

行政院及所屬各機關出國報告
(出國類別：研究)

美國商品期貨交易委員會(CFTC)第十屆
年度國際市場管理者訓練研討會研究報告

服務機關：財政部證券暨期貨管理委員會
出國人 職 稱：專員 專員
姓 名：游翔芸 蔡櫻瑜

出國地點：美國華府及芝加哥
出國期間：八十九年十月十三日至二十日
報告時間：九十年三月

D9/
C08906427

目 錄

第一章	前言.....	1
第二章	美國期貨市場之管理架構	
	一、美國商品期貨交易委員會.....	3
	二、全美期貨公會.....	5
	三、期貨交易所.....	7
第三章	衍生性商品市場之建立	
	一、建立衍生性商品市場之要素.....	9
	二、美國衍生性商品發展概況.....	14
	三、建立衍生性商品市場之法規規範.....	15
第四章	衍生性商品市場結構之發展趨勢與中介機構業務之管理	
	一、今日各金融機構角色定義.....	18
	二、電子交易市場興起.....	18
	三、交易市場跨國聯盟.....	19
	四、結算機構與風險控管.....	22
	五、結算機構全球化趨勢.....	24
	六、自律組織之新功能.....	25
第五章	衍生性商品交易市場之管理	
	一、衍生性商品交易市場管理之目的.....	27
	二、期貨交易不法行為之法規規範.....	27
	三、期貨交易不法行為之防範.....	30
	四、契約之設計.....	31
	五、市場監視.....	34

第六章	執法之策略與技巧	
一、	美國商品期貨交易委員會相關調查權.....	37
二、	簿冊與紀錄保存之法規規範.....	38
四、	美國商品期貨交易委員會犯罪調查技巧.....	39
第七章	結語.....	43
附錄：CFTC 第十屆訓練研討會各項議題相關資料		

第一章 前言

美國商品期貨交易委員會第十屆年度國際市場管理者訓練研討會（Commodity Futures Trading Commission 10th Annual Training Seminar on Regulation of Derivatives Products , Markets and Financial Intermediaries for International Market Authorities）於八十九年十月十三日至八十九年十月二十日在美國首府華盛頓及芝加哥舉行，共有來自各國主管機關及自律機構等市場管理者之代表七十五人參與。研討會課程共分六日進行，包含兩大部分：第一部分為十月十三日由 CFTC 與國際金融公司（IFC）於華盛頓合辦之研討會，主要探討如何建立衍生性商品市場以及介紹美國期貨市場之管理架構。第二部分為十月十六日至二十日由 CFTC 與芝加哥聯邦準備銀行合辦之研討會，主要針對衍生性商品市場結構現狀與未來發展趨勢、中介機構業務之監督、風險管理、衍生性商品交易市場之管理等議題為廣泛性的探討。研討會各項議題係由 CFTC 資深人員、其他金融主管機關、學術界、金融業界、交易所及自律機構之人員參與座談，以其專業角度提出相關未來市場管理方向發展之建議及對美國現行管理制度與法規加以介紹。

此外由於高科技技術引進交易市場以及在金融全球化之趨勢下，交易市場跨國結盟，目前全球期貨市場正快速發生結構性的變化，各國管理機構為因應市場變化的角步，如何兼顧市場之發展，制定合宜之法規管理市場，乃至建立跨國合作之機制，以維護市場健全及保護投資者之權益，誠為當務之急。

美國商品期貨交易委員會舉辦此一研討會之目的即在透過本研討會之課程，讓各國參與之代表對於衍生性商品市場之管理以及衍生性商品市場結構、法規及其未來發展之方向等專業議題有初步之

瞭解，以提供參與者對未來市場管理之思考方向。本研究報告將就本次課程有關美國期貨交易市場之管理架構加以介紹，並針對衍生性商品交易市場之建立，市場結構發展趨勢、中介機構業務之監督及衍生性商品交易市場之管理等相關議題提出研究心得。

第二章 美國期貨市場之管理架構

美國期貨市場之管理制度，包括美國政府所設之期貨交易主管機關及自律組織及各期貨交易所對於會員所設立之自律規章。期貨交易主管機關即為美國商品期貨交易委員會（Commodity Futures Trading Commission；CFTC），係依據一九七四年商品交易法（Commodity Exchange Act）所設立之獨立機構，該項法案授權 CFTC 擁有對所有商品、勞務及股權之期貨及選擇權契約管轄權，凡在美國境內買賣期貨契約均須經 CFTC 審核通過，並在 CFTC 核准之交易所進行買賣。另依據該項法案，期貨業得經由 CFTC 之核准成立全美期貨公會（National Futures Association；NFA）以為期貨業之自律組織（Self-Regulatory Organization），任何期貨經紀商必須是 NFA 之會員始得營業，故 NFA 亦具有管理期貨商之權利；此外，期貨商尚須遵守期貨交易所對於會員所制定之規章。

一、美國商品期貨交易委員會（Commodity Futures Trading Commission；CFTC）

CFTC 之總部位於華盛頓特區，在芝加哥及紐約均設有區域辦公室，另在堪薩斯市、洛杉磯及明尼波里亦設有小型辦公室。目前 CFTC 有五名委員，其任期五年，均須由總統提名，且三名委員不得來自同一政黨。CFTC 之主要任務在於確保期貨市場之健全性、效率性及競爭性，並防止市場操縱、不法交易及犯罪，以提供價格發現及風險移轉之功能，保障投資人之權益及符合市場所需。CFTC 現有三個主要業務部門，包括法律執行部門（Division of Enforcement）、經濟分析部門（Division of Economic Analysis）及交易及市場部門（Division of Trading and Markets）；另尚有三個辦公室，即法務室（Office of the General

Counsel)、執行長辦公室 (Office of the Executive Director) 及
主委辦公室 (Office of the Chairperson)，其功能略述如下：

(一) 法律執行部門 (Division of Enforcement)：

- 1、調查並起訴違反商品交易法 (Commodity Exchange Act) 及
CFTC 規則之行為，該部門除得自行調查外，並可依據其他
部門、聯邦政府或國際權威機關 (International Authorities)
所查獲之資料或自律機構所出具之資料。
- 2、對於違反期貨相關法令者，採取行政處分 (Administrative
Sanctions)，包括停止接單、撤銷或限制登錄及罰款等，另
對於因不法行為而獲致之利益，該部門可指派接管者、強制
交出資產並予以凍結。此外，商品交易法 (CEA) 並賦予 CFTC
對於某些狀況得採取單方 (即未經通知) 之暫行措施，如暫
停交易以取具交易紀錄、凍結資產及指派接管者等。
- 3、違反商品交易法 (CEA) 之刑事條款者則移送司法部門提起
刑事訴訟。

(二) 經濟分析部門 (Division of Economic Analysis)

- 1、市場分析 (Market Analysis)：就現有及新增之期貨或選擇
權契約規格進行複核，並分析法令變革對現有期貨或選擇權
契約所生之影響。由於設計不當之契約容易遭到不法者之操
縱或導致市場之無效率，故該部門需定期分析商品規格與相
關法令之關聯。
- 2、市場監視 (Market Surveillance)：市場監視之目的在於維持
一自由且完全競爭之期貨及選擇權市場，使其達到價格發現
及風險移轉之功能。為避免遭到不法人士之操縱或濫用，該
部門必須經常檢視如大額交易、期貨與現貨價格之差異及供
需關係等參考指標。此外，市場監視小組必須與交易所及其

他政府組織密切合作，以因應任何危及市場交易秩序之潛在危機。

3、市場研究 (Market Research)：係對與 CFTC 有關之主要政策進行研究、評估 CFTC 之法規變動對於期貨及選擇權市場之經濟影響及進行市場研究評估等。

(三) 交易及市場部門 (Division of Trading and Markets)：該部門之任務包含 1、起草、修訂並解釋投資人保護法規，2、確保持有客戶交易保證金之期貨商財務健全，3、對交易所、結算所 (Clearing House) 及全美期貨公會等自律機構進行稽核，4、審查交易所之自律規則及複核交易所或其他期貨組織之規則，5、監視期貨業者及其從業人員之登錄。

(四) 法務室 (Office of the General Counsel)：提供 CFTC 法律意見、代表 CFTC 進行訴訟、處理某些特殊案件、複核 CFTC 所發布之重大法案及解釋商品交易法等法規。

(五) 執行長辦公室 (Office of the Executive Director)：其任務包含資訊資源管理 (發展自動化資訊系統)、財務管理 (預算之制定、執行與分配)、人力資源管理、管理性服務及圖書館。

(六) 主委辦公室 (Office of the Chairperson)：包括國際事務室 (Office of International Affairs)、法律事務聯絡室 (Office of Legislative and Intergovernmental Affairs，負責聯絡國會、州政府或其他政府機構，暫譯為法律事務聯絡室)、公共關係室 (Office of Public Affairs)、秘書室 (Office of the Secretariat) 及稽核室 (Office of the Inspector General)。

二、全美期貨公會 (National Futures Association；NFA)

NFA 係依 1974 年之商品交易法授權期貨業於 CFTC 之核准下

成立之自律組織，於 1981 年正式向 CFTC 提出申請並於 1982 年開始運作，任何與公眾客戶從事期貨交易業務之業者或個人均需登錄為 NFA 之會員，包括期貨經紀商（Futures Commission Merchants；FCM）、期貨仲介商（Introducing Brokers；IB）、期貨基金經理人（Commodity Pool Operator；CPO）、期貨交易顧問（Commodity Trading Advisor；CTA）及上述事業中之從業人員（Associated Persons）。至於交易所、結算所、銀行及其他期貨相關機構亦可申請為會員，惟並無強制性。

NFA 係以執行委員會為核心，設立十二個常設委員會，三個特別委員會，就各委員會之分工情形說明如下：

（一）規則訂定（Rule Development）

由 NFA 會員透過期貨經紀商諮詢委員會、期貨交易輔助人諮詢委員會及 CPO/CTA 諮詢委員會等三個常設委員會向執行委員會提出修定或訂定新規則之建議，經 NFA 理事會通過及 CFTC 核准後實行，另由執行委員會再設一特別委員會檢視其執行程序。

（二）規則執行（Rule Enforcement）

NFA 訂定規則後經由東區、西區及中央三個常設商業行為委員會負責監督執行，如為會員制裁案件則另交由常設上訴委員會審理。地區商業行為委員會的查核行動包括實地檢查會員帳冊及交易紀錄，以查核會員之財務情況是否符合 NFA 對於會員之規範，及調查是否有不法情事。

（三）登錄及會員申請（Registration & Membership）

教育測驗顧問委員會及會員委員會負責審理期貨專業人員之登記申請，申請者必須提供專業及財務方面之資訊，於取得登錄後，會員必須維持其申請時之適格條件，否則將被取消

資格。為取得專業資格，申請者必須通過全國期貨商品考試（National Commodity Futures Examination，NCFE），該項測驗係由 NFA 委託全國證券商公會辦理。除上述之常設委員會外，NFA 另設有管理重覆登錄之特別委員會。

（四）財務管理（Finance）

NFA 為財務獨立之自律組織，由常設之財務委員會及審計委員會負責財務管理工作。此外，特設收入結構特別委員會，負責向執行委員會提出財務結構調整之建議。NFA 之收入來源主要係為向會員收取交易費用，其他收入包括登記及考試費用收入、利息收入等。

三、期貨交易所

美國乃期貨交易極活絡之市場，其期貨交易所之數量甚多，惟由於電子化之趨勢，各交易所均亟思改善之道以增進效率並降低交易成本，茲以芝加哥期貨交易所（Chicago Board of Trade；CBOT）為例說明：

- （一）CBOT 係於一八四八年成立，初期僅交易穀物等農產品，直至一九七五年開始交易金融商品，即美國長期政府債券期貨（U.S. Treasury Bond Futures），現亦為世界交易量最活絡之契約之一。一九八二年，期貨選擇權商品上市，惟至一九九七年始推出道瓊工業指數期貨及期權。CBOT 為美國最大期貨交易所之一，原採會員制，為一非營利性組織，其交易方式原以公開喊價為主，惟隨著電子化之趨勢及網際網路之蓬勃發展，CBOT 之組織及交易方式於近年來出現重大之轉變。
- （二）就交易方式而言，CBOT 自一九九四年十月起，首度推出電子化交易系統 Project A，並於二〇〇〇年八月停止

