchase commodity options traded on or subject to the rules of a contract market which represent permissible cover for leverage contracts entered into by such leverage customers shall be deposited under an account name which clearly indicates that it contains obligations treated as belonging to leverage customers, segregated as required by this

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section. Each person so depositing any leverage customer funds shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from the futures commission merchant wherein the leverage customer funds have been deposited that:

(1) The futures commission merchant has been informed that the commodity account is being treated by the depositing person as belonging to leverage customers and is being held in accordance with the provisions of this section,

(2) The customers on whose behalf the account is maintained by the leverage transaction merchant shall not be liable for any margin calls or other required deposits related to such account, and

(3) Upon liquidation of the open contracts in the account the futures commission merchant's claim in the account balance will be subordinate to that of leverage customers.

(c) Each person that uses leverage customer funds to purchase obligations or unencumbered warehouse receipts as permitted by paragraph (b) of this section shall keep a written record which includes the following:

(1) The date on which the purchase was made;

(2) The name of the person through which the purchase was made;

(3) The amount of funds so used;

(4) A description of such obligations or warehouse receipts, including the receipt number and the issuer's name;

(5) The identity of the futures commission merchant, bank or trust company wherein the obligations or warehouse receipts are segregated;

(6) The date on which the obligation, warehouse receipt, or portion thereof, is liquidated or otherwise disposed of;

(7) The amount of money, if any, received upon such liquidation or disposition; and

(8) The name of the person to or through which the obligation or warehouse receipt was disposed.

(d) Persons that use leverage customer funds to purchase obligations or unencumbered warehouse receipts described in paragraph (b) of this section shall include such obligations or unencumbered warehouse receipts in

segregated accounts at values which do not exceed the lesser of current market value or a value calculated on the basis of a commercial or retail cash price series used to compute the market value of the physical commodities subject to leverage contracts in accordance with §31.9(a)(1).

(e) The provisions of paragraphs (a) and (b) of this section shall not operate to prevent any person that uses leverage customer funds to purchase government obligations as described therein from receiving and retaining as its own any increment or interest resulting from such government obligations: *Provided, however*, That the leverage transaction merchant fulfills its obligation to pay carrying charges on a short leverage contract, including any margin deposit made in connection with such a contract, in accordance with §31.25(b).

(f) The amount of leverage customer funds which are and which must be in a segregated account in order to comply with the requirements of this section shall be computed as of the close of each business day by each person required to segregate such leverage customer funds. A written record of this computation shall be made and kept, together with all supporting data, in accordance with the provisions of §1.31 of this chapter. This daily computation shall be made by noon on the next business day and shall be identical in format to the Schedule of Segregation Requirements and Funds in Segregation contained in Form 2-FR.

(g) Each leverage transaction merchant shall maintain, as provided in §1.31, a record of all securities and property received from leverage customers in lieu of money to purchase, guarantee or secure the entry into a leverage contract. Such record shall show separately for each leverage customer a description of the securities or property received; the name and address of such leverage customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated; the dates of deposits and withdrawals from such depositories; and the date of return of such securities or property to such leverage customer, or other disposition thereof, together with the

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facts and circumstances of such other disposition.

(h) The requirements of paragraphs (a) through (g) of this section shall not be applicable if the leverage transaction merchant is a member of a designated self-regulatory organization and conforms to minimum segregation standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations or resolutions approved by the Commission pursuant to section 19 of the Act and §31.28 of this part.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5535, Feb. 13, 1984, as amended at 50 FR 31, Jan. 2, 1985, 50 FR 34616, Sept. 6, 1985; 50 FR 40964, Oct. 8, 1985; 54 FR 41081, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

#### §31.13 Financial reports of leverage transaction merchants.

(a) Each leverage transaction merchant who files an application for registration with the National Futures Association under §3.17 of this chapter shall submit concurrently with the filing of such application either:

(1) A Form 2-FR certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or

(2) A Form 2-FR as of a date not more than 45 days prior to the date on which such report is filed and an Form 2-FR certified by an independent public accountant as of a date not more than 1 year prior to the date on which such report is filed. Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(b)(1) Each leverage transaction merchant must file, in accordance with the requirements of paragraph (e) of this section, a Form 2-FR for each fiscal quarter of each fiscal year. The Form 2-FR filed as of the close of the leverage transaction merchant's fiscal year must be certified by an independent public accountant. Each Form 2-FR must be filed no later than 45 days

after the date for which the report is made: *Provided, however,* That any Form 2-FR which must be certified by an independent public accountant must be filed no later than 90 days after the close of the leverage transaction merchant's fiscal year.

