

Commodity Futures Trading Commission

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applicable, shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25. No investment losses shall be borne or otherwise allocated to the customers of the futures commission merchant and, if customer funds are invested by a derivatives clearing organization in its discretion, to the futures commission merchant.

[78 FR 68637, Nov. 14, 2013]

§ 1.30 Loans by futures commission merchants; treatment of proceeds.

Nothing in the regulations in this chapter shall prevent a futures commission merchant from lending its own funds to customers on securities and property pledged by such customers, or from repledging or selling such securities and property pursuant to specific written agreement with such customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of customers shall be treated and dealt with by a futures commission merchant as belonging to such customers, in accordance with and subject to the provisions of the Act and these regulations. A futures commission merchant may not loan funds on an unsecured basis to finance customers' trading, nor may a futures commission merchant loan funds to customers secured by the customer accounts of such customers.

[78 FR 68637, Nov. 14, 2013]

RECORDKEEPING

§ 1.31 Regulatory records; retention and production.

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

Electronic regulatory records means all regulatory records other than regulatory records exclusively created and maintained by a records entity on paper.

Records entity means any person required by the Act or Commission regulations in this chapter to keep regulatory records.

Regulatory records means all books and records required to be kept by the Act or Commission regulations in this chapter, including any record of any

correction or other amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include:

(i) Any data necessary to access, search, or display any such books and records; and

(ii) All data produced and stored electronically describing how and when such books and records were created, formatted, or modified.

(b) *Duration of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter:

(1) A records entity shall keep regulatory records of any swap or related cash or forward transaction (as defined in § 23.200(i) of this chapter), other than regulatory records required by § 23.202(a)(1) and (b)(1)–(3) of this chapter, from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

(2) A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

(3) A records entity shall keep each regulatory record other than the records described in paragraphs (b)(1) or (b)(2) of this section for a period of not less than five years from the date on which the record was created.

(4) A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

(c) *Form and manner of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter, all regulatory records must be created and retained by a records entity in accordance with the following requirements:

(1) *Generally.* Each records entity shall retain regulatory records in a form and manner that ensures the authenticity and reliability of such regulatory records in accordance with the

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Act and Commission regulations in this chapter.

(2) *Electronic regulatory records.* Each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records, including, without limitation:

(i) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic regulatory records and to monitor compliance with the Act and Commission regulations in this chapter;

(ii) Systems that ensure the records entity is able to produce electronic regulatory records in accordance with this section, and ensure the availability of such regulatory records in the event of an emergency or other disruption of the records entity's electronic record retention systems; and

(iii) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic regulatory records.

(d) *Inspection and production of regulatory records.* Unless specified elsewhere in the Act or Commission regulations in this chapter, a records entity, at its own expense, must produce or make accessible for inspection all regulatory records in accordance with the following requirements:

(1) *Inspection.* All regulatory records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(2) *Production of paper regulatory records.* A records entity must produce regulatory records exclusively created and maintained on paper promptly upon request of a Commission representative.

(3) *Production of electronic regulatory records.* (i) A request from a Commission representative for electronic regulatory records will specify a reasonable form and medium in which a records entity must produce such regulatory records.

(ii) A records entity must produce such regulatory records in the form and medium requested promptly, upon

request, unless otherwise directed by the Commission representative.

(4) *Production of original regulatory records.* A records entity may provide an original regulatory record for reproduction, which a Commission representative may temporarily remove from such entity's premises for this purpose. Upon request of the records entity, the Commission representative shall issue a receipt for any original regulatory record received. At the request of a Commission representative, a records entity shall, upon the return thereof, issue a receipt for the original regulatory record returned by such representative.

[82 FR 24486, May 30, 2017]

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

(1) The total amount of futures customer funds on deposit in segregated accounts on behalf of futures customers;

(2) The amount of such futures customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such futures customers; and

(3) The amount of the futures commission merchant's residual interest in such futures customer funds.

(b) In computing the amount of futures customer funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular futures customer's account against the current market value of readily marketable securities, less applicable deductions (*i.e.*, "securities haircuts") as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3-1(c)(2)(vi)), held for the same futures customer's account. Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3-1(c)(2)(vi)