

## Securities and Exchange Commission

## § 300.100

amount to be used for each such purpose.

*Item 7: Exhibits to be furnished.*

A copy of each of the following documents shall be attached to or otherwise furnished as a part of the report:

(a) Each constituent instrument defining the rights evidenced by the obligations.

(b) An opinion of counsel, written in the English language, as to the legality of the obligations.

(c) Each material contract pertaining to the issuance or distribution of the obligations, to which the EBRD or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Any prospectus or other sales literature to be provided by the EBRD or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

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AUTHORITY: 15 U.S.C. 78ccc.

SOURCE: 44 FR 5077, Jan. 25, 1979, unless otherwise noted.

NOTE: The numbers to the right of the decimal points correspond with the respective rule numbers of the rules of the Securities Investor Protection Corporation (hereinafter referred to as “SIPC”).

EXPLANATORY NOTE: Pursuant to section 3(e)(2)(D) of the Securities Investor Protection Act of 1970 (hereinafter referred to as “the Act”), the Securities and Exchange Commission (hereinafter referred to as “the Commission”) shall approve a proposed rule change submitted by the Securities Investor Protection Corporation if it finds that such proposed rule change is in the public interest and is consistent with the purposes of the Act, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The rules of this part 300 have been so approved.

#### ACCOUNTS OF “SEPARATE” CUSTOMERS OF SIPC MEMBERS

### § 300.100 General.

(a) For the purpose of sections 9(a)(2) and 16(12) of the Securities Investor Protection Act (hereinafter referred to as “the Act”), these rules will be applied in determining what accounts held by a person with a member of SIPC (hereinafter called a “member”) are to be deemed accounts held in a capacity other than his individual capacity.

(b) Accounts held by a customer in different capacities, as specified by these rules, shall be deemed to be accounts of “separate” customers.

(c) A “person” as used in these rules includes, but is not limited to, an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization,

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or a government or political subdivision thereof.

(d) The burden shall be upon the customer to establish each capacity in which he claims to hold accounts separate from his individual capacity.

### § 300.101 Individual accounts.

(a) Except as otherwise provided in these rules, all accounts held with a member by a person in his own name, and those which under these rules are deemed his individual accounts, shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by an agent or nominee for another person as a principal or beneficial owner shall, except as otherwise provided in these rules, be deemed to be an individual account of such principal or beneficial owner.

### § 300.102 Accounts held by executors, administrators, guardians, etc.

(a) Accounts held with a member in the name of a decedent or in the name of his estate or in the name of the executor or administrator of the estate of the decedent shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by a guardian, custodian, or conservator for the benefit of a ward or for the benefit of a minor under the Uniform Gifts to Minors Act or in a similar capacity shall be deemed to be held by such guardian, custodian, or conservator in a different capacity from any account or accounts maintained by such person in his individual capacity.

### § 300.103 Accounts held by a corporation, partnership or unincorporated association.

A corporation, partnership or unincorporated association holding an account with a member shall be deemed to be a separate customer distinct from the person or persons owning such corporation or comprising such partnership or unincorporated association if on the filing date it existed for a purpose other than primarily to obtain or increase protection under the Act.

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### § 300.104 Trust accounts.

(a) A trust account held with a member shall be deemed a "qualifying trust account" if it is held on behalf of a valid and subsisting express trust created by a written instrument. No account held on behalf of a trust that on the filing date existed primarily to obtain or increase protection under the Act shall be deemed to be a qualifying trust account.

(b) A qualifying trust account held with a member shall be deemed held by a separate customer of the member, distinct from the trustee, the testator or his estate, the settlor, or any beneficiary of the trust.

(c) Any account held with a member on behalf of a trust which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual account of the settlor of the trust on behalf of which the account is held.

### § 300.105 Joint accounts.

(a) A joint account shall be deemed to be a "qualifying joint account" if it is owned jointly, whether by the owners thereof as joint tenants with the right of survivorship, as tenants by the entirety or as tenants in common, or by husband and wife as community property, but only if each co-owner possesses authority to act with respect to the entire account.

(b) Subject to paragraph (c) of this rule, each qualifying joint account with a member shall be deemed held by one separate customer of the member.

(c) All qualifying joint accounts with a member owned by the same persons shall be deemed held by the same customer so that the maximum protection afforded to such accounts in the aggregate shall be the protection afforded to one separate customer of the member.