(2) The provisions of paragraph (b)(1) of this section may be met by any person registered as a leverage transaction merchant who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved after April 13, 1984, by the Commission pursuant to section 19 of the Act and §31.28 of this part: *Provided, however,* That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

(c) Each Form 2-FR which must be certified by an independent public accountant in accordance with the provisions of paragraphs (a)(1), (a)(2) and (b)(1) of this section, must be certified in accordance with §1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of §1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of §1.16 (except paragraph (f)) of this chapter: *Provided, however,* That the term "Form 2-FR" shall be substituted for "Form 1-FR" in §1.16(c)(5) of this chapter, the term "§31.9" shall be substituted for the term "§1.17," the term "leverage transaction merchant" shall be substituted for the term "futures commission merchant," and "the segregation requirements of §31.12" shall be substituted for "the segregation requirements of section 4d(a)(2) of the Act and these regulations and the secured amount requirement of the Act and these regulations."

(d) Upon receiving written notice from any representative of the Commission or any self-regulatory organization of which it is a member, a leverage transaction merchant shall, on a

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monthly basis or at such other times as specified, furnish the Commission and the self-regulatory organization, if any, with a Form 2-FR or such other financial information as requested by the representative of the Commission or the self-regulatory organization. Each such Form 2-FR or such other information must be furnished within the time specified in the written notice.

(e) The reports provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state wherein the principal place of business of the leverage transaction merchant is located, in accordance with §140.2 of this chapter, and by the designated self-regulatory organization, if any.

(f) Each Form 2-FR filed pursuant to this section which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(1) A statement of financial condition as of the date for which the report is made;

(2) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(3) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(4) A statement of the computation of the minimum capital requirements pursuant to §31.9, a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, as of the date for which the report is made; and

(5) In addition to the information expressly required, such further information as may be necessary to make the required statements and schedules not misleading.

(g) Each Form 2-FR filed pursuant to this §31.13 which is required to be certified by an independent public accountant must be completed in accordance

with the instructions to the form and contain:

(1) A statement of financial condition as of the date for which the report is made;

(2) Statements of: income (loss); cash flows; changes in ownership equity; and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made: *Provided, however,* That for an applicant filing pursuant to paragraph (a) of this section, the period must be the year ending as of the date of the statement of financial condition;

(3) A statement of the computation of the minimum capital requirements pursuant to §31.9, a schedule of coverage requirements and coverage provided, and a schedule of segregation requirements and funds on deposit in segregation, as of the date for which the report is made;

(4) Appropriate footnote disclosures; and

(5) In addition to the information expressly required, such further information as may be necessary to make the required statements and schedules not misleading.

(h) The statements required by paragraphs (g) (1) and (2) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraph (b) of this section, or accompanying the application for registration pursuant to paragraph (a) of this section, rather than in the format specifically prescribed by these regulations: *Provided, however,* That the statement of financial condition is presented in a format as consistent as possible with the Form 2-FR and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to §31.9. Such reconciliation must be certified by an independent public accountant in accordance with §1.16 of this chapter.

(i) Attached to each Form 2-FR filed pursuant to this section must be an oath or affirmation that to the best

knowledge and belief of the individual making such oath or affirmation the information contained in the Form 2-FR is true and correct. If the leverage transaction merchant is a sole proprietorship, then the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or, if a corporation, by the chief executive officer or chief financial officer.

(j) Any leverage transaction merchant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year in writing, concurrently with the filing of Form 2-FR pursuant to paragraph (a) of this section, but in no event may such fiscal year end more than one year from the date of the Form 2-FR filed pursuant to paragraph (a) of this section. A leverage transaction merchant which does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year. A leverage transaction merchant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year is approved upon written application to the designated self-regulatory organization.

(k) In the event any leverage transaction merchant finds that it cannot file its report for any period within the time specified in paragraphs (b) or (d) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date which may not be more than 90 days after the date as of which the financial report was to have been filed. The application must state the reasons for the requested extension and must contain an agreement to file the report on or before the specified date. The application must be received by the designated self-regulatory organization before the time specified in paragraphs (b) or (d) of this section for filing the report. Within 10 calendar days after receipt of the application for an extension of time, the designated self-regulatory organization shall: (1) Notify the leverage transaction merchant of the grant or denial of the requested extension; or (2) indicate that additional time is required to analyze

the request, in which case the amount of time needed will be specified.