Project A，而以 a/c/e 電子交易平臺（alliance/CBOT/Eurex）取而代之。Eurex 系統係結合 CBOT 與德國及瑞士衍生性商品交易所之電子化交易系統，而為全球規模最大之電子化交易系統。經由與德、瑞交易所之結盟，CBOT 會員未來將可與全球超過五千台之電子終端機相互連結。另有關人工公開喊價部分，由於一般市場參與者仍認為人工公開喊價之方式乃為最具流動性及價格發現功能之交易方式，且目前仍有百分之九十七之交易量係透過人工公開喊價，故有效提高公開喊價之效率及降低交易成本亦為 CBOT 之主要課題。為達到上述目標，CBOT 於一九九九年開始推動直接下單（OrderDirect）之交易方式，採用應用程式界面（Application Program Interface；API）以連結會員至場內經紀人（floor broker）位於 CBOT 之委託單傳輸系統（CBOT order routing network），使會員得以直接遞單予場內經紀人。

- (三) 就組織而言，CBOT 於二〇〇〇年一月十九日經董事會投票通過組織分割計劃（Demutualization Plan），該決議將 CBOT 分割為二個營利性公司，其一維持傳統人工公開喊價之交易方式，另一公司則以電子化交易為主，至於該二公司所進行之商品則完全一致，以提供市場參與者更多之交易選擇。

第三章 衍生性商品市場之建立

建立期貨市場之經濟目的，在於期貨交易具有避險（現貨資產持有者可藉由期貨交易達到風險控管）、價格基差（藉由期貨與現貨間價格基差，尋找套利空間）、價格發現（經由期貨交易價格，發覺現貨之市場價值與預期未來的合理現貨價格）及投機（Speculation）等多項經濟功能。因此世界各先進國家配合經濟蓬勃發展及市場之需求，多已建立期貨市場，並逐漸推出各種衍生性商品，以滿足各種經濟目的需求。個別國家在發展衍生性商品市場時，應先探討其本身具備之總體經濟環境、法規、市場環境、市場參與者種類等條件，並依金融市場發展程度不同，對衍生性商品市場設立之需求，同時考量推出之時點及條件、比較衍生性商品集中交易市場以及櫃檯買賣市場之優缺點等，以建立本土衍生性商品市場。

一、建立衍生性商品市場之要素（ Building Derivatives Markets Critical Pieces）

建立衍生性商品及市場時，應考慮或評估下列要素：

（一）建立國內衍生性商品市場之動機及原因

- 1、提供某些商品投機以及避險之工具。
- 2、攫取市場契機(to take advantage of a natural or competitive edge that exists in the market)。
- 3、保護或促進標的商品之交易運作(to protect or enhance a particular product or benchmark)。

（二）衍生性商品市場可能之標的物

- 1、政府公債
- 2、短期利率
- 3、貨幣

4、國內有價證券

5、大宗農牧礦、金屬、能源商品

(三) 客戶導向

在開發新的衍生性商品時，通常需確定投資者是否需要一個交易所或期貨商品。有太多交易所是依照其會員意見行事，而非其客戶之意見，客戶意見有其重要性，往往是不可忽略的。而並非每一種商品都適合存在於不同的交易環境裡，不要試圖完全複製其他交易所成功的商品，歷史證明此法絕少成功。

(四) 具高流動性之現貨市場

契約必須能夠反映某些重要指標，例如政府公債、有價證券、實物商品。

(五) 設立集中交易市場或是 OTC 市場之方案

衍生性商品交易市場無論設立集中交易市場或是 OTC 市場，兩者均為可行之方法。惟一般業者較傾向於使用 OTC 市場以符合其個別需求，一般銀行或投資銀行等中介商則傾向於使用集中交易市場來避險，基金管理人及金融機構亦多使用集中交易市場避險。

(六) 需要市場參與人之參與，市場參與人包括：

- 1、最終使用人(end users)—機構投資人、銀行、保險公司、個人
- 2、中介商—期貨經紀商、證券經紀商
- 3、交易所—電子或人工喊價
- 4、結算機構
- 5、交易及結算會員
- 6、提供流動性之造市者

7、主管機關

(七) 最常見之最終使用人

- 1、最常見之最終使用人通常為銀行（資金運用、換率換匯及交易室-funding, Swaps and Trading Desks）、證券商、一般企業（因財務或避險需求）、共同基金、期貨基金或保險公司及一般企業資金管理者。
- 2、最終使用人之應具備何種標準條件，亦可列入討論。對於最終使用者之財務狀況及產品需求，必須有基本之了解，而依其狀況給與適度之信用額度，並提供最終使用人必須之研究及交易上的協助。

(八) 交易所存在之目的

集中交易市場存在之目的與功能在於提供一安全之市場機制、提供契約以供交易。並透過制定會員標準、相關規則以及職業道德操守標準及制定有關交易、結算、資本需求、保證金及稽核審計之種種管理規則，以維持公正而有效率的交易環境。

(九) 交易所所需之資本

為保護投資人，交易所必須有足夠之營運資本，且必須有有效之機制以預防會員違約

(十) 契約規格

在設計契約規格時，需經審慎之考量。若無必要不應連續修改。而契約規格應符合一般期貨契約之型態，在交割作業上亦應規劃平穩順利之交割程序。

(十一) 會員資本額需求

交易及結算會員應有最低資本額之限制。結算會員必須能夠偵測出信用較差之客戶

(十二)保證金

- 1、為保護所有的參與者，保證金之收取尤為重要。制訂收取適足之保證金為必須研究及執行的事項，宜針對不同性質之交易（例如投機及避險）收取不同之保證金額度，並可針對市場狀況之改變調整保證金額度。
- 2、明白列出可抵繳保證金之抵押品。
- 3、考慮使用總額保證金或淨額保證金之制度

(十三)交易方式

選擇何種交易方式。包括人工喊價、電子交易或其他交易功能之考量，例如相互沖銷機制。

(十四)人工喊價市場

採用人工喊價之交易方式，市場流動性可由現場交易之熱絡或清淡窺知。而交易所及交易會員則需聘用大批專業員工，為因應人工喊價交易需要建設實體交易場地，並需由造市者在場中提供流動性。

(十五)電子交易市場

新的交易市場必須能夠接受現行之電子交易平台。電子交易使得二十四小時交易之遠景得以達成。如不分節而連續交易，則電子交易可達最佳成效，電子交易可較容易的與其他國際交易所進行策略聯盟。後續建立衍生性商品市場的地區或國家，大都朝向設立電子交易市場方向發展。

(十六)市場行銷之協助

期貨市場商品之研究及行銷必須獲得其標的市場及本身交易市場使用者之支持。在商品交易上市前之行銷活動必須具有參考性，並提供商品成功性之預測。

(十七)技術方面之協助

「價格與相對風險表」必須能饋入期貨市場現行系統平台 (Price Feeds and Risk Matrix must be fed into existing industry platforms)。系統需具相容性 (must be in compatible /acceptable formats)。

(十八)結算機構存在之目的

市場所有的交易最後皆需仰賴結算機構結算，故結算所實際負擔著整個市場的交易風險。結算機構存在之目的及功能，在於作為交易雙方保證之機構。由結算機構收取並保存原始及變動保證金，保存分離之款項、監管結算會員之相關業務活動。

(十九)結算機構之資本

結算機構之資本維持，可提昇並確保更高之財務健全性。可獨立成立結算機構或由交易所設立結算部門成為交易所的一部份。例如 CME 的結算機構為 CME 的一部份，CBOT 結算機構則與其為分別獨立之公司，倫敦國際金融期貨及選擇權交易所 (LIFFE) 的結算則由銀行擔任。

(二十)訂定相關法規之目的

對於新的衍生性商品交易市場應訂定相關法規，以提供市場活動之準繩。而相關法規包括確保交易及結算作業遵循交易所或結算機構業務等規則。交易所在主管機關行政管轄權之下統合市場管理，應建立市場法規做為市場爭端之最後裁量標準。

(二一)主管機關應具備之機能

主管機關為監管市場之參與者。與交易所分享資訊，掌控交易部位集中度。並應具備監控不法交易人的能力 (ability to identify rouge traders)。

二、美國衍生性商品發展概況

- (一)美國芝加哥期貨交易所(CBOT)於一八四八年成立、芝加哥商業交易所(CME)於一九一九年成立，成立之初主要交易商品均為農產品。至七十年代以後，因國際間以美元為中心之金本位固定匯率制度崩潰，金融市場產生重大變革，利率與匯率交易產生風險，因而衍生出利率、匯率相關之金融期貨交易。自CME於1972年推出七種幣別的匯率期貨，CBOT於1975年推出利率期貨契約，為全球首創之利率期貨契約。此後，為滿足各種避險等經濟需求，金融衍生性商品即不斷推陳出新，使期貨市場不再是農產品的天下，衍生性商品交易已成為美國金融重要之一環。目前美國推出的各種衍生性商品，利率期貨、股價指數選擇權及利率選擇權等衍生性商品之交易量分別居領先地位，股價指數選擇權交易量超過所有選擇權交易量之百分之三十。二〇〇〇年底CBOT上市的美國長期政府債券期貨(U.S. Treasury Bonds)及CME上市的歐洲美元期貨(Eurodollar Future)，分別為全球成交量第一、二名之期貨契約，而歐洲美元期貨(Eurodollar Future)則在二〇〇一年二月時已成為全球成交量第一大之期貨契約。
- (二)美國期貨交易的主管機關為商品期貨交易委員會(CFTC)，期貨交易所設計之商品契約規格，需經商品期貨交易委員會(CFTC)審查核准後，始得在該期貨交易所上市交易。但衍生性商品有時會同時被定義為證券與期貨契約，為區分商品期貨交易委員會(CFTC)與證券管理委員會(Securities & Exchange Commission; SEC)的管轄權(Jurisdiction)，一九九一年期貨交易實務法案(The Future Trading Practices Act)乃規定，當超過百分之五十的契約價值或契約價值變動是歸功

於該契約之商品期貨特性時，該契約即應屬商品期貨交易委員會（CFTC）管轄。至於股票選擇權（Stock Option）及股價指數選擇權（Options on Stock Indexes）依美國一九三三年證券法規定，係屬有價證券之範圍，受證券管理委員會（SEC）所管轄。但是美國商品期貨交易委員會（CFTC）仍會繼續爭取對股票選擇權及股價指數選擇權之管轄。

三、 建立衍生性商品市場之法規規範

（一）各國為順應潮流及符合經濟需求，新的衍生性商品不斷推陳出新，就期貨契約或選擇權契約之設計以至在交易所上市交易，各國大致上多以法律概括訂定其條件，其餘細節性之契約條款或作業規則授權由所屬期貨交易所明定。以美國商品交易法（Commodity Exchange Act）為例：

- 1、Sec.5 規定，CFTC 有權於任何一交易所在符合並履行 Sec.5 所定之條件與規定時，指定該交易所為一特定商品交易市場。
- 2、Sec.5a(12)規定，有關契約銷售之條件 CFTC 得訂定規則或辦法。CFTC 因此訂定發布的管理規則（Code of Federal Regulation）§ 1.4l(a)(2)規定，期貨交易之銷售契約應明訂之事項包括：(1)標的商品之品質或數量標準及任何法令適用之豁免。(2)交易時間、合約月份及契約之上市。(3)漲跌幅限制及結算價之設定。(4)部位限制及部位報告規定。(5)交付地點及不同地點之差價。(6)交付標準及程序，包括可代替物交付之方法及未履行交付時適用之處罰。(7)契約之結算。(8)選擇權權利金或保證金之支付或收取。
- 3、Sec.5a(12)並規定，每一特定商品上市之交易所就一切有關特定商品交易市場或簽訂銷售契約條款等事項，所頒佈之規

則、辦法及決議事項或其他規則，除保證金訂定之標準或經 CFTC 於法令中排除者外，均應事先報 CFTC 核准或備查。CFTC 在審查商品交易所規則的程序上，應給予關係人得以提出書面資料、意見與論據等方式參與該規則之審核程序之機會。

- 4、期貨或選擇權契約內容、規格與設計在形式上符合主管機關或期貨交易所所定之規範，並不一定保證即可在期貨交易市場交易。一個健全有效之期貨或選擇權契約，除符合形式之要求外，並應達到經濟上及市場之需求，同時應兼具維護公益之功能。CFTC 對於期貨或選擇權契約之審查，除要求必須符合形式之條件外，實質上亦須符合產品設計之經濟原則，始得以上市交易。商品期貨交易法 Sec.5(7)規定，交易所必須能證明，如被指定為特定商品交易市場時，在該市場上進行的所有未來交易，不致違反公共利益 (Public interest)。
 - 5、任一交易所違反商品交易法或 CFTC 制定之任何規則、辦法、命令或違反該交易所為特定商品交易市場之條件所制定之規則時，依 Sec.5b 及 Sec.6(a)規定，CFTC 有權中止 (以不超過六個月為限) 或撤銷指定該交易所為特定商品交易市場之許可。
- (二) 各國隨著經濟之發展推出各種衍生性商品。衍生性商品市場不僅具有經濟效益，同時係為公共利益而設，而衍生性商品市場亦有遭受人為操縱或其他不法行為破壞之可能，致使其無法發揮市場之經濟功能，甚至可能對現貨市場造成負面影響，必須透過市場之管理，加以避免或降低衍生性商品市場遭受破壞之情形。因此在建立衍生性商品市場時，主管機關