(d) A joint account with a member which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual or qualifying joint account of the co-owner or co-owners having the exclusive power to act with respect to it.

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### ACCOUNTS INTRODUCED BY OTHER BROKERS OR DEALERS

#### § 300.200 General.

A person having one or more accounts cleared by the member on a fully disclosed basis for one or more introducing brokers or dealers is a customer of the member and shall be protected with respect to such account or accounts without regard to the protection available for any other account or accounts he may have with the member.

#### § 300.201 Accounts introduced by same or different broker or dealer.

All accounts of a person which are introduced by the same broker or dealer shall be combined and protected as the single account of a separate customer, unless such accounts are maintained in different capacities as specified in §§ 300.100 through 300.105; accounts introduced by different brokers or dealers shall be protected separately.

### CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

AUTHORITY: Sec. 3, 6(d), Pub. L. 91-598, 84 Stat. 1636 (15 U.S.C. 78ccc, 78fff(d)), as amended by secs. 3, 5, 9, Pub. L. 95-283, 92 Stat. 249.

SOURCE: Sections 300.300 through 300.307 appear at 44 FR 21211, Apr. 9, 1979, unless otherwise noted.

#### § 300.300 Definitions.

For the purpose of these rules, adopted pursuant to section 8(e) of the Securities Investor Protection Act of 1970, as amended (hereinafter referred to as "the Act"):

(a) The term *failed to receive* shall mean a contractual commitment of the debtor made in the ordinary course of business to pay to another broker or dealer the contract price in cash upon receipt from such broker or dealer of securities purchased: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date as defined in section 16(7) of the Act (hereinafter referred to as the "filing date").

(b) The term *failed to deliver* shall mean a contractual commitment of the debtor, made in the ordinary course of business, to deliver securities to an-

other broker or dealer against receipt from such broker or dealer of the contract price in cash: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date.

(c) The term *open contractual commitment* shall mean a failed to receive or a failed to deliver which had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date: *Provided*, however, That the term "open contractual commitment" shall not include any contractual commitment for which the security which is the subject of the trade had not been issued by the issuer as of the trade date.

(d) The term *customer* shall mean a person (other than a broker or dealer) in whose behalf a broker or dealer has executed a transaction out of which arose an open contractual commitment with the debtor, but shall not include any person to the extent that such person at the filing date (1) had a claim for property which by contract, agreement of understanding, or by operation of law, was a part of the capital of the broker or dealer who executed such transaction or was subordinated to the claims of creditors of such broker or dealer, or (2) had a relationship with the debtor which is specified in section 9(a)(4) of the Act.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

#### § 300.301 Contracts to be closed out or completed.

An open contractual commitment shall be closed out or completed if:

(a) The open contractual commitment:

(1) Arises from a transaction in which a customer (as defined in § 300.300) of the other broker or dealer had an interest. For the purposes of this rule a customer is deemed to have an interest in a transaction if (i) the other broker was acting as agent for the customer or (ii) the other dealer was not a market maker in the security involved, to the extent such other dealer held a firm order from the customer and in connection therewith: In

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the case of a buy order, prior to executing such customer's order purchased as principal the same number of shares or purchased shares to accumulate the number of shares necessary to complete the order; or in the case of a sell order, prior to executing such customer's order sold the same number of shares or a portion thereof; and

(2)(i) Had a settlement date on or within 30 calendar days prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date; and

(ii) Had a trade date on or within three business days prior to such settlement date; and

(b) The other broker or dealer can establish to the satisfaction of the trustee through appropriate documentation that:

(1) In the case of a broker or dealer who maintains his records on a specific identification basis:

(i) The open contractual commitment arose out of a transaction in which his customer had such an interest, and

(ii) In the case of a failed to deliver of the debtor, as of the filing date such broker's or dealer's customer's interest had not been sold to such broker or dealer; or

(2) In the case of a broker or dealer who maintains his records other than on a specific identification basis, he has determined that a customer had such an interest in a manner consistent with that used by such broker or dealer prior to the filing date to allocate fails to receive and fails to deliver in computing the special reserve bank account requirement pursuant to the provisions of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3); or

(3) In the case of a broker or dealer not described in paragraph (b)(1) or (2) of this section, he has made the determination in a manner which the trustee finds to be fair and equitable.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

### § 300.302 Mechanics of closeout or completion.

(a) The closeout or completion of an open contractual commitment meeting the requirements of § 300.301 shall be effected only:

(1) By the buy-in or sell-out of the commitment by the other broker or dealer in accordance with the usual trade practices initiated by the other broker or dealer within or promptly upon the expiration of a period of 30 calendar days after settlement date; or

(2) At the option of the trustee by the delivery of securities against receipt of the contract price or payment of the contract price against the receipt of the securities at any time within 30 calendar days after settlement date unless the commitment previously has been bought-in or sold-out in accordance with paragraph (a)(1) of this section; or

(3) In the event of the refusal of the other broker or dealer to accept completion of an open contractual commitment in accordance with paragraph (a)(2) of this section, or the failure of the other broker or dealer to promptly buy-in or sell-out a commitment in accordance with paragraph (a)(1) of this section, or in the event of the failure of the other broker or dealer to provide the trustee with appropriate documentation as required by § 300.303, by delivery of securities against receipt of the contract price or payment of the contract price against receipt of securities, or the buy-in or sell-out of the commitment or cancellation of the commitment or otherwise, as may be appropriate, as the trustee in his discretion will most benefit the estate of the debtor.

(b) In the event of a close-out of an open contractual commitment pursuant to paragraph (a)(1) of this section, the money differences resulting from such close-out shall be payable by the other broker or dealer to the trustee or by the trustee to the other broker or dealer, whichever would be entitled to receive such difference under the usual trade practices: *Provided, however,* (1) That prior to the payment of any such money difference by the trustee to such other broker or dealer with respect to transactions executed by such other broker or dealer for any separate

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customer account, all open contractual commitments with respect to such account which meet the requirements of § 300.301 must have been completed by delivery of securities against receipt of the contract price or by payment of the securities in conformity with paragraph (a)(2) of this section, or by buy-in or sell-out in conformity with paragraph (a)(1) of this section, and (2) that the net amount so payable by the trustee to the other broker or dealer shall not exceed \$40,000 with respect to any separate customer account.

### § 300.303 Report to trustee.

Promptly upon the expiration of 30 calendar days after the filing date, or if by the expiration of such 30-day period notice pursuant to section 8(a) of the Act of the commencement of proceedings has not been published, then as soon as practicable after publication of such notice, a broker or dealer who had executed transactions in securities out of which arose open contractual commitments with the debtor shall furnish to the trustee such information with respect to the buy-in, sell-out or other status of open contractual commitments as called for by Forms 300-A, B and C (§§ 301.300a-301.300c of this chapter) including appropriate supporting documentation and schedules.

### § 300.304 Retained rights of brokers or dealers.

(a) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to any claim against the debtor's estate, or the right of the trustee to make any claim against a broker or dealer, with respect to a commitment of the debtor which was outstanding on the filing date, but (1) which is not described in § 300.300(c), or (2) which, although described in § 300.300(c), does not meet the requirements specified in § 300.301 or was not closed out of completed in accordance with § 300.302 or was not reported to the trustee in conformity with § 300.303 or was not supported by appropriate documentation.

(b) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to a claim against the debtor's estate for the

amount by which the money difference due the broker or dealer upon a buy-in or sell-out may exceed the amount paid by the trustee to such broker or dealer.

### § 300.305 Excluded contracts.

Notwithstanding the fact that an open contractual commitment described in § 300.300(c) meets the requirements of § 300.301 and the other requirements of these rules, a court shall not be precluded from canceling such commitment, awarding damages, or granting such other remedy as it shall deem fair and equitable if, on application of the trustee or SIPC, it determines that such commitment was not entered into in the ordinary course of business or was entered into by the debtor, or the broker or dealer or his customer, for the purposes of creating a commitment in contemplation of a liquidation proceeding under the Act. Such a determination shall be made after notice and opportunity for hearing by the debtor, such broker or dealer, or such customer, and may be made before or after the delivery of securities or payment of the contract price or before or after any buy-in or sell-out of the open contractual commitment, or otherwise.

### § 300.306 Completion or closeout pursuant to SIPC direction.

In its discretion SIPC may, in order to prevent a substantial detrimental impact upon the financial condition of one or more brokers or dealers, direct the closeout or completion of an open contractual commitment, irrespective of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported in conformity with § 300.303 or is supported by appropriate documentation. SIPC shall consult with the Securities and Exchange Commission before SIPC makes any determinations under this section.