(l)(1) In the event a leverage transaction merchant finds that it cannot file its certified financial report and schedules for any year within the time specified in paragraph (b) of this section without substantial undue hardship, it may file with the designated self-regulatory organization an application for an extension of time to a specified date not more than 90 days after the date as of which the certified financial report and schedules were to have been filed. The application must be submitted by the leverage transaction merchant and must:

(i) State the reasons for the requested extension;

(ii) Indicate that the inability to make a timely filing is due to circumstances beyond the control of the leverage transaction merchant, if such is the case, and describe briefly the nature of such circumstances;

(iii) Be accompanied by the latest available formal computation of its adjusted net capital and minimum financial requirements computed in accordance with §31.9;

(iv) Be accompanied by the latest available computation of required segregation and by a computation of the amount of leverage customer funds segregated pursuant to §31.12 as of the date of the latest available computation;

(v) Be accompanied by the latest available computation of required cover and by a computation of cover provided pursuant to §31.8 as of the date of the latest available computation;

(vi) Contain an agreement to file the report on or before the date specified by the leverage transaction merchant in the application;

(vii) Be received by the designated self-regulatory organization prior to the date on which the report is due; and

(viii) Be accompanied by a letter from the independent public accountant answering the following questions:

(A) What specifically are the reasons for the extension request?

(B) On the basis of that part of your audit to date, do you have any indication that may cause you to consider



commenting on any material inadequacies in the accounting system, internal accounting controls or procedures for safeguarding customer or firm assets?

(C) Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 31.9 or the cover or segregation requirements of these regulations, or has any significant financial or record-keeping problems?

(2) Within 10 calendar days after receipt of an application for extension of time, the designated self-regulatory organization shall:

(i) Notify the leverage transaction merchant of the grant or denial of the requested extension; or

(ii) Indicate that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(3) On the written request of a leverage transaction merchant, or on its own motion, the designated self-regulatory organization may grant an extension of time or an exemption from any of the certified financial reporting requirements of this section either unconditionally or on specified terms and conditions.

(m) The following portions of Form 2-FR filed pursuant to this section will be public: The statement of financial condition, the computation of the minimum capital requirements pursuant to § 31.9, the schedule of coverage requirements and cover provided, and the schedule of segregation requirements and funds on deposit in segregation. The other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 2-FR, trade secrets and certain other commercial or financial information on such other statements and schedules, will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter. All information on such other statements, footnote disclosures and schedules will, however, be available for official use by any official or employee of the United States or any State, by any self-regulatory organization of which the person filing such re-

port is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest. The independent public accountant's opinion filed pursuant to this section will be deemed to be public information.

(n)(1) Until such time as the Commission orders, otherwise, the Commission hereby delegates to the Director of the Division of Swap Dealer and Intermediary Oversight or his designee the authority to perform all functions reserved to the Commission in this section.

The Director of the Division of Swap Dealer and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (n)(1) of this section.

[49 FR 5536, Feb. 13, 1984, as amended at 54 FR 41081, Oct. 5, 1989; 62 FR 10445, Mar. 7, 1997; 67 FR 62352, Oct. 7, 2002; 69 FR 41426, July 9, 2004; 78 FR 22419, Apr. 16, 2013]

#### § 31.14 Recordkeeping.

(a) All books, records and other documents required to be kept by this part shall be kept in accordance with the provisions of § 1.31 of this chapter. In addition, information concerning leverage transactions shall be made available upon request of the Executive Director, the Director of the Division of Swap Dealer and Intermediary Oversight, the Director of the Division of Market Oversight or the Director of the Division of Enforcement, or other designees, at a time and place and in such form and manner as may be specified in the request.

(b) Each leverage transaction merchant shall:

(1) Keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to leverage contracts, commodity futures, commodity options and cash commodities and furnish true and correct information and reports as to the contents and the meaning thereof when and as requested by any authorized representative of the Commission, designated self-regulatory organization, if any, or the U.S. Department of Justice. Included among

such records shall be: All leverage contract orders; signature cards; journals; ledgers; canceled checks; bank statements; loan agreements; invoices; copies of confirmations; copies of statements of purchase, sale, repurchase, resale, liquidation, rescission and delivery; copies of month-end statements; monthly trial balances, and a monthly listing as described in paragraph (d) of this section; reports, letters and copies of disclosure statements signed by leverage customers as described in §31.11; promotional material, circulars, memoranda, publications, writings, and all other literature or written advice distributed to leverage customers or prospective leverage customers; and all other records, data and memoranda which have been prepared in the course of the business of the leverage transaction merchant concerning leverage contracts, commodity futures, commodity options, and cash commodities;

(2) Keep a record in permanent form which shall show for each leverage customer's account carried by such leverage transaction merchant:

(i) The true name and address of the person for whom such account is carried;

(ii) The principal occupation and/or type of business of the person for whom such account is carried;

(iii) The name and address of any other person who assumes or purports to assume any financial responsibility for or operational control of such account; and

(iv) The names of the persons who have solicited and are responsible for each leverage customer's account.