亦應建立完備的市場管理制度及規範，以維護市場之健全。此外，隨著衍生性商品市場之未來發展趨勢，主管機關對於未來何種新商品種類之預期、新科技以及全球化趨勢將對於市場結構及中介商造成之影響等議題亦應加以關注探討，並在相關法規上作適當調整以利新商品之發展。有關衍生性商品市場結構未來發展方向以及衍生性商品市場之管理，將於第四章及第五章加以探討。

第四章 衍生性商品市場結構之發展趨勢與中介機構業務之管理

一、今日各金融機構角色定義

金融體系組織結構包括銀行(Bank)、交易所(Exchange)、金融中介商(Financial Intermediary)、客戶(Customer)及結算組織(Clearing Organization)等五大組織。其傳統之角色定義，近年來隨者市場變化而有所改變。由於金融中介商之功能逐日擴增，在未來十年內亦將有取代交易所功能之可能性。而交易所亦有在未來數年之內朝向現貨與期貨市場整合及區域內整合之可能。結算組織同時有朝向大區域單一結算機構發展之可能，未來數年可預見泛歐洲、泛亞洲之結算中心，提供區域內多個交易所商品之結算服務。跨商品、跨國界甚或跨幣別之結算服務均將成為結算中心之基本功能。主管機關應注意於衍生性商品市場結構之變化及相關規範是否適合時宜。而各國在訂定相關法規時，亦應注意及避免相關之金融法規過於繁複，造成不同主管機關管轄範圍有重複之處，以致影響管理效率。

二、電子交易市場興起

- (一) 美國期貨交易市場一開始是採取一種公開人工喊價的競價系統，隨著科技的進步，逐漸發展透過電腦終端機交易的電子自動化交易系統。而此種電子交易系統之發展，早期因為傳統人工喊價市場的抗拒或壓力以致受到限制，但近來電子交易系統發展之阻力已逐漸減小。甚至如傳統大型之交易所，芝加哥期貨交易所(CBOT)與芝加哥商業交易所(CME)已合作發展出 GLOBEX 自動化電子交易系統，除以該系統交易本身之商品外，全球主要交易所商品亦在其系統上交易。而隨著高科技的進步及被使用，促使電子交易市場之興起，並

成為交易市場發展之趨勢。

- (二) 傳統人工喊價市場基於種種競爭理由及高科技進步之助長逐漸轉型成為電子交易市場。為了因應競爭日益之市場趨勢及電子交易之威脅，交易所由傳統之會員制改製成為以追求利潤為主的公司制將成為趨勢。芝加哥商業交易所(CME)已於二〇〇〇年六月經 CFTC 核准修正章程，成為美國第一家以營利為目的之公司制交易所。CME 大多數會員認為，組織之變革可使交易所之運作更有效率、並可增強決策模式、促進電子交易制度之發展。
- (三) 此外由於科技的進步以及電信之發達徹底的改造了金融市場的架構，電子交易成為主流。主管機關應瞭解目前高科技於期貨業中應用的狀況，以及高科技的使用如何改變了傳統期貨市場的結構，儘速訂定相關法規以因應新科技對於期貨業之影響。而主管機關應思考的問題：1、市場主管機關是否需為新興之電子交易所或其他新科技擬議新的法規架構。2、市場主管機關在管理新興電子交易所或其他新科技時所面對之挑戰及如何面對這些挑戰。3、不同性質之交易市場是否應遵循一制式之法規，主管機關是否應針對不同特性之市場量身訂作適宜之法規。

三、交易市場跨國聯盟

在金融市場全球化趨勢下，各個金融市場，包括現貨、期貨以及 OTC 衍生性商品市場關係益加密切，加上高科技技術進步，造成衍生性商品市場結構之改變，使得競爭日趨嚴重。為保持國際競爭力，必須能夠引起國外交易人之興趣，進而帶進交易量，在此目的下促使交易所間產生跨國策略聯盟。例如在第二章所提到的芝加哥期貨交易所(CBOT)及歐洲交易所(EUREX)聯

盟建立之 a/c/e (alliance/cbot/eurex) 電子交易平台，已自二〇〇〇年八月二十七日起在共同的電子交易平台上開始交易。a/c/e 交易平台推出後，CBOT 之會員可經由網路與全球各國之據點連線，使全球投資者只要經由單一終端機，即可同時交易兩家交易所之商品。此策略聯盟係全球兩大交易所合作之創舉，將衍生性商品市場之版圖重新劃分並推向全球化。此外，芝加哥商業交易所(CME)之跨交易所交易規則(Cross-Exchange Trading Rules)，允許其與國外交易所進行合作。紐約商業交易所(New York Mercantile Exchange)與雪梨期貨交易所(Sydney Futures Exchange)之合作案等。金融全球化已成為趨勢，大量交易亦透過各國國界及管理界線而達成。

(一) 跨國市場聯盟面臨之挑戰

- 1、期貨市場在跨國市場聯盟產生後，市場狀況發生快速的變化，而傳統的市場定義將面對改變之挑戰。
- 2、在不同國家、不同的法規架構（有時一個國家之內就有多重之法規架構）下建構一跨國聯盟，而法規架構本身亦面對改變之挑戰。
- 3、在市場之管理方面，將面臨管理對象之種類、管轄之區域、管轄之權限之界定等挑戰。

(二) 相關法規之核准及管理：

跨多國營運之交易市場或許需要所有相關主管機關之核准（多重核准 multiple approvals），而有時一個國家甚至可能有一個以上之主管機關。市場中介商如欲提供跨國服務，亦需經由主管機關之核准。有關管轄之規定，每個國家情形不同。茲以美國之規範為例：

- 1、以商品之本質決定管轄權：在美國，證券相關衍生性商品之

主管權由證券管理委員會(SEC)及商品期貨交易委員會(CFTC)共有：

- (1)非美國交易所如欲提供股價指數期貨供美國境內交易人交易，則需經過 CFTC 發給不禁制函(no-action letter)。
- (2)然股價指數選擇權及個股選擇權之管轄權為 SEC 所有。
- (3)非美國交易所如經其母國主管機關同意，可交易個股期貨，但依法不得提供美國境內交易人交易。CFTC 及 SEC 在一共同草案中表示，如經立法通過，美國交易所將可提供個股期貨商品供交易人交易，至於在期貨或現貨交易所交易則需經兩單位再行協商。

2、金融中介商與顧客之關係：依 CFTC 相關法令規定，非美國期貨中介商在不註冊為期貨經紀商之前提下，僅可接受特定美國交易人下單交易非美國交易所之商品，必須遵守下列規定：

- (1)前述特定美國交易人或其代表必須符合特定標準需求，以確定其為有經驗之交易人(sophisticated investor)。
- (2)前述美國之特定交易人必須下單至合法期貨經紀商之非美國中介商 omnibus 戶口。
- (3)前述美國特定交易人必須得到期貨經紀商 FCM 之同意方得交易他國交易所商品。
- (4)該 FCM 必須達到較高之資本需求標準。

(三) 面對期貨產業全球化(globalization)，主管機關應瞭解市場結構之變化對期貨業者企業運作之影響以及進行跨國交易時一公司所需之風險控管以及內部會計控制，以制訂合宜之法規管理。另需瞭解全球性之期貨經紀商所需面對之金融及業務方面之風險，建立並執行之「風險偵測稽核系統」。所謂風

險偵測稽核系統之精神及在於注重、集中稽核之精神與時間在風險較高之期貨商或交易所會員，投注較少之時間在於過往記錄、內部控制良好之期貨商或交易所會員，以更有效達成市場監督管理的責任。以往制式、一體適用之期貨商或交易所會員財務監督方式以不合時宜，具彈性的風險偵測稽核系統可更有利交易所、其會員以及期貨商資源之應用效益。

三、結算機構與風險控管

由於衍生性商品的結構及運用日益複雜及廣泛，加上交易所間之全球連線以及策略聯盟已趨普遍，各國期貨主管機關尤應重視結算機制於降低風險之重要性，並應及早加強跨市場間之風險控管。

(一)結算機構之任務

- 1、提供市場交易雙方之保證-為已成交之交易提供財務保證、為交易雙方之另一方，買方之賣方，賣方之買方，亦為實物交割之中介者。
- 2、提供會員財務安全防衛系統-具雄厚之資本以作為保證之準備、嚴厲之會員限制及財務監視、收取保證金或抵押品、每日結算等等，例如 CME 有二百億美金之保證基金、每日兩次之盤中結算、即時部位通報、每日壓力測試、風險控管及最後之違約金額共同分擔
- 3、減低信用及交易對手之風險-交易成交雙方之風險移轉至結算機構、藉由每日結算減低累積之信用風險
- 4、降低整體市場風險-多方付款沖銷機制(multi-lateral payment netting)可減低付款之流量、跨市場/商品保證金結算制度亦可減低跨市場保證金之匯款量、另結算機構之財務安全防衛系統亦需包括違約處理程序。

(二)結算機構存在之經濟效益

- 1、資本及信用額度(capital and credit line relief)-central counter party obligations move off balance sheet, novation frees up counter party credit lines—經由 novation (新債代替舊債) 程序, 結算機構成為所有衍生性商品合約買賣者的買方及買者之賣方。即經由交易而產生之財務上義務, 由結算機構保證。
- 2、營運效益-集中交易、交易確認、交易介面標準化以及集中計算能力
- 3、集中擔保品之服務-減低交易雙方互相提供擔保品之行政手續、跨市場/商品保證金之機制可減少保證金之收取、藉由統一之標準收取抵押品或保證金、減少相關費用、有效的評估抵押品價值以及每日結算。
- 4、多方付款沖銷機制(multi-lateral payment netting)
- 5、提昇業務量及增進成長-減短交易雙方信用調查之程序、提供交易雙方更佳之價格、減低衍生性商品交易於會計方面之限制及減少短期借貸之使用, 降低資金成本。
- 6、減少文件之流量。

(三)獨立專業結算機構存在之必要性

Board of Trade Clearing Corporation(BOTCC)和 Option Clearing Corporation(OCC)分別為美國期貨與選擇權之專業結算公司。基於考量市場財務健全, 獨立專業結算機構之存在有其必要性。造成交易及結算機制之分家, 其原因為:

- 1、在過去幾年市場結構發生相當大的變化, 影響客戶選擇不同的經紀商進行其交易和結算。由於此結構變化, 加上科技的助益, 一般客戶已有直接管道下單。
- 2、結算獨立, 執行交易之單位承擔風險 (創造市場風險), 直到

結算單位接受此交易（解除市場風險）。對於交易及結算制度而言，應為更好的模式。

- 3、愈來愈多的客戶要求經紀商能夠執行安排跨商品保證金，整合的跨市場、不受區域限制的結算機制有較大的優勢。
- 4、結算機構獨立，在結算業務上可以不受市場部門之影響。不同的衍生性商品風險大小亦有所不同，可以針對產品風險的不同，訂定高低標準不同的保證金水準。
- 5、因現有結算產品有限，故結算費用十分昂貴。結算機構獨立後較利於擴展結算之商品，有助於拓展結算作業之商機。

四、結算機構全球化趨勢

- (一) 由於電子交易的發達，更促進了跨國交易之可能性，為有效率的溝通打開了國與國的界線，發展全球化的交易所已成為趨勢。而本土市場參與者必須了解這個全球的趨勢。隨著跨國交易之發展，地區性的結算機構較無能力了解其最大客戶的全球整體風險，而已整合之跨市場、不受區域限制的結算機構有較大的優勢，結算機構國際化亦將成為趨勢。目前結算機構國際化及結算機構機能的腳步已開放，結算組織雖已開始溝通，成效則仍須一段時日後才有可能看到。
- (二) 為了整體市場財務健全之考量及交易後之透明度，在交易所及結算機構在全球化趨勢下，亦將發展交易及結算業務獨立，目前在有價證券及債務、現貨市場現在亦有此狀況。而跨市場結算有下列之優點：
 - 1、每個市場參與人僅有一個結算帳戶。
 - 2、所有的交易(現貨、期貨...) 部位歸為一風險評估之標準。
 - 3、保證金可以一個囊括全球部位之戶口為基礎來計算。保證金的應用可更有效率。

4、資本的使用可更有效率。

(三) 面對市場結構之變化，結算機構對於擴展結算項目：

1、目前歐洲的有價證券交易量的進步無法持續，除非引進多方沖銷系統。

2、而對於結算非標準性商品的前景則意見極端。

3、為電子商務提供結算服務。

4、跨國風險控管 (Cross-border Risk Management)。

5、金融仲介商之市場及營運風險管理成為全球性的。

6、地區性的結算機構無能力了解其最大客戶的全球整體風險。

7、主管機關資源互相分享是跨國風險管理之要點。

(四) 面對市場結構之變化，未來結算機構對於遠距/跨國結算之風險控管、如何拓展結算組織新商機暨服務項目以及最新之結算技巧等相關結算機制，均為應加以探討研究之議題。而結算機構之發展願景在於最終達到所有市場參與者在全球所有的交易部位僅有唯一的一個結算帳戶，對交易所及結算機構說來可清楚洞悉每個交易人的所有交易部位，進行最有效益的風險控管，而對交易人本身之資本以及保證金運用亦可達到最高效益。

五、自律組織之新功能—教育及顧問功能

以目前全美期貨公會 (NFA) 的角度看來，由於許多交易所由傳統之會員制改製成為以追求利潤為主的公司制，而傳統人工喊價市場基於種種競爭理由逐漸轉型成為電子交易市場，再加上由於科技的助益致使建立交易市場的資格限制降低，導致許多網路交易所之成立，交易所以往在其境內獨大的現象已不復存在，競爭日益激烈，故應將其有限之資源投注於其核心業務，亦即交易相關機制的發展上，避免浪費寶貴的企業資源。

於其他可外包(out-sourcing)的旁支業務。此類業務包括相關規章之訂定、稽核以及結算等等，以美國作例子，交易所可將上述功能分別外包予 NFA 以及 BOTCC/OCC 等專業機構。由於外包相關工作予專業機構不但可以提昇工作之品質，亦可因效率之提昇減低整體成本。

NFA 應朝向專業顧問之角色邁進。目前 NFA 協助交易所（包含傳統、欲轉型以及新興之交易所）訂定相關規章。程序上是由交易所提出需求，由 NFA 著手進行規章草案之擬定，最後版本之確認工作仍交由交易所負責，並擁有完整之掌控權。

此外，市場推廣及教育之工作亦是 NFA 致力之工作之一，不僅在美國境內，亦與其他國家之交易所或期貨組織合辦相關活動。

第五章 衍生性商品交易市場之管理

一、衍生性商品交易市場管理（Oversight）之目的

期貨市場之經濟效益不僅在於交易所本身，更影響了每一個期貨市場之使用者、相關之行業、個體經濟，在某些例子中，更影響整體經濟，同樣的，期貨市場如有違法之事件發生，亦有可能對經濟產生廣泛之影響。期貨市場發生操縱(manipulation)及價格扭曲(price distortion)及其他市場之犯罪與濫用(abuses)，對市場的影響包括：1 破壞期貨市場之經濟功能。2 致使避險之成果較不有效，或完全無效。3 誤導商業使用者、主管機關或其他相關者。4 可能對現貨市場造成負面影響。

美國國會亦認為期貨市場不僅為營運上需要買賣現貨商品之人提供定價及避險之功能，期貨市場同時係為公共利益而設，而期貨市場有被使用人操縱及遭遇其他不法行為破壞的可能，以致影響經濟及公共利益，必須建立完善的市場管理制度。而將破壞市場之危機降至最低，就是市場管理（Oversight）之目的。

二、期貨交易不法行為之法規規範

期貨交易不法行為態樣繁複，美國商品交易法（Commodity Exchange Act）對於市場操縱、內線交易、期貨詐欺等，嚴重影響市場價格妨礙市場公平競爭及危害市場秩序之行為，均明文加以禁止：

（一）市場操縱(market manipulation)

定義：任何經由有計劃之運作及交易以計算並產生人工、非正常供給與需求而產生之期貨或其他相關市場之價格。

目的：影響市場正常經由供給與需求而產生之商品價格，最

終目的在於破壞或影響正常期貨或現貨之價格以得取不正當利益。價格扭曲通常是經由人為操作集中部位或快速買賣而達成(concentrated or rapid buying or selling)，亦有可能藉由發布不正確資訊或報告而達成影響價格之意圖，進而從事操縱行為。由於資訊發布軟體的進步，更有可能加速達成不肖人士意圖影響價格之目的，而不正確之相關資訊有可能藉由網際網路或聊天室更加迅速傳遞。

規範：商品交易法 Sec.6(b)及 Sec.6(c)規定，CFTC 有理由認為任何人於州際商務中或任一特定商品交易市場上或依其他規則辦理之未來期貨交易中，操縱或意圖操縱任何商品之市場價格時，經由 CFTC 或 CFTC 指定之一位行政訴訟法官主持聽證會後，CFTC 得命令禁止該人在任一特定商交易市場上交易及停止其行為。該命令於法定上訴期間屆滿或經上訴確定後，該涉嫌人不能或拒絕遵守是項命令時即屬觸犯輕罪 (Misdemeanor)，應處美金十萬元罰金，或處或併處六個月以上一年以下之有期徒刑。若已違反商品交易法 Sec.9(b)所規定，有操縱或意圖操縱任何特定商品交易市場或依其規則交易之未來期貨商品之市場價格，或囤積或意圖囤積任何商品，或對可能影響商品價格之市場消息或狀況為錯誤或誤導或明知不實之報導等行為即屬重罪 (Felony)，應處五年以下有期徒刑，或科或併科美金十五萬元以下罰金及起訴費用。

(二) 內線交易

定義：內部人因職務等關係獲取重要消息，而在消息未

公開前，利用此一未公開之訊息進行交易。

目的：內線交易通常是藉由持有一般投資大眾所無法取得的足以影響投資人交易決定之重大資訊，在該消息未公開前進行交易，以獲取不公平利益或減少損失。

規範：依商品交易法 Sec.9(d)規定，CFTC 之委員、員工或其代理人直接或間接參與任何期貨交易或任何具有期貨性質之交易，而使用未公開之消息為重罪(Felony)，應處以五年以下有期徒刑，或科或併科美金十萬元以下罰金及起訴費用。

(三) 期貨交易詐欺行為 (Fraud)

商品交易法 Sec. 4b 及 Sec. 4c(a)反詐欺條款，規定以詐欺或誤導為目的之行為及虛偽不實(Meretricious) 交易等本質上具有詐欺性質之行為，包括沖洗交易、對作、交叉交易 (相對委託)、虛偽交易、配合交易等均屬不法行為。而該等行亦具有違反公開競爭之性質，造成虛偽價格時，亦屬不法操縱行為，因其會使得在非公開競爭之情況下，造成交價格之扭曲，此種非真實之價格，很可能會被有心人士，以誘使其他市場參與者進行交易，而藉由創造人為價格之方式，進行市場操縱。從事 Sec.4b 及 Sec.4 等違反競爭之期貨詐欺行為時，依商品交易法 Sec.9(b)規定，以重罪 (Felony) 論，應處五年以下有期徒刑，或科或併科美金十五萬元以下罰金及起訴費用，商品交易法 Sec. 4b 及 Sec. 4c 規定禁止之行為包括下列態樣：

1、沖洗交易 (Wash Trading)

定義：在無市場風險下，以相同之價格、數量同時買進及賣出同一商品。其目的只是為了使其交易價格等被紀錄在市場上，以製造交易熱絡之假象。

2、對作 (Bucketing)

定義：期貨經紀商接受期貨交易委託後，未將客戶買賣委託單傳送到期貨交易所執行公開競價交易，而逕予直接或間接私自承受或居間與其他期貨交易人、期貨經紀商進行交易。

3、交叉交易 (Cross Trading)

定義：場內經紀人為使另一場內交易人成為其客戶訂單之相對交易人，乃以同樣價格自其他之另一場內交易人處，買進或賣出相同數量之相同期貨交易契約。

4、虛偽交易 (Fictitious Trading)

定義：對於未實際進行期貨交易，卻做出交易報告之行為。

5、配合交易 (Accommodation Trading)

定義：期貨交易人為配合另一市場交易人之需要，透過事先的安排，所從事之非公開競價之交易。

三、期貨交易不法行為之防範

市場操縱及內線交易等不法行為之防範需具備完善之法令予以規範，除此之外，市場不法行為之防範需要適宜之契約設計及市場監視配合，以達到市場正常之運作，使商業使用者 (commercial users) 可以利用此市場以達到避險以及套利之功能及確保此市場發現之價格為公正的、市場供給與需求下所產生之結果。市場監視及完善之契約設計必須相輔相成，缺

一不可。

四、契約之設計(contract design)

完善的契約設計可協助避免市場操縱並增進市場監視之效率。契約設計應確保契約本身不易受到操縱。

(一) 不同的市場主管機關（包括交易所、自律機構及政府單位）

在契約設計及檢討上可扮演不同之角色。政府主管機關可在契約上市前進行審核，亦可在契約規格確定後給與非正式之其他意見。上開單位在契約設計與維護上執行相關任務時，應參依下列作業準則：

- 1、市場主管機關應建立一套明確架構以設計並檢視相關契約設計之要點，並依據此架構執行稽核之工作。另並應有權限及相關程序來偵測造成市場種種犯罪、濫用的事件。
- 2、經濟效用：所推出的商品契約必須具有風險控管及價格發現之功能。
- 3、與現貨市場之相關性：契約規格應反映該標的現貨市場之運作情形並避免交割之任何障礙。
- 4、結算及交割之可信賴性：結算以及交割之程序應反映現貨市場之需求，並促進價格之一致性。
- 5、採納契約使用者之意見。
- 6、透明度：所有相關契約規格、交割以及價格資訊應予公開透明化。

(二) 契約規格設計要點

期貨契約商品標的物種類廣泛，包括農牧礦產品、能源、金屬及金融商品。期貨市場以商品之交割方式來分類，可分為實物交割(physical delivery)-已具實體之標的商品或金融商品進行實物交割，與現金結算(cash settlement)-以標的

物（實體商品、金融商品或指數）價格直接進行現金結算。

實物交割-實體標的之商品

- 1、由於供給較為有限，運輸上可能之困難以及其生產或使用方式等種種原因，以實體商品進行交割之期貨契約較易導致操縱的危機。
- 2、契約規格內容應盡其能的反應標的物現貨市場之實際運作。
- 3、為了期貨市場之經濟效益以及運作，交割物些微的不同是可以允許的，例如為求交割之便利性及效率，契約規格參考運輸工具容量為交割量之標準。實施容許在固定差異水準內，多種交割等級及多個交割地點。
- 4、最重要的一點是交割之便利，亦即是現貨商品有充足且合於規格的量支應交割的需求。

實物交割-金融標的商品

- 1、流通層面廣泛，易於交割及支付。
- 2、需考量標金融的商品亦可能受到其他主管機關之管轄
- 3、標的金融商品之現貨市場最好具深度(deeper)、高流動性、具透明度且有效率。
- 4、但如標的物廣度不夠(deliverable supply is a narrow segment of the market)，則該標的物之供給是否足夠則必須列入契約設計之考量。

股價指數期貨之契約設計

- 1、具流動性極佳之標的現貨市場。
- 2、標的現貨應為高度資本化。
- 3、指數之計算方式被隨意更改之可能性低。
- 4、現貨市場透明度高。

- 5、所有權不應有太多限制(little or no restrictions on ownership)。
- 6、相關貨幣應是具兌換性。
- 7、對於現貨及期貨間之套利不應造成障礙。
- 8、現貨與期貨市場之主管機關應相互溝通協調。

債券相關契約之設計

- 1、是否作為現貨市場之指標(benchmark)? 利率指標之建立是發展利率期貨(公債期貨)之必要條件,如何建立一個具又公信力的指標,應予審慎考量。
- 2、最低之市場違約風險。
- 3、標的現貨市場應具深度、流動性及具有眾多的買、賣方。
- 4、具價格、供給及需求之資訊透明度。
- 5、政府介入應維持在最低限度。
- 6、當標的物為一籃子的可交割債券時,其應有及相近之到期日。

現金交割契約—由具公信力之獨立第三者(機構)研發之指數契約之設計標準

- 1、獨立的第三者必須同意其研發之指數做為期貨商品之標的。
- 2、獨立之第三者(機構)應為有信譽之現貨市場資訊發布者。
- 3、需有資訊安全防衛系統以避免遭致破壞。
- 4、所有指數之發布均以正當而公開之數據為基礎。
- 5、期貨市場的操縱可由影響其標的現貨市場價格而達成,故需分析評估該現貨市場規模以及流動性是否達到一定標準,以避免經由影響現貨市場來操縱期貨市場。如現貨市場有遭致操縱之虞,則期貨商品契約則可考慮施以

投機性交易之部位限制，或以隨機抽選時點所取得之多個指數來演算商品結算價格

現金交割契約—由交易所研發之指數(independent third party indexes)契約之設計標準

- 1、應明列指數計算方式及程序，並應設立安全控管機制以防操縱。
- 2、指數計算所使用之資訊必須是可信的。
- 3、指數設計之過程如藉助市場調查，則該市場調查對象需具備代表性並對市場有深入之了解。依據 CFTC 之經驗，需有至少四個以上經紀商及八個以上的自營商。
- 4、對極端不具代表性的數據應依程序予以排除。
- 5、現貨市場所有市場資訊應予以公開化，以便交易人能自行核對指數之正確性，以提昇指數之信賴。