### § 300.307 Completion with cash or securities of customer.

The trustee may, if authorized by the court, complete an open contractual commitment of the debtor, regardless of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported to the trustee in conformity with § 300.303, to the extent that such commitment is completed

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with customer name securities of the customer of the debtor for whose account the commitment was made, or with cash or securities paid or delivered by or for the account of such customer to the debtor or trustee after the filing date.

### § 300.400 Satisfaction of customer claims for standardized options.

(a) For the purpose of sections 7(b)(1), 8 (b) and (d), and 16(11) of the Securities Investor Protection Act (hereinafter referred to as “the Act”), this rule will be applied in determining what a customer will receive in either (1) a liquidation proceeding pursuant to the Act or (2) a direct payment procedure pursuant to section 10 of the Act, in satisfaction of a claim based upon Standardized Options positions.

(b) As promptly as practicable after the initiation of a liquidation proceeding or a direct payment procedure under the Act, the trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall liquidate or cause to be liquidated, by sale or purchase, all Standardized Options positions held for the accounts of customers except to the extent that the trustee, with SIPC’s consent, or SIPC as trustee, as the case may be, has arranged or is able promptly to arrange, a transfer of some or all of such positions to another SIPC member.

(c) A trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall calculate the dollar amount of all Standardized Options positions held for the account of a customer in accordance with section 16(11) of the Act, and credit or debit, as appropriate, the dollar amount so calculated to the account of such customer.

(d) Notwithstanding paragraph (b) of this section, neither the trustee in a liquidation proceeding nor SIPC in a direct payment procedure shall be required under this rule to liquidate any short position in Standardized Options covered by the deposit of (1) the underlying securities, in the case of a call option, or (2) treasury bills, in the case of a put option, by or on behalf of a customer with a bank or other depository. Any such positions that are not liquidated shall be excluded from the

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calculation provided for in paragraph (c) of this section.

(e) In no event will Standardized Options positions be delivered to or on behalf of customers in satisfaction of claims pursuant to section 7(b)(1) of the Act except to the extent that such positions have been transferred as provided in paragraph (b) of this section.

(f) In no event will Standardized Options be purchased for delivery to customers pursuant to section 8(d) of the Act.

(g) This rule shall not be construed as limiting or restricting in any way the exercise of any right of a broker or registered clearing agency to liquidate or cause the liquidation of Standardized Options Positions.

(h) As used in this rule the term *Standardized Options* means options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange, and any other option that is a security under section 16(14) of the Act, 15 U.S.C. 78lll(14), and is issued by a securities clearing agency registered under section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1, or a foreign securities clearing agency.

[48 FR 49840, Oct. 28, 1983, as amended at 79 FR 2781, Jan. 16, 2014]

### RULES RELATING TO SATISFACTION OF A “CLAIM FOR CASH” OR A “CLAIM FOR SECURITIES”

SOURCE: Sections 300.500 through 300.503 appear at 53 FR 10369, Mar. 31, 1988, unless otherwise noted.

### § 300.500 General.

These rules will be applied in determining whether a securities transaction gives rise to a “claim for cash” or a “claim for securities” on the filing date of either a liquidation proceeding pursuant to the Securities Investor Protection Act (hereinafter referred to as “the Act”) or a direct payment procedure pursuant to section 10 of the Act.

### § 300.501 Claim for cash.

(a) Where a SIPC member (“Debtor”) held securities in an account for a customer, the customer has a “claim for

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cash” with respect to any authorized securities sale:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer’s account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held cash in an account for a customer, the customer has a “claim for cash”, notwithstanding the fact that the customer has ordered securities purchased for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer’s account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

### § 300.502 Claim for securities.

(a) Where the Debtor held cash in an account for a customer, the customer has a “claim for securities” with respect to any authorized securities purchase:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer’s account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held securities in an account for a customer, the customer has a “claim for securities”, notwithstanding the fact that the customer has ordered the securities sold for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer’s account; or

(2) Whether or not written confirmation of the purchase has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase from the account.

### § 300.503 Voidable securities transactions.

(a) Nothing in these Series 500 Rules shall be construed as limiting the rights of a trustee in a liquidation proceeding under the Act to avoid any securities transaction as fraudulent, preferential, or otherwise voidable under applicable law.

(b) Nothing in these Series 500 Rules shall be construed as limiting the right of the Securities Investor Protection Corporation, in a direct payment procedure under section 10 of the Act, to reject a claim for cash or a claim for securities if such claim arose out of a securities transaction which could have been avoided in a liquidation proceeding under the Act.

## RULES RELATING TO SUPPLEMENTAL REPORT ON SIPC MEMBERSHIP

### § 300.600 Rules relating to supplemental report on SIPC membership.

(a)(1) *Who must file the supplemental report.* Except as provided in paragraph (a)(2) of this section, a broker or dealer must file with SIPC, within 60 days after the end of its fiscal year, a supplemental report on the status of its membership in SIPC (commonly referred to as the “Independent Accountants’ Report on Applying Agreed-Upon Procedures”) if a rule of the Securities and Exchange Commission (SEC) requires the broker or dealer to file audited financial statements annually.

(2) If the broker or dealer is a member of SIPC, the broker or dealer is not required to file the supplemental report for any year in which it reports \$500,000 or less in total revenues in its annual audited statement of income filed with the SEC.

(b) *Requirements of the supplemental report.* The supplemental report must cover the SIPC Annual General Assessment Reconciliation Form (Form SIPC-7) or the Certification of Exclusion From Membership Form (Form SIPC-3) for each year for which an SEC

Rule requires audited financial statements to be filed. The supplemental report must include the following:

(1) A copy of the form filed or a schedule of assessment payments showing any overpayments applied and overpayments carried forward, including payment dates, amounts, and name of SIPC collection agent to whom mailed; or

(2) If exclusion from membership was claimed, a statement that the broker or dealer qualified for exclusion from membership under the Securities Investor Protection Act of 1970, as amended, and the date the Form SIPC-3 was filed with SIPC; and

(3) An independent public accountant's report. The independent public accountant, who must be independent in accordance with the provisions of 17 CFR 210.2-01, must be engaged to perform the following agreed-upon procedures in accordance with standards of the Public Company Accounting Oversight Board (PCAOB):

(i) Compare assessment payments made in accordance with the General Assessment Payment Form (Form SIPC-6) and applied to the General Assessment calculation on the Form SIPC-7 with respective cash disbursements record entries;

(ii) For all or any portion of a fiscal year, compare amounts reflected in the audited financial statements required by an SEC rule with amounts reported in the Form SIPC-7;

(iii) Compare adjustments reported in the Form SIPC-7 with supporting schedules and working papers supporting the adjustments;

(iv) Verify the arithmetical accuracy of the calculations reflected in the Form SIPC-7 and in the schedules and working papers supporting any adjustments; and

(v) Compare the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or

(vi) If exclusion from membership is claimed, compare the income or loss reported in the audited financial statements required by an SEC rule with the Form SIPC-3.

[81 FR 14374, Mar. 17, 2016]

## PART 301—FORMS, SECURITIES INVESTOR PROTECTION CORPORATION

Sec.

301.0-1 Availability of forms.

FORMS FOR CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

301.300a Form 300-A, for summary of buy-ins or sell-outs of all open contractual commitments.

301.300b Form 300-B, for report of all fails to deliver.

301.300c Form 300-C, for report of all fails to receive.

AUTHORITY: Sec. 3, 84 Stat. 1636 (15 U.S.C. 78ccc), as amended by sec. 3, Pub. L. 95-283, 92 Stat. 249.

SOURCE: 44 FR 21213, Apr. 9, 1979, unless otherwise noted.

NOTE: Pursuant to section 3(e)(2)(D) of the Securities Investor Protection Act of 1970 (the "Act"), the Securities and Exchange Commission ("Commission") shall approve a proposed rule change submitted by the Securities Investor Protection Corporation ("SIPC") if the Commission finds the rule change is in the public interest and is consistent with the purposes of the Act. Any rule change so approved shall be given force and effect as if promulgated by the Commission. The forms described in this part have been so approved.

### § 301.0-1 Availability of forms.

The forms prescribed for use under the Securities Investor Protection Act of 1970, as amended, (the "Act") and under part 300 of this chapter are identified and described in this part. Copies of these forms may be obtained upon request to, as appropriate, the Securities Investor Protection Corporation ("SIPC") at 900 Seventeenth Street, NW., Washington, DC 20006, or the trustee appointed in a liquidation proceeding under section 5 of the Act.

FORMS FOR CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

### § 301.300a Form 300-A, for summary of buy-ins or sell-outs of all open contractual commitments.

This form shall be filed as required by § 300.303 of this chapter with the trustee in a proceeding under section 5 of the Act by a broker-dealer who executed transactions out of which arose