(c) Each leverage transaction merchant shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger which will show separately for each leverage customer's account all charges against and credits to such leverage customer's account, including but not limited to all charges and credits for purchases, repurchases, sales, resales, liquidations, rescissions and settlements by delivery of leverage contracts (including the corresponding transaction identification numbers) and all funds transferred, deposited

into, or withdrawn from the leverage customer's account.

(2) A record of transactions which will show separately for each leverage customer's account in chronological sequence all leverage contracts entered into with such customer. This record will show for each transaction: The date of the transaction; the commodity involved; a transaction identification number; the maturity date; the number of contracts; whether the transaction represents an initial purchase, initial sale, closing repurchase, closing resale, a liquidating transaction, a rescission or a delivery; and, if a closing or liquidating transaction or a rescission, the total amount realized.

(3) A daily record or journal which will show separately by leverage commodity complete details of all leverage transactions executed on that day, including the person for whom such transaction was made, the leverage commodity and contract involved, the number of leverage contracts, the transaction identification number for each leverage contract, whether the transaction was an initial purchase, repurchase, initial sale, resale, liquidating transaction, rescission or delivery, and the total value of the transaction.

(4) The acknowledgement specified in §31.11(a).

(5) A record of all notifications under §31.11(h).

(6) Where reproductions on microfilm of the records required by this paragraph (c) are substituted for hard copy in accordance with the provisions of paragraph (a) of this section, the requirement of paragraphs (c)(1) and (c)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides at such time and place as required by the Commission and at the expense of such person, reproduced copies which show the records as specified in paragraphs (c)(1) and (c)(2) of this section, on request by any representative of the Commission, designated self-regulatory organization or the U.S. Department of Justice.

(d) Each leverage transaction merchant shall prepare, as of the close of the last business day of each calendar month, a listing of all open leverage

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contracts carried for leverage customs. Such listing shall be by leverage commodity and contract and separately by long leverage contracts and short leverage contracts, and shall include the following details with respect to each leverage contract:

(1) The customer account identification number;

(2) The name of the leverage commodity and contract;

(3) The date of execution and the maturity date;

(4) The transaction identification number;

(5) The value of the leverage contract when initiated; and

(6) The unrealized profit or loss on each open leverage contract marked to the market on the basis of the leverage transaction merchant's bid price for a long leverage contract and ask price for a short leverage contract.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[50 FR 32, Jan. 2, 1985; 50 FR 2283, Jan. 16, 1985, as amended at 67 FR 62352, Oct. 7, 2002; 78 FR 22419, Apr. 16, 2013]

### §31.15 Reporting to leverage customers.

Each leverage transaction merchant shall furnish in writing directly to each leverage customer:

(a) Promptly upon the repurchase, resale, liquidation, rescission or delivery of a leverage contract, a statement showing the financial result of the transactions involved, including the gain or loss on the leverage contract as well as the commission and other charges;

(b) As of the close of the last business day of each calendar month or as of any regular monthly date selected a statement which clearly shows:

(1) All leverage contracts which were terminated for or by the leverage customer during the monthly reporting period by leverage commodity and contract, the number of contracts involved, the transaction identification number for each leverage contract, whether the terminating transaction involved repurchase, resale, liquidation, rescission, or delivery, the date the contract was initially entered into, the value of the contract when initi-

ated, the date the contract was terminated, the value of the contract when terminated, and the realized profit or loss on the contract;

(2) The open leverage contract positions carried for the leverage customer by leverage commodity and contract, whether the position is a long or short leverage contract, the dates on which such contracts were executed and their maturity dates, the number of contracts, the total value of the contracts when initiated, and the unrealized profit or loss on each such contract marked to the market on the basis of the leverage transaction merchant's bid price for a long leverage contract and ask price for a short leverage contract.

(3) The net ledger balance carried in the leverage customer's account as of the monthly closing date and a complete accounting of any leverage customer funds held for the leverage customer;

(4) A detailed accounting of all financial charges and credits to the previous ledger balance during the monthly reporting period, including all leverage customer funds received from or disbursed to the leverage customer, and all commissions and fees incidental to the contract which have been charged and received, as well as all realized profits and losses; and

(5) Any securities or other property which the leverage customer has deposited with the leverage transaction merchant that represent leverage customer funds.

The monthly statement must also contain the following bold-faced legend in at least ten-point type: IF YOU BELIEVE YOUR MONTHLY STATEMENT IS INACCURATE YOU SHOULD PROMPTLY CONTACT (*name of LTM*) AT (*telephone number*).

(c) With respect to any leverage account controlled by any person other than the leverage customer for whom the account is carried, except such leverage customer's spouse, parent or child, a copy of the statements required by paragraphs (a) and (b) of this section shall be sent to the controller

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of the account as well as to the leverage customer for whom such account is carried.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5539, Feb. 13, 1984, as amended at 50 FR 33, Jan. 2, 1985; 50 FR 2283, Jan. 16, 1985]

### § 31.16 Monthly reporting requirements.

(a) *Monthly activity.* Each leverage transaction merchant shall file written monthly reports with the National Futures Association in the format specified by the National Futures Association, by the tenth business day of the month following the month covered by the report and shall include the following information separately for each leverage commodity and each long and short leverage contract:

(1) The total number of leverage contracts that are open as of the close of business on the last business day of the month for:

- (i) All customer accounts, and
- (ii) Separately for commercial leverage accounts.

(2) The total number of leverage contracts entered into by leverage customers during the month for:

- (i) All customer accounts, and
- (ii) Separately for commercial leverage accounts.

(3) The total number of leverage contracts which were repurchased or resold by the leverage transaction merchant during the month.

(4) The total number of leverage contracts which were liquidated by the leverage transaction merchant during the month (*i.e.*, as a result of overdue or unanswered margin calls).

(5) The total number of deliveries on leverage contracts during the month.

(6) The total number of leverage contracts which were rescinded during the month.

(b) *Prices.* The monthly report shall also show the following information separately for each leverage commodity and each long and short leverage contract: the leverage transaction merchant's last bid price offered and last ask price offered as of the close of business on each business day.

[54 FR 41082, Oct. 5, 1989]

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### § 31.17 Records of leverage transactions.

(a) Each leverage transaction merchant receiving a leverage customer's order shall immediately upon receipt thereof prepare a written record of such order, including the account identification and order number, and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, such order is received.

(b) Each leverage transaction merchant executing the order of a leverage customer shall record on a written record of such order, including the account identification and order number, by time-stamp or other timing device, the date and time, to the nearest minute, such order is executed.

(c) For the purposes of this section, the term "order" shall include, but not be limited to, any order for the purchase, sale, repurchase, resale, rescission, settlement by delivery, or liquidation of a leverage contract.

(d) Each leverage transaction merchant shall establish and maintain a record of the bid and ask prices of each leverage contract on each leverage commodity that the leverage transaction merchant offers to sell or sells, or offers to purchase or purchases. The record shall include the times these prices were in effect to the nearest ten seconds.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5540, Feb. 13, 1984, as amended at 50 FR 34, Jan. 2, 1985]

### § 31.18 Margin calls.

(a) No leverage transaction merchant shall liquidate a leverage contract because of a margin deficiency without effecting personal contact with the leverage customer. If a leverage transaction merchant is unable to effect personal contact with a leverage customer, a telegram sent to the leverage customer at the address furnished by the customer to the leverage transaction merchant shall be sufficient contact.

(b) A leverage transaction merchant shall allow a leverage customer a reasonable time after contact is effected

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in which to respond to a margin call. Twenty-four hours, excluding Saturdays, Sundays, and holidays, will be a reasonable time: *Provided, however,* That in the event the leverage customer's leverage account equity falls below 50 percent of aggregate minimum margin with respect to the leverage contracts therein, the leverage transaction merchant may liquidate sufficient contracts to restore minimum margin without prior notice: *Provided, further,* That the leverage customer must be notified of such liquidation within no more than 24 hours thereafter and must be permitted to re-establish his contract for a period of 5 business days at the then prevailing bid price in the case of a long leverage contract and at the then prevailing ask price in the case of a short leverage contract, without commissions, fees or other mark-ups or charges. If a termination charge was assessed by the leverage transaction merchant upon liquidation of a contract in accordance with the first proviso of this paragraph, such a charge must be rescinded upon re-establishment of the contract in accordance with the second proviso of this paragraph.

(c) A record of all margin calls, including all contacts with leverage customers and attempts to contact leverage customers with respect to such calls, shall be kept by the leverage transaction merchant in accordance with the provisions of § 31.14.

(d) Leverage contracts liquidated by a leverage transaction merchant because of a margin deficiency must be liquidated in declining order of loss, commencing with the leverage contract with the greatest loss.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5540, Feb. 13, 1984, as amended at 50 FR 34, Jan. 2, 1985; 50 FR 36416, Sept. 6, 1985]

### § 31.19 Unlawful representations.

It shall be unlawful for any person:

(a) Required to be registered with the Commission in accordance with §§ 3.17 and 3.18 of this chapter expressly or impliedly to represent that the commission, by registering that person or by registering the leverage commodity which underlies contracts offered for

sale or purchase, or sold or purchased by that person, or otherwise, has directly or indirectly approved that person, the person's method of operation, or any leverage commodity or leverage contract solicited or accepted by that person;

(b) To represent in writing that it is registered with the Commission or that it is offering any leverage commodity registered with the Commission without also stating in writing in connection with that representation that the Commission, by registering that person or the leverage commodity which underlies contracts offered for sale or purchase or sold or purchased by that person, has not directly or indirectly approved the person, the person's method of operation, or any leverage commodity or contract solicited or accepted by that person; or

(c) In or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any leverage contract, expressly or impliedly to represent that compliance with the provisions of the Act and these regulations constitutes a guarantee of the fulfillment of the leverage contract.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5540, Feb. 13, 1984, as amended at 50 FR 34, Jan. 2, 1985]

### § 31.20 Prohibition of guarantees against loss.

(a) No leverage transaction merchant shall in any way represent that it will, with respect to any leverage contract in any account carried by the leverage transaction merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect initial, minimum or maintenance leverage margin established for customers.

(b) No person shall in any way represent that a leverage transaction merchant will engage in any of the acts or practices described in paragraphs (a)(1), (a)(2) or (a)(3) of this section.

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(c) This section shall not be construed to prevent a leverage transaction merchant from assuming or sharing in the losses resulting from an error or mishandling of an order.

(d) This section shall not affect any guarantee entered into prior to the effective date of this section, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

[49 FR 5540, Feb. 13, 1984]

### **§ 31.21 Leverage contracts entered into prior to April 13, 1984; subsequent transactions.**

Nothing contained in these regulations shall be construed to affect any lawful activities that occurred prior to April 13, 1984. All leverage contracts offered or entered into on or after April 13, 1984 shall be subject to the terms and conditions of these regulations.

[54 FR 41082, Oct. 5, 1989]

### **§ 31.22 Prohibited trading in leverage contracts.**

No futures commission merchant or introducing broker shall offer to enter into, enter into, confirm the execution of, or solicit or accept orders for any leverage contract.

[54 FR 41082, Oct. 5, 1989]

### **§ 31.23 Limited right to rescind first leverage contract.**

(a) A leverage customer who is entering a leverage contract or contracts for the first time with a particular leverage transaction merchant may rescind such contract or contracts during a period of not less than three business days from and including the day on which the leverage customer receives the Confirmation Statement pursuant to the following provisions:

(1) Such customer may be assessed actual price losses accruing to the customer's position from the time at which the customer entered into a leverage contract to the time that the leverage contract was rescinded. Such losses do not extend to any other charges or fees, such as account initiation, carrying, margin or account termination;

(2) In the case of a leverage customer whose initial leverage transaction was

a purchase of a leverage contract from a leverage transaction merchant (long leverage contract), actual losses accruing to the position may be calculated only by subtracting the ask price of the leverage contract offered by the leverage transaction merchant at the time when the leverage contract was rescinded from the ask price at which the leverage contract was purchased by the leverage customer and which appears on the Confirmation Statement. In the case of a leverage customer whose initial leverage transaction was a sale of a leverage contract to a leverage transaction merchant (short leverage contract), actual losses are calculated by subtracting the bid price at which the leverage contract was sold by the leverage customer and which appears on the Confirmation Statement from the bid price of the leverage contract offered by the leverage transaction merchant at the time when the leverage contract was rescinded.

(3) Such customer may rescind the contract by telegram sent to the leverage transaction merchant at the address provided on the confirmation statement, or by telephone to a telephone number provided by the leverage transaction merchant on the Confirmation Statement with immediate written affirmation of rescission by telegram, certified letter or at least equivalent means.

(b) A leverage transaction merchant must make complete refund of all monies received except for actual price losses as calculated in paragraph (a)(2) of this section, to the leverage customer who has rescinded a contract pursuant to paragraph (a) of this section within 24 hours of notification of rescission.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5540, Feb. 13, 1984, as amended at 50 FR 34, Jan. 2, 1985]

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### § 31.24 [Reserved]

### § 31.25 Bid and ask prices; carrying charges.

(a) A leverage transaction merchant must use the same bid price at any particular point in time to purchase a leverage contract from a leverage customer (initiation of a short transaction) and to repurchase a leverage contract from a leverage customer (close-out of a long transaction), and a leverage transaction merchant must use the same ask price at any particular point in time to sell a leverage contract to a leverage customer (initiation of a long transaction) and to resell a leverage contract to a leverage customer (close-out of a short transaction), with respect to contracts involving the same leverage commodity.

(b) A leverage transaction merchant must apply a carrying charge rate on a short leverage contract that is within one percent per annum of the carrying charge rate that it applies to a long leverage contract. In the case of a short leverage contract, the leverage customer must be credited with carrying charges computed on the total initial value of the contract, using the bid price when the contract was executed, plus any margin deposits made by the leverage customer in connection with the contract, and the same carrying charge rate must be applied to the total initial value of the contract and to the margin deposits. In the case of a long leverage contract, the leverage customer must be assessed carrying charges only on the unpaid balance of the contract, which is the total initial value of the contract, using the ask price when the contract was executed, minus any margin deposits made in connection with the contract: *Provided, however,* That in the case of a long leverage contract, interest on unpaid carrying charges may be assessed at the same rate as the interest rate component of the carrying charges and, if such an assessment were made and if the leverage transaction merchant offers short leverage contracts, payment of interest on carrying charges that have been credited to the leverage customer's account and not withdrawn must be made at the same rate as the

interest rate component of the carrying charges.

[50 FR 36416, Sept. 6, 1985, as amended at 54 FR 41082, Oct. 5, 1989]

### § 31.26 Quarterly reporting requirement.

Each leverage transaction merchant must file, in accordance with the instructions of, and in the format specified by, the National Futures Association a quarterly report with the National Futures Association by the fifteenth business day of the month following the quarter covered by the report. The report must list all leverage contracts which were either repurchased, resold, liquidated or settled by delivery by or to the leverage transaction merchant during the quarter and, with respect to each leverage contract, must include the following information:

- (a) The leverage commodity and contract involved;
- (b) Whether a long or short leverage contract was involved;
- (c) The date the leverage contract was entered into;
- (d) The maturity date of the leverage contract at initiation;
- (e) The price at which the leverage contract was entered into;
- (f) Whether the leverage contract was repurchased, resold, liquidated or settled by delivery;
- (g) The date the leverage contract was repurchased, resold, liquidated or settled by delivery;
- (h) The price at which the leverage contract was repurchased, resold or liquidated;
- (i) The leverage customer account identification number;
- (j) Whether the leverage customer had a commercial or noncommercial leverage account;
- (k) Whether the leverage customer was the owner or holder of a proprietary leverage account as defined in § 31.4(e); and
- (l) The profit or loss incurred by the leverage customer on the contract. In the case of a long leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the leverage transaction merchant's bid price at the time of repurchase or liquidation, the total

value of the contract based on the ask price at which the contract was entered into, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial, carrying and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, in connection with the leverage contract. In the case of a short leverage contract, profit or loss shall be determined by subtracting, from the total value of the contract based on the bid price at which the contract was entered into, the total value of the contract based on the leverage transaction merchant's ask price at the time of resale or liquidation, minus any amounts paid or owed by the leverage customer to the leverage transaction merchant, including initial and termination charges, plus any amounts paid or credited by the leverage transaction merchant to the leverage customer, including carrying charges, in connection with the leverage contract.

[50 FR 36416, Sept. 6, 1985; 50 FR 37519, Sept. 16, 1985, as amended at 54 FR 41083, Oct. 5, 1989]

**§ 31.27 Registered futures association membership.**

Each person registered or required to register as a leverage transaction merchant must become and remain a member of at least one futures association which is registered under section 17 of the Act and which provides for the membership therein of such leverage transaction merchant, unless no such futures association is so registered.

[54 FR 41083, Oct. 5, 1989]

**§ 31.28 Self-regulatory organization adoption and surveillance of minimum financial, cover, segregation and sales practice requirements.**

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial, cover, segregation and sales practice, and related reporting requirements for all its members who are registered leverage transaction merchants. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such re-

quirements must be the same as, or more stringent than, those contained in this part 31 and the definition of adjusted net capital must be the same as that prescribed in § 31.9(b)(4) of this part.

(b) Each self-regulatory organization which has members who are registered leverage transaction merchants shall have in effect and enforce rules submitted to the Commission pursuant to paragraph (a) of this section and approved by the Commission.

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered leverage transaction merchant which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the reports necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements.

(d) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by the designated self-regulatory organization among the self-regulatory organizations participating in such a plan.

(e) A plan's designated self-regulatory organization must report to that plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor, audit or examine has been delegated to such designated self-regulatory organization under this section.

(f) The self-regulatory organizations may, among themselves, establish programs to provide access to any necessary information.

(g) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;



(2) Is for the protection and in the interest of leverage customers;

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements of the self-regulatory organizations submitting the plan for any leverage transaction merchant which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the information necessitated by such minimum financial, cover, segregation and sales practice, and related reporting requirements by any leverage transaction merchant which is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(h) After the Commission has approved a plan or part of one under paragraph (g) of this section, a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial, cover, segregation and sales practice, and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

(i) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan or part of one established under this section, if such plan or part of one ceases to effectuate adequately the purposes of section 19 of the Act or of this section.

(j) Whenever a registered leverage transaction merchant holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the

Commission in Washington, DC and send a copy of that notification to such leverage transaction merchant.

(k) Nothing in this section shall preclude the Commission from examining any leverage transaction merchant for compliance with the minimum financial, cover, segregation and sales practice, and related reporting requirements to which such leverage transaction merchant is subject.

(l) In the event a plan is not filed and/or approved for each registered leverage transaction merchant which is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those leverage transaction merchants which are not the subject of an approved plan (under paragraph (g) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (c) of this section.

[54 FR 41083, Oct. 5, 1989]

#### **§ 31.29 Arbitration or other dispute settlement procedures.**

Each self-regulatory organization which has members who are registered as leverage transaction merchants must be able to demonstrate its capability to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a leverage customer's claim or grievance brought against any member leverage transaction merchant or any employee of a member leverage transaction merchant. Such rules shall be consistent with the rules set forth in part 180 of this chapter governing contract market arbitration and dispute settlement procedures.

[54 FR 41084, Oct. 5, 1989; 54 FR 46503, Nov. 3, 1989]

#### **APPENDIX A TO PART 31—SCHEDULE OF FEES FOR REGISTRATION OF LEVERAGE COMMODITIES**

(a) Each application for registration of a leverage commodity must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by

the Commission and published in the FEDERAL REGISTER.

(b) Checks or money orders should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for registration of a leverage commodity will result in the return of the application. Fees will not be returned after receipt.

(d) Any firm with an application for registration of a leverage commodity pending on the date that this fee schedule becomes effective must submit its application fee within 10 days of that date. Otherwise, the application shall be deemed withdrawn without prejudice and shall be returned to the applicant.

(Secs. 5, 5a, 8a(5) and 19 of the Commodity Exchange Act (7 U.S.C. 7, 7a, 12, 12a(5), and 23), sec. 26 of the Futures Trading Act of 1982 (7 U.S.C. 16a), Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97-258, 96 Stat. 1051 (Sept. 13, 1982))

[49 FR 25835, June 25, 1984, as amended at 52 FR 22635, June 15, 1987; 60 FR 49335, Sept. 25, 1995]

## PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Sec.

32.1 Scope.

32.2 Commodity option transactions; general authorization.

32.3 Trade options.

32.4 Fraud in connection with commodity option transactions.

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### APPENDIX A TO 17 CFR PART 32

AUTHORITY: 7 U.S.C. 1a, 2, 6c, and 12a, unless otherwise noted.

SOURCE: 77 FR 25338, Apr. 27, 2012, unless otherwise noted.

#### § 32.1 Scope.

The provisions of this part shall apply to all commodity option transactions, except for commodity option transactions on a contract of sale of a commodity for future delivery conducted or executed on or subject to the rules of either a designated contract market or a foreign board of trade.

#### § 32.2 Commodity option transactions; general authorization.

Subject to §§ 32.1, 32.4, and 32.5, which shall in any event apply to all commodity option transactions, it shall be unlawful for any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless:

(a) Such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, or

(b) Such transaction is conducted pursuant to § 32.3.

#### § 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, *provided that*:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;