五、市場監視(market surveillance)

- (一) 市場監視係對於市場持續性之監控。市場監視最重的要功能及目的在於預防市場人為操縱、價格扭曲以及其他不法交易犯罪等事件，以維持一自由且完全公平競爭之市場。在某些狀況下，即使設計完善的契約亦有可能遭致操縱或受人為因素影響市場價格，而市場監視作業即在於蒐集正確、充分之資料，並對資料加以分析比較，以達即時發現問題遏止不法，進而維護市場之健全。
- (二) 一套完整的市場監視系統為市場長久監管制度所必須具備的工具。市場監管系統之要素及其功能，包含應受監管之範疇、市場監視報告、稽核等。為防範市場操縱、內線交易等不法行為之發生，以維護市場秩序及保護交易人之權益，各國主管機關都會要求自律組織設立嚴密之監視制度。CFTC 管理

規則 (Code of Federal Regulation) § 1.51 中規定，交易所應設置獨立之市場監視部門，對市場中可能發生之過度集中與價格扭曲等交易行為進行監視，依該規定交易所應執行計畫內容包括：

- 1、監視市場之交易活動以發現可能之操縱或其他可能導致價格扭曲之市場狀況。
- 2、監視交易廳內之交易作業。
- 3、檢查會員所保存有關於交易市場從事期貨、選擇權、現貨業務之簿冊與記錄。
- 4、調查客戶對帳戶或委託單處理方面所提出之指控。
- 5、調查其他指控或明顯違反法律、規章及決議之行文為。
- 6、其他執行法律、規則、規章、決議等所需要進行之監視、檢查與調查。
- 7、對於認定違反規定之行為採取迅速有效懲戒行為之程序。

CFTC 要求監視部門每日蒐集交易人活動資訊 (包括價格、部位及交割方式)，分析與比較期貨及現貨市場中供需之情形、期貨與現貨間價格之關係、部位持有及交割方式等事項。目前監視部門之監視作業之內容包括大額交易人申報 (large trader reporting)、投機性交易之部位限制、到期期貨契約之監督及採取緊急處置措施等。

- (三) 另外由於為高科技之助益，刻正快速改變市場結構。為有效管理市場，主管機關應瞭解目前高科技於期貨業中應用的狀況，以及高科技技術助長市場整合以致改變了傳統期貨市場的結構，以往法規中之定義及規範，是否能因應市場結構之變化，以及對新興電子交易市場之交易監視作業等，都是主

管機關在市場管理上應加以關注的。

- (一) 針對交易市場跨國聯盟之市場管理(Cross-Border Market Alliances-Implication For Regulators)牽涉問題，則包括管理之對象、方向、程度、標準等。市場監管要旨—主管機關需訂定市場管理計劃及最低監管標準、資訊分享、成立委員會及專業報告。此外應加強跨國市場之協調與合作，建立跨國市場監視合作機制。IOSCO 於一九九〇年已提出之衍生性商品市場電子交易系統管理之十大準則，以及新近由於交易市場跨國聯盟而增訂之四條新的監管準則：1、發展合作協定並協調監督管理之責任。2、主管機關應有效率的並即時的分享資訊。3、有關協調之法規需求及架構必須盡可能透明化。4、在討論合作時必須考慮其他主管機關是否亦遵守 IOSCO 協定。

第六章 執法之策略與技巧

由於從事非法期貨交易行為具有高度之專業性及隱密性，較難察覺與認定。如何揭發非法交易行為，並有效管理市場，主管機關除對於一般期貨交易之技巧應充分瞭解，對交易活動記錄之掌握分析，並進行必要及適當的調查程序，俾得以達到打擊不法維護市場秩序之目的。有關於 CFTC 執法之策略及技巧(Strategies and Techniques of Enforcement)：

一、美國商品期貨交易委員會 (CFTC) 相關調查權

- (一) 商品交易法 Sec.8 (a)(1)規定，CFTC 為有效執行商品交易法之規定，及提供資訊予國會使用，得於認為有必要確定交易所營運及其他商品交易法所規範人員之相關事實時，進行調查 (Investigation)。
- (二) 為確定是否有任何人違反或即將要違反商品交易法或相關規則及命令時，由 CFTC 法律執行部門(Division of Enforcement) 依 CFTC 授權進行調查；為取得更多的證據及行使更多的調查權限，依照 CFTC 正式調查命令之授權，對於調查事件之特定人得發出傳票，該收受傳票之特定人，必須在指定時間及地點，接受被指定調查人員之調查或提出任何與調查案件有關之文件及證據。正式調查命令應記載下列事項：1、授與進行調查之權限。2、調查之範圍。3、授權其發出傳票之委員及被指定之調查人員。

二、簿冊與記錄保存之法規規範

(一) 商品交易法 (Commodity Exchange Act)

- 1、Sec.4g(a)任何一期貨經紀商、仲介商或場內經紀人應就其美國境內或其他任何地點之任一交易所內進行之期貨交易，依 CFTC 規定申報交易與部位等相關資料，並依 CFTC 規定格

式、方式與期限維護與保存該等交易與部位之相關帳冊紀錄，且應使該等帳冊紀錄隨時可供 CFTC 或美國司法部代表查核。

- 2、Sec.4g(b)每一結算機構及特定商品交易市場應依 CFTC 所定之規則保持每日交易紀錄資料。
- 3、Sec.4g(c) 期貨經紀商、仲介商或場內經紀人應就每一客戶每日交易保存交易紀錄，其紀錄方式與格式應足以辨識前第(b)項所稱之交易事項。
- 4、Sec.4g(d)每日交易紀錄應依 CFTC 規定之格式與期限維護保存。各項報告應依保存之紀錄上所登載資料，及依 CFTC 以規則、辦法或命令等規定之期間、地點、格式作成。
- 5、Sec.4n(3)(a) 任一期貨交易顧問、期貨基金經理人應依 CFTC 規定之格式與方式保存帳冊紀錄與提出報告。上述帳冊紀錄保存期限至少三年，或 CFTC 另行規定之較長期限，且應隨時可供 CFTC 或美國司法部代表查閱。

(二) CFTC 管理規則 (Code of Federal Regulation) § 1.31 (a)、(b)、(d)、§ 4.23、§ 4.7 (a) (2) (IV)、§ 4.33、§ 4.7 (b) (2) (II) 分別對交易所、結算機構、期貨商、期貨基金經理人、期貨交易顧問等，就有關簿冊與記錄之格式、保存方式、範圍及期限等有詳細之規範。

- 1、§ 1.31 規定所有依商品交易法或 CFTC 規章規定應保存之簿冊、紀錄至少須保存五年，且可隨時供 CFTC 或司法部之代表檢查。電腦、會計機器或商業機器等製造的紀錄得迅速複製在微縮影片上保存；簿冊、文件等硬式拷貝於保存期限後三年亦得以微縮影片代替之。依上述方式以微縮影片代替硬式拷貝時，應(1)隨時準備設備，供立即、容易讀取微縮影片

之資料。(2)將微縮影片適度編目、列檔，俾得以立即找出特定紀錄之位置。(3)CFTC 或司法部代表提出要求時，保管人須立即提出文件之傳真擴大版予 CFTC 或司法部代表。

2、相關簿冊及紀錄之類型

- 分離帳戶中客戶之資金紀錄
- 開戶、交易及委託紀錄
- 對期貨經紀商之風險評估紀錄
- 其他紀錄—期貨經紀商、仲介商提供客戶之促銷資料及其相關來源之資料。

三、美國商品期貨交易委員會 (CFTC) 犯罪調查技巧(investigation techniques)

CFTC 對於期貨交易不法行為或進行跨國交易不法行為所採用之基本犯罪調查技巧，包括如何利用現有資料來源(例如相關期貨商、結算或往來銀行、CFTC、NFA 及其他政府單位之內部資源)蒐集基本背景資料、進而對資料加以分析、進行後續調查、訪問以及如何將所有調查之文件及過程彙整成為有效之呈堂證供，以揭發不法之情事並予以懲罰：

(一) 書面文件及資訊之蒐集

1、可經由調查權取得之資訊：

- 開戶文件
- 每日/月交易明細表
- 交易場內各種交易相關卡片記錄
- 已結算及未成交之交易明細
- 交割記錄
- 推廣及行銷等廣告資料
- 往來信件

- 聘僱員工、員工薪資及佣金等之付款記錄
 - 與期貨交易帳戶相關之銀行往來記錄
 - 相關銀行帳戶所有記錄
 - 相關交易價格及時間之記錄
 - 交易所及公會(NFA)相關稽核(audit)、調查(investigate)及自律/懲戒(disciplinary)之檔案
 - 於交易所或公會(NFA)記錄有案之申訴事件
 - 稽核手冊、書面之內部作業程序以及條例
 - 相關交易員資訊(Reportable trader information)
 - 相關交易員報告 (Reports identifying reportable traders)
 - 相關交易員之自行報告 (Reports filed by reportable traders)
 - 公會(NFA)之資料庫及其他資訊：MRRS, FACTS, BASIC
 - 從交易所資料庫取得：依照需求檢索出所需之成交資料、特定交易資訊、相關交易時間資訊。
 - 稽核檔案，包括基本資料、報告及往來信件
 - 交易者之檔案及相關資訊(由 CFTC 交易市場管理部提供)
 - 資料庫可取得之：結算公司、交易者及經紀商協會會員資訊
 - 行政救濟及裁定賠償(Reparations)之請求及相關檔案
 - 其他執法方式(other enforcement actions)
 - 其他調查檔案
 - 歷史交易資訊
- 2、可經由其他州立或聯邦 agency 取得之資訊：
- 美國證管會(Securities and Exchange Commission)
 - 聯邦交易委員會(Federal Trade Commission)
 - 美國郵政檢查單位(U.S. Postal Inspection Service)
 - 美國農業部(U.S. Department of Agriculture)

- 聯邦調查局(Federal Bureau of Investigation)
 - 州立證券管理機構(State Securities Regulators)
 - 州立法官(State Attorney Generals)
- 3、可經由其他資源取得之資訊：
- 網際網路(Internet)
 - Choice Point
 - Lexis
 - Consumer Sentinel
 - Compliance Data Center, Inc.
- 4、非正式調查訪問
- 撰寫調查訪問報告
 - 準備聲明書(Declarations)或上堂證供(Sworn Statements)
- 5、自願宣示作證(Take Voluntary Sworn Testimony)
- (二) 取得正式調查命令(Formal Order of Investigation)
- 1、為取得更多證據。
 - 2、提供 CFTC 人員更多之權利行使職權。
 - 3、文件傳票(Subpoena Documents)。
 - 4、銀行傳票(RFPA Bank Subpoenas)。
 - 5、證人傳票 (Subpoena Testimony)。
- (三) 資料分析
- 1、檢閱並分析公開之文件：法定代理人、客戶之經歷、收入、資產、姓名、地址及電話號碼。
 - 2、檢閱並分析交易帳戶相關文件：檢視其帳戶總利潤或總損失、未平倉部位、總值、總佣金、計算總佣金佔資本之比例 (commission to equity ratio)、計算總佣金佔投資金額比例 (commission to investment ratio)、交易時期、研討帳戶實際之

交易是否服何雙方原本同意之方式、計算經由不明帳戶起使之交易總利潤或損失。

- 3、檢視相關銀行往來記錄：察明資金來源及去向、計算收入與支出。
- 4、檢視相關交易記錄：細查稽核報告中任何不正常之處、彙總統計資訊、重新構造交易流程(reconstruct Trade Sequence)並與價格變化進行比照、細查交易是否已如記錄確實結算、檢視是否有特定交易模式、比照交易場及經紀商處之交易單是否符合、檢視 out-trade 文件。

(四) 準備報告(work papers)

- 1、可使用電腦軟體輔助資料之處理。
- 2、歸納、分析比較相關資訊。
- 3、尋找出特定模式(patterns)。

(五) 法庭作證(take sworn testimony)

- 1、強制作證 (Compel witnesses to appear and testify)。
- 2、在法庭宣示作證 (Witness testify under oath)。
- 3、作證時必須回答每一個問題或是 assert a valid privilege。

第七章 結語

本屆 CFTC 年度國際市場管理者訓練研討會之研討內容主要係對於衍生性商品市場及金融中介機構業務之管理規範架構作一廣泛性的探討。以提供本屆研討會參與者對於衍生性商品市場管理方向之建議，並幫助參與者能夠瞭解目前全球期貨市場結構之發展趨勢及主管機關在管理上將面臨的問題。

我國期貨市場自臺灣期貨交易所於八十七年四月正式開業，並於同年七月二十一日推出本土首項期貨商品「台灣證券交易所發行之加權股價指數期貨」，而後於八十八年七月二十一日推出「電子類股股價指數期貨」及「金融類股股價指數期貨」等二項類股股價指數期貨，且即將於九十年四月九日推出小型臺指期貨，並預計於今年內再推出臺指選擇權。目前臺灣期貨交易所上市商品的成交量已呈逐漸增加的趨勢，一般大眾參與期貨市場之比率逐漸提高，國內期貨市場之參與者亦已累積相當之專業知識及經驗。

隨著我國期貨市場日漸蓬勃發展，除期貨商之品質及社會大眾之教育宣導等均應繼續加強外，主管機關監控不法交易的能力將是確保市場正常運作、發揮期貨市場經濟功能之重要工作。此外由於高科技技術引進交易市場以及交易市場跨國聯盟，目前全球期貨市場正快速發生結構性的變化。雖然我國期貨市場發展時間較歐美先進國家晚，但在金融全球化趨勢以及我國推動金融國際化的政策下，未來我國期貨市場亦不無朝向跨市場聯盟趨勢發展之可能性，對於如何因應市場結構轉變及規畫合宜的制度與管理規範，是主管機關宜及早省思的問題。由於本次課程範圍非常廣泛，而授課期間極為短暫，部分內容實尚須進一步研究探討，在此僅藉本次研究心得，提供對期貨市場未來發展與管理方向的參考。

附錄「CFTC 第十屆訓練研討會各項議題相關資料」

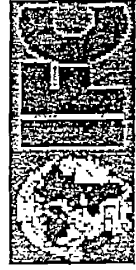
附錄一：衍生性商品市場之建立

附錄二：衍生性商品市場結構之發展趨勢與中介機構業務之管理

附錄三：衍生性商品交易市場之管理

附錄四：CFTC 執法之策略與技巧

附 錄 一



Derivative Products and Markets: Critical Pieces

By Alison Harwood
IFC

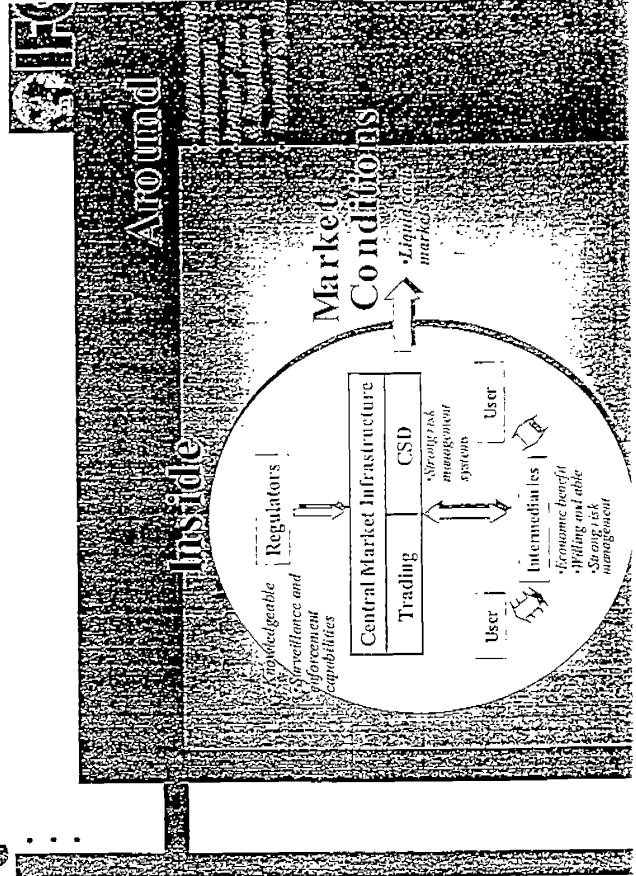
CFTC-IFC 2000
Washington, D.C.
October 13, 2000



Session I: Building Critical Pieces

What pieces are needed to *maximize the benefits* of using derivatives and *minimize the risks*?

- Why and when are derivatives needed?
- What macroconditions are needed?
- What central market infrastructure is needed?
- What do you need to do to attract key market participants?





Why are derivatives unusual?

- Derivatives have a split personality:
 - Great risk reducer
 - Potential risk enhancer
- The risk elements are created by:
 - High leverage
 - Instrument complexity
 - Linkages created across markets



Why are derivatives unusual?

- Derivatives have a split personality:
 - Great risk reducer
 - Potential risk enhancer
- The risk elements are created by:
 - High leverage
 - Instrument complexity
 - Linkages created across markets



During the development process, most emerging markets lack key conditions

- Market Conditions
 - Illiquid cash markets.
- Regulations
 - Weak regulatory oversight.
 - Limited knowledge and comfort with products.
- Market Infrastructure
 - Nonexistent or limited clearing and settlement.
- Market Participants
 - Thin depth of good quality counterparties.
 - Limited skills among buyers/sellers/dealers.



During the development process, most emerging markets lack key conditions

- Market Conditions
 - Illiquid cash markets.
- Regulations
 - Weak regulatory oversight.
 - Limited knowledge and comfort with products.
- Market Infrastructure
 - Nonexistent or limited clearing and settlement.
- Market Participants
 - Thin depth of good quality counterparties.
 - Limited skills among buyers/sellers/dealers.



Specific and systemic risks are enhanced as a result

- **Market Risk**
 - Market illiquidity means higher price volatility for underlying products/collateral. Creates higher margin calls and chance of defaults.
- **Credit Risk**
 - Fewer strong counterparties means if business is sizable, may be transacting with weak parties. No CC to reduce defaults.
- **Operational Risk**
 - Enhanced since all parties (regulators, infrastructure, participants) are new to the activity, standardized documentation is lacking,
 - Enhanced by lack of or unclear laws/regs, lawyers and judges new to the activity.
- **Systemic Risk**
 - All these risks create increased systemic risk



To help gain benefits and minimize risks in a transitioning environment:

- 1) Put good risk management systems in place:
 - **Infrastructure: Create a centralized clearing corporation with strong risk management capabilities** (Membership requirements, Margins, Collateral and guarantee funds)
 - **Participants: Ensure that intermediaries have strong internal risk management capabilities** (clear policies, position limits that are monitored and enforced, internal reporting mechanisms)
 - **Regulators: Ensure surveillance systems (markets, intermediaries), enforcement, education**



Obtaining benefits and minimizing risks...

- 2) **Introduce instruments that are needed for economic purposes.**
 - Have liquid underlying markets
 - Have strong base for hedging of important economic activities (interest rates, foreign exchange, stock index futures)
- 3) **Limit participation to those with high enough credit quality, even if that means limiting market size to start.**
- 4) **Move at a speed that fits with the capabilities of regulators and market participants.**



Obtaining benefits and minimizing risks....

- 5) **Understand the market by working closely with market participants.**
 - Regulators must "dialogue" with market participants.
 - For insights into business and product needs, risk management; share market management responsibility.
 - Both share common goal of creating active, quality markets.
- 6) **Encourage training of all market actors (regulators, participants, etc.).**



Building Derivatives Markets Critical Pieces

Lawrence P. Anderson
Carr Futures

Client Driven

- Is there a demonstrated need for this exchange or product from the investors
- Too many exchanges want what their members want versus what clients want
- Do not try to duplicate other successful contracts as it rarely works



Why Create a Local Derivatives Market?

- To provide a vehicle to conduct hedge or speculative transactions in specific products
- To take advantage of a natural or competitive edge that exists in the market
- To protect or enhance a particular product or benchmark



What are Underlying Products of the Proposed Derivative Market

- Sovereign Debt
- Short term interest rates
- Currency
- Domestic Equity Issues
- Indigenous Commodities



Liquid Underlying Markets

- The new contracts must be able to track a meaningful benchmark of
 - Government Securities
 - Equity Products
 - Underlying commodity



Participants Needed

- End Users
- Intermediaries
- Exchange
- Members to provide execution and clearing
- Market Makers to Provide Liquidity
- Exchange with Electronic or Open Outcry
- Clearinghouse
- Regulators



Exchange Traded or OTC

- Both are viable markets
- Corporations tend to use OTC with their Banks or Investment banks
- These Intermediaries tend to use Exchanges to offset the risks
- Fund Managers and Financial Institutions tend to use the exchanges directly
- We are going to concentrate on Exchange issues.



Typical End Users

- Banks (Funding, Swaps and Trading Desks)
- Securities Firms
- Corporations
 - Treasury (FX and Balance Sheet)
 - Hedgers (Input and output)
- Money Managers
 - Mutual Funds
 - Commodity Funds
 - Insurance Companies
 - Corporations



Qualifying End Users

- Important to know customer
 - Financial Strength
 - Product needs
- Establish appropriate credit limits
- Provide necessary Research and Trade construction support



Exchange Capital

- Exchange must have adequate operating Capital
- Exchange must have a proven mechanism to protect investors from default of a particular member



Purpose of Exchange

- Provide Safe Mechanism to Access Markets
- Determine Contract Specifications
- Membership Requirements/Rules/Ethics
- Governance Rules Pertaining to
 - Execution
 - Clearing
 - Capital Requirements
 - Margins
 - Audits



Contract Specifications

- Must be well thought out
- Not subject to continuous changes
- Similar to other Futures style
- Smooth Delivery Procedures
- Options considerations



Method of Trading

- Open Outcry
- Electronic
- Additional Considerations
 - Mutual Offset Capabilities



Membership Capital

- Minimum Capital Requirements must be set for both Clearing and Executing members of Exchange
- Customers must be screened by clearing members for weaker credits



Open Outcry

- Liquidity is present
- Significant staffing requirements for members and exchange
- Requires Bricks & Mortar
- Local market makers floor presence necessary to provide liquidity



Margins

- Adequate to protect all participants
- Spec/Hedge Differential
- Ability to adjust for changing market conditions
- Explicit listing of acceptable collateral
- Gross versus net



Electronic Exchanges

- New Markets must be able to adapt to existing electronic order platforms
- Allows expansion of trading day up to 24 hours per day
- Works best if seamless uninterrupted sessions
- Allows for easy alliance with Global Partners



Technology Support

- Price Feeds and Risk Matrix must be fed into existing industry platforms
- Must be in compatible / acceptable formats



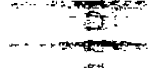
Marketing Support

- Research and Marketing must be supported by exchange and sponsors of underlying markets
- Pre-trading marketing presentations must be both informational and provide a measure for gauging interest level



Purpose of Clearinghouse

- Guarantees Trade Performance
- Collects and Maintains Initial and Variation Margins
- Maintains Segregated Funds
- Monitors activity of Clearing Members





Regulators Should...

- Monitor Market Participants
- Share information between exchanges
- Control Trading Concentration
- Have ability to identify rogue traders



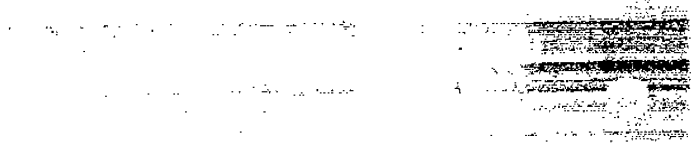
Clearinghouse Capital

- Provides increased financial integrity
- Clearinghouse can be part of Exchange or separately capitalized
 - CME-Part of Exchange
 - CBOT-Separate clearinghouse
 - LIFFE-Bank owned clearinghouse



Purpose of Regulatory Entities

- Help provide level playing field
- Insure integrity of trading and clearing by enforcing the rules of the exchange
- Must coordinate all oversight of the exchanges under their jurisdiction
- In the event of overlap, establish which regulator has final word





Prerequisites for Establishing Exchange Derivatives Markets

- A legal system and economic climate conducive to commerce and investment
- Stable currency
- Contractual rights must be enforceable
 - Trading in derivatives not prohibited
 - Legal, regulatory system in place for financial markets, institutions and transactions
- Pool of potential traders - commercial users & well-capitalized speculative interests.
- Equitable access to the financial and legal systems

DEVELOPING EXCHANGE DERIVATIVES MARKETS

by Richard Shilts

CFTC-IFC 2000
Washington, D.C.
October 13, 2000

SUCCESS OF NEW DERIVATIVES MARKETS IS PROBLEMATIC

- Difficult to predict which new markets will succeed or fail
- Even under ideal circumstances for well established exchanges, most new contracts fail
- Likelihood of success depends on many factors -- some within and others beyond the control of market authorities

Non-Controllable Elements & Conditions

- The legal and economic environment of the country
- Monetary policy & stability of currency
- Size of cash markets
- Pool of local traders & institutional money
- Attractiveness of the products to international investors

Controllable Factors

- type and level of market oversight.....
- contract design and maintenance.
- trading practices and order execution.
- measures that foster integrity of the marketplace and the appearance of fair & equitable trades.
- resources for education & marketing.

After determining that a derivatives market is viable

Issues to be addressed:

- Open outcry (pit based) or electronic execution system?
- Which services/functions are to be provided directly by the exchange & what should be outsourced?
- Which commodities, financial instruments or index products are suitable candidates for derivatives trading?

Establishing a Derivatives Market

Open Outcry vs. Electronic Systems

Open outcry:

- Entry costs are high (new pits at CBT & NYMEX cost around \$200 million alone)
- High operating costs (dedicated floor staff)
- Space requirements constrain expansion

Electronic systems:

- Entry costs are lower and are falling (less than \$50 million for some B2B cash exchanges)
- Larger pool of potential traders due to:
 - virtually unlimited number of terminals
 - absence of geographical limitations
- Easier customization of tailored products
- Automated execution algorithm & audit trail may enhance market's credibility by promoting appearance of fairness

NEW OPPORTUNITIES RESULTING FROM
**Technological Advances and
Development of B2B Commerce**

- Allows for specializing in “core” exchange functions, such as:
 - product development and maintenance
 - order execution
 - payment & delivery guarantees
 - regulatory liaison
- Decide whether to also provide other “non-core” services or functions.
 - Clearing & settlement
 - Compliance program
 - Market surveillance
 - System management

**For “non-core” functions,
no need to “reinvent the
wheel.”**

- Consider outsourcing non-core functions to third party specialist firms or to other SROs or exchanges
 - The NFA in the US offers compliance and surveillance
 - U.S. & other clearing houses offer clearing services

NEW OPPORTUNITIES RESULTING FROM
**Technological Advances and
Development of B2B Commerce**

- Allows for specializing in “core” exchange functions, such as:
 - product development and maintenance
 - order execution
 - payment & delivery guarantees
 - regulatory liaison
- Decide whether to also provide other “non-core” services or functions.
 - Clearing & settlement
 - Compliance program
 - Market surveillance
 - System management

**For “non-core” functions,
no need to “reinvent the
wheel.”**

- Consider outsourcing non-core functions to third party specialist firms or to other SROs or exchanges
 - The NEA in the US offers compliance and surveillance
 - U.S. & other clearing houses offer clearing services
- Consider “partnering” with existing, successful exchanges

Potential Downside of Modern Technology & Internet Commerce

- B2B commerce & internet also lowers barriers to existing, successful exchanges
- Lower entry & operating costs may encourage many competitors
 - Evidenced by thousands of B2B exchanges being developed for spot, forward and derivatives markets
- Trading may be dispersed so that no single exchange has sufficient liquidity to become successful

Trading Design Elements of Successful Derivatives Markets

Some key elements of a successful trading model:

- Equitable trade execution procedures -- for electronic trading systems, have a matching engine with time/price priority, market clearing or average price
- Transparency (pre- and post-trade) of prices and transaction statistics (volume and open interest)
- Clear rules for routine situations and for dealing with crises
- Prohibition against unfair practices by traders and intermediaries, including manipulation, wash sales, collusion sham transactions, abuse of customer orders

Potential Downside of Modern Technology & Internet Commerce

- B2B commerce & internet also lowers barriers to existing, successful exchanges
- Lower entry & operating costs may encourage many competitors
 - Evidenced by thousands of B2B exchanges being developed for spot, forward and derivatives markets
- Trading may be dispersed so that no single exchange has sufficient liquidity to become successful

Trading Design Elements of Successful Derivatives Markets

Some key elements of a successful trading model:

- Equitable trade execution procedures -- for electronic trading systems, have a matching engine with time/price priority, market clearing or average price
- Transparency (pre- and post-trade) of prices and transaction statistics (volume and open interest)
- Clear rules for routine situations and for dealing with crises
- Prohibition against unfair practices by traders and intermediaries, including manipulation, wash sales, collusion sham transactions, abuse of customer orders

An Active Cash Market

Means:

- Frequent trading on a regular basis
- Adequate price volatility to sustain active trading
- A sufficient base of market users or potential risk shifters to support liquidity
- Readily available information as to supply, demand, and cash prices of the product

U.S Experience in Exchange Traded Derivatives

- Most established futures markets evolved over a long period of time -- a direct outgrowth of a cash forward market trading (grains, metals, debt).
- More recently, new markets have been developed almost concurrently with, or shortly after the development of an active cash forward market (energy, electricity, emission allowances).
- Futures markets also have been developed independently by exchanges to address newly defined unmet risk management needs (weather derivatives, bankruptcy futures)
 - Exchanges need to think creatively about new products in nontraditional areas
 - Exchange derivatives may complement OTC trading

Choosing a Product for Derivatives Trading

CFTC's "Competitiveness Study" found that :

- Most successful non-U.S. markets are based on commodities where cash market trading is indigenous to the country or region where the exchange is located.
- The top non-U.S. markets are based on debt instruments or stock indexes for the country or region where the exchange is located.
- Other successful markets are based on agricultural products or metals produced or actively traded in that country

Considerations for Selecting a Product for Derivatives Trading

- Don't duplicate existing successful futures markets -- competing with an established market is almost always unsuccessful.
- Candidates for futures or option trading should not be subject to significant governmental restrictions.
- Carefully research previously undeveloped opportunities
 - Contracts based on products or financial instruments produced, traded, or widely known in the country.
 - Indexes of stock prices on local exchange.
- Consider indexes that measure prices or data which relate to common business risks.
- Identify financial instruments or commodities in home country or region having an active cash market.

Acceptance by Key Segments of Cash Market is Critical

- Trading interest begins with the dealer or merchant community
- Later, activity expands to other segments of the cash market -- the contract becomes integrated into commercial pricing and hedging arrangements
- Success of Treasury bond & note futures in the U.S. is attributed to substantial early participation by broker/dealers active in the cash market for U.S. Treasury securities
- Later, other cash market participants, such as banks, insurance companies, pension funds and corporate treasurers became active users

Other Considerations in Developing Futures Markets

- Is there any need to lock in prices and to what extent are firms able to shift price risk to others -- using any existing cash market arrangements
- If existing non-futures arrangements to offset price risk are widely integrated into cash operations, then futures may not be able to compete successfully
- Consider the legal regulatory environment -- are there any prohibitions against, or impediments to, trading futures or to trading in the underlying cash instrument?



Opportunities Presented by Development of B2B Commerce

- B2B exchanges provide trade execution services for many products & services for which there currently are no derivatives markets.
- B2B exchanges generally specialize in spot & forward transactions.
- Derivatives represent a natural complementary & evolutionary product for traders on those exchanges who need a risk management tool.

Development of Derivative Markets Based on B2B Commerce

Consider partnering with new B2B enterprises to develop derivatives products

Evaluate products listed by the B2B exchange -- are they amenable to standardization of terms and are they viable derivatives products

CME has partnered with CheMatch to develop new chemical product futures products based on activity on that B2B marketplace
NYBOT plans to offer inspection & delivery services for an internet based green coffee exchange

CFTC staff have had discussions with many newly formed exchanges specializing in the creation of derivatives products for B2B exchanges



Once a Product Has Been Identified for Futures Trading, Contract Design is the Next Task

Some key issues:

- Cash settlement or physical delivery.
- Specification of standardized terms and conditions that meet industry needs
- Ensuring adequacy of deliverable supplies or appropriate cash settlement to prevent manipulation.
- Measures to ensure contract performance and the integrity of the marketplace.
- Resources to educate potential users and market the product.

Contract Design: Specifying Terms and Conditions

- Ensure contract terms are designed to meet commercial risk management needs
- Contract should be integrated into cash market operations of significant commercial sectors likely to use the market
- Incorporate the cash market pricing and delivery systems
- A contract size smaller than cash market transactions may appeal to speculative interests to enhance liquidity and it allows more precise hedging.

Contract Design Involves Several Trade-Offs

- Tension between minimizing susceptibility to manipulation while also minimizing basis risk
- Broad contract terms allowing for a wide variety of deliverable products is desirable to ensure adequate deliverable supplies to prevent manipulation
- Narrow contract terms limiting range of deliverable products is desirable in order to have a consistent pricing basis
- Which Segment of Cash Market Should the Terms be Designed for?

Cash Settlement or Physical Delivery

Physical delivery

- Generally, the preferred settlement procedure since the potential for arbitrage ensures price convergence
- Possible when a contract can be designed with terms and conditions that result in adequate deliverable supplies

Cash settlement

- Possible only when reliable prices are available
- Preferred when:
 - Physical delivery is impractical or not possible
 - Congestion/manipulation are of serious

Contract Design Issues

- Need to consider any regulatory oversight of underlying instruments by other regulators -- does this constrain design
- Have trade groups or international bodies set standards for the commodity?
- For government securities, consider whether the instrument is used in connection with the Central Bank's implementation of monetary policy?
- When the deliverable supply is a narrow segment of the cash market, questions raised about supply shortages or availability of product are key concerns

Deliverable Supplies for Physical Delivery Contracts

Definition:

- The amount of the commodity or financial instrument that reasonably can be expected to be available, or made available, at its economic value to traders involved in delivery
- Not all product is available for delivery, either because it does not meet the terms of the contract or because making it available would involve uneconomic activities
- Assess amount of the product meeting the specifications for the delivery months
- Exclude any unavailable stocks -- supplies that are unavailable or committed to other uses
- If deliverable supplies are small, the terms may have to be revised to increase potential supply; other terms may need to be adopted (such as limits on speculative positions)

Cash Settlement Issues

- Ensure that cash settlement price
 - reflects cash market
 - is not susceptible to manipulation
- Method of cash settlement price determination
 - surveys of brokers/dealers should guard against conflicts of interest
 - transactions data taken over a period of time protects against manipulation but may be less reflective of market
- Cash settlement price and cash price series should be:
 - Acceptable to the user community
 - Reliable, reflective of cash market risk management needs
 - Made publicly available in a timely manner

Preconditions for Stock Index Contracts

- Stocks not readily susceptible to manipulation
- Stock market liquidity should be fairly high
- Stocks should be well-capitalized
- Low potential for tampering with index calculation
- Trading on stock market is transparent
- Little or no restrictions on foreign ownership
- Currency is convertible
- No impediments to arbitraging stocks and futures
- Regulatory coordination between futures/stock



Other Recent Innovations in Futures Trading in the U.S.

Weather Derivatives

- Provides an alternative tool for risk management of heating/cooling costs not directly related to prices

Bankruptcy Contracts

- An innovative way for credit companies to manage risk, to the extent earnings are related to # of bankruptcies

Barge Freight Contracts

- Based on a “commodity” that is essentially a service, rather than a physical product or financial instrument

Insurance Contracts

- Provide an alternative to the re-insurance markets for insuring against catastrophic losses

30



Preconditions for Agricultural Contracts

- Substantial cash price volatility
- Large supplies available
- Relatively large number of buyers and sellers
- Widely accepted grading standards
- Reliable and readily available information on prices, supply and demand
- Limited government intervention in pricing or marketing

Recent Innovations in Futures Trading in the U.S.

Agency Note Contracts:

- U.S. Agency notes (based on Fannie Mae & Freddie Mac issues)
- Declining issuance of US Treasury bonds and notes raises questions about their benchmark status & deliverable supply concerns

E-Mini Contracts:

- CME has listed small-sized contracts traded exclusively on their electronic system to appeal to retail traders (stock indexes, agricultural commodities)

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

[STATEMENTS OF ACCOUNT]

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest. [Sec. 4n, as added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 205, 88 Stat. 1397, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 9(1), (2), and (3), 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 213, 96 Stat. 2294, 2305.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 7655.001, 7685.001, 7705.001, 7715.001, 7765.001, and 7795.001.

[FRAUDULENT TRANSACTIONS PROHIBITED]

Sec. 4b. (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator 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 any client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this Act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented. [Sec. 4b, as added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 205, 88 Stat. 1397, effective July 18, 1975, pursuant to CFTC action taken under Act of April 16, 1975, Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 10, 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 214, 96 Stat. 2294, 2305.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,625.001.

[FITNESS STANDARDS]

Sec. 4p. (a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this Act or contract markets may adopt written proficiency examinations to be given to applicants for registration, and charge reasonable fees

to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 206, 88 Stat. 1400; as amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 215, 96 Stat. 2294, 2305—2306; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 210(a)(1), P.L. 102-546, 106 Stat. 3590, 3607.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 7145.001.

[1192]

[Mandatory Ethics Training for Registrants]

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 210(a)(2), P.L. 102-546, 106 Stat. 3590, 3607.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 7190.001.

[1201]

[CONTRACT MARKET—DESIGNATION]

Sec. 5. The Commission is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(1) When located at a terminal market where any cash commodity of the kind specified in the contracts of sale of commodities for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the commodity and the differences in value between the various grades of such commodity, and where there is available to such board of trade, official inspection service approved by the Secretary of Agriculture or the Commission for the purpose: *Provided*, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Commission. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

.01 1974 amendment.—The 1974 amendment added the words "or the Commission" after the word "Secretary of Agriculture" and substituted the word "Commission" for the words "Secretary of Agriculture".

.02 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6001.001.

[1202]

[Records of Transactions]

(2) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Commission may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Commission, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions or transactions for future delivery consummated on or subject to the rules of a board of

trade, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Commission may direct, showing the details and terms of all cash and future transactions entered into by them, consummated on or subject to the rules of a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, and shall at all times be open to the inspection of any representative of the Commission or United States Department of Justice. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

01 1974 amendment.—The 1974 amendment substituted the word "Commission" the first four times it appears in Section 5(b) for the words "Secretary of Agriculture" and substituted the word "Commission" the fifth time it appears in the section for the words "United States Department of Agriculture".

[¶ 1203]

[Improper Reports—Prevention of Dissemination]

(3) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce. [As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6045.001.

[¶ 1204]

[Manipulation of Prices]

(4) When the governing board thereof provides for the prevention of manipulation of prices and the cornering of any commodity by the dealers or operators upon such board. [As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6065.001.

[¶ 1205]

[Membership]

(5) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash commodity business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association. [As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6085.001.

[¶ 1206]

[Compliance with Requirements]

(6) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of section 6(c), and the orders issued pursuant to the provisions of section 5a of this Act, and for compliance in all other respects with the requirements applicable to such board of trade under this Act. [As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 201(c) and 209(b)(2), P.L. 102-546, 106 Stat. 3590, 3597, 3606.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6105.001.

[¶ 1207]

[Public Interest]

(7) When such board of trade demonstrates that transactions for future delivery in the commodity for which designation as a contract market is sought will not be contrary to the public interest. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 207, 88 Stat. 1400; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6135.001.

[¶ 1208]

[Compliance]

(8) When such board of trade demonstrates that every contract market for which such board of trade is designated complies with the requirements of section 5a(b). [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(c), P.L. 102-546, 106 Stat. 3590, 3597-3598.]

01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6140.001.

[¶ 1211] [CONTRACT MARKETS—OPERATION REQUIREMENTS]

Sec. 5a. (a) Each contract market shall—

[Bylaws—Rules—Regulations]

(1) promptly furnish the Commission copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein; [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(a), P.L. 102-546, 106 Stat. 3590, 3595.]

01 1974 amendment.—The 1974 amendment substituted the word "Commission" for the word "Secretary of Agriculture".

02 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6251.001 and 8901.001.

[¶ 1212]

[Books—Records]

(2) keep all books, records, minutes, and journals of proceedings of such contract market, and its governing board, committees, subsidiaries, and affiliates in a manner that will clearly describe all matters discussed by such contract market, governing board, committees, subsidiaries and affiliates and reveal any action taken in such matters, and allow inspection at all times by any authorized representative of the Commission or United States Department of Justice of all such books, records, minutes, and journals of proceedings. Such books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Commission shall so direct. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective 21, 1975, Sec. 103, 88 Stat. 1392.]

01 1974 amendment.—The 1974 amendment substituted the word "Commission" the first time it appears in subsection (2) of Sec. 5a for the words "United States Department of Agriculture".

regulations of the contract market to achieve the above objectives. ^{Added.} That any order issued under this paragraph shall not apply to contracts of sale for future delivery in any months in which contracts are currently outstanding and open. *And provided further.* That no requirement for an additional delivery point or points shall be promulgated following hearings until the contract market affected has had notice and opportunity to file exceptions to the proposed order determining the location and number of such delivery point or points; [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 208(d), 88 Stat. 1401.]

[1221] [Customer Claim and Grievance Procedures]

(11) provide a fair and equitable procedure through arbitration or otherwise (such as by delegation to a registered futures association having rules providing for such procedures) for the settlement of customers' claims and grievances against any member or employee thereof. *Provided,* That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the contract market, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a contract market, such procedure shall provide, to the extent appropriate—

(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation; [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 209, 88 Stat. 1401; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 11, 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 217(a), 96 Stat. 2294, 2307; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 103 and 222(a), P.L. 102-546, 106 Stat. 3599, 3615.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 6505.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 6505.001.

[1222] [Commission Approval of Contract Market Rules]

(12)(A) except as otherwise provided in this paragraph, submit to the Commission for its prior approval all bylaws, rules, regulations, and resolutions ("rules") made or issued by such contract market, or by the governing board thereof or any committee thereof, that relate to terms and conditions in contracts of sale to be executed on or subject to the rules of such contract market, as such terms and conditions are defined by the Commission by rule or regulation, except those rules relating to the setting of levels of margin. Each contract market shall submit to the Commission all other rules (except those relating to the setting of levels of margin) and except those that the Commission may specify by regulation) and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the contract market requests review and approval thereof by the Commission or the Commission notifies such contract market in writing of its determination to review

such rules for approval. The determination to review such rules for approval shall not be delegable to any employee of the Commission. At least thirty days before approving any rules of major economic significance, as determined by the Commission, the Commission shall publish a notice of such rules in the Federal Register. The Commission shall give interested persons an opportunity to participate in the approval process through the submission of written data, views, or arguments. The determination by the Commission whether any such rules are of major economic significance shall be final and not subject to judicial review. The Commission shall approve such rules if such rules are determined by the Commission not to be in violation of this Act or the regulations of the Commission and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission. If the Commission institutes proceedings to determine whether a rule should be disapproved pursuant to this paragraph, it shall provide the contract market with written notice of the proposed grounds for disapproval, including the specific sections of this Act or the Commission's regulations which would be violated. At the conclusion of such proceedings, the Commission shall approve or disapprove such rule. Any disapproval shall specify the sections of this Act or the Commission's regulations which the Commission determines such rule has violated or, if effective, would violate. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period as the contract market may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the contract market may agree to, such rule may be made effective by the contract market until such time as the Commission disapproves such rule in accordance with this paragraph.

(B)(X) The Commission shall issue regulations to specify the terms and conditions under which, in an emergency as defined by the Commission, a contract market may, by a two-thirds vote of its governing board, make a rule (hereinafter referred to as an "emergency rule") effective on a temporary basis without prior Commission approval, or without compliance with the ten-day notice requirement under subparagraph (A), or during any period of review by the Commission, if the contract market makes every effort practicable to notify the Commission of such emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. If the contract market does not provide the Commission with such notification and explanation before making the emergency rule effective, the contract market shall provide the Commission with such notification and explanation at the earliest possible date. The Commission may delegate the power to receive such notification and explanation to such individuals as the Commission determines necessary and appropriate.

(i) Within ten days of the receipt from a contract market of notification of such an emergency rule and an explanation of the emergency involved, or as soon as practicable, the Commission shall determine whether it is appropriate either—

(I) to permit such rule to remain in effect during the pendency of the emergency, or

(II) to suspend such rule pending review either under the procedures of subparagraph (A) or otherwise.

The Commission shall submit a report on its determination and the basis thereof with respect to such emergency rule to the affected contract market, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report is submitted more than ten days after the Commission's receipt of notification of such an emergency rule from a contract market, the report shall explain why submission within such ten-day period was not practicable. A determination by the Commission to suspend the effect of a rule under this subparagraph shall be subject to judicial review on the same basis as an emergency determination under section 8a(9). Nothing in this paragraph shall be construed to limit the authority of the Commission under section 8a(9); [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 210, 88 Stat. 1401, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 12(1) and (2), 92 Stat. 865, 871; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 216(2), 96 Stat. 2294, 2306—2307; and Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10,

1986, Sec. 110, 100 Stat. 3561; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 103 and 213(a), P.L. 102-546, 106 Stat. 3590, 3594, 3609-3610.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 6525.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 6525.001.

.03 1986 amendment.—For historical comment on amendments made by the Futures Trading Act of 1986, see ¶ 6525.001.

.04 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6525.001.

¶ 1223 [Disclosure of Formal Arrangements]

(13) provide for disclosure to the contract market and the Commission of any trade, business, or financial partnership, cost-, profit-, or capital-sharing agreements or other formal arrangement among or between floor brokers and traders on such contract market where such partnership agreement or arrangement is material and known to the floor broker or floor trader; [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 103, P.L. 102-546, 106 Stat. 3590, 3594-3595.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6527.001.

¶ 1224 [Meaningful Representation]

(14)(A) provide for meaningful representation on the governing board of the contract market's board of trade of a diversity of interests, including—

- (i) futures commission merchants;
- (ii) producers of, and consumers, processors, distributors, or merchandisers of, principal commodities traded on the board of trade;
- (iii) floor brokers and traders; and
- (iv) participants in a variety of pits or principal groups of commodities traded on the exchange.

(B) provide that no less than 20 percent of the regular voting members of such board be comprised of nonmembers of such contract market's board of trade with—

- (i) expertise in futures trading, or the regulation thereof, or in commodities traded through contracts on the board of trade; or
- (ii) other eminent qualifications making such person capable of participating in and contributing to board deliberations.

(C) provide that no less than 10 percent of the regular voting members of such board be comprised where applicable of farmers, producers, merchants, or exporters of principal commodities traded on the exchange; [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 206 (a)(1), P.L. 102-546, 106 Stat. 3590, 3601.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6528.001.

¶ 1225 [Diversity of Membership]

(15)(A) provide on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.

(B) Consistent with Commission rules, a major disciplinary committee hearing a disciplinary matter shall include—

- (i) a majority of qualified persons representing a trading status other than that of the subject of the proceeding; and
- (ii) where appropriate to carry out the purposes of this Act, qualified persons who are not members of the exchange.

(C) For purposes of this paragraph, a trading status on a contract market may include, consistent with Commission rules, such categories as

- (i) floor brokers and traders;
- (ii) producers, consumers, processors, distributors, or merchandisers of commodities;
- (iii) futures commission merchants; and

(iv) members of the aforementioned categories who participate in particular contract markets or principal groups of commodities on the board of trade.

(D) If a contract market takes final disciplinary action against a member for a violation that involves the execution of a customer transaction and results in financial harm to such customer, the contract market shall promptly inform the futures commission merchant identified on the records of such contract market as having cleared such transaction, and such futures commission merchant shall promptly inform the person identified on its records as the owner of the account for which such transaction was executed, of the disciplinary action and the principal facts thereof; [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 206(a)(1), P.L. 102-546, 106 Stat. 3590, 3601-3602.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6529.001.

¶ 1226 [Fitness]

(16) provide that no member found by the Commission, a contract market, a registered futures association, or a court of competent jurisdiction to have committed any violation of this Act or any other provision of law that would reflect on the fitness of the member may serve on any contract market oversight or disciplinary panel for an appropriate period (as defined by Commission rule); and [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 206(a)(1), P.L. 102-546, 106 Stat. 3590, 3602.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6530.001.

¶ 1227 [Prohibition on Voting by Interested Members]

(17)(A) provide for the avoidance of conflict of interest in deliberations by the governing board and any disciplinary and oversight committees. In order to comply with this subparagraph, each contract market shall adopt rules and procedures to require, at a minimum, that

(i) any member of a governing board or a disciplinary or other oversight committee must abstain from confidential deliberations and voting on any matter where the named party in interest is the member, the member's employer, the member's employee, or any other person that has a business, employment, or family relationship with the member that warrants abstention by the member;

(ii) any member of a governing board or a disciplinary or other oversight committee must abstain from voting on any significant action that would not be submitted to the Commission for its prior approval, if, as determined in accordance with regulations promulgated by the Commission, the member knowingly has a direct and substantial financial interest in the result of the vote, based either on positions held personally or at an affiliated firm;

(iii) prior to the deliberations of the governing board, disciplinary board, or other oversight committee, acting directly or indirectly through an authorized member or contract market official, the positions of the members of such board or committee, and positions of the firm or firms with which such members are affiliated, are reviewed; *Provided, however,* That no contract market or official, employee, member, other than the member whose position or positions are being reviewed, or agent thereof shall be subject to liability, except for liability in an action initiated by the Commission, for having conducted this review and for having taken or not taken further action; and

(iv) the board or committee shall clearly reflect, in the minutes of such meeting, that the review required in clause (iii) occurred and any decisions by a member to abstain or by the board or committee whether to direct a member or members to abstain from deliberations or voting on the matter before the board or committee.

附 錄 二

Financial Intermediaries in the Emerging E-Commerce Marketplace

Joseph H. Harrison, Jr.

The future role of financial intermediaries is not entirely certain. The cause of this uncertainty and the catalyst for change is the reality of non-intermediated electronic exchanges and the dawn of a new technologically sophisticated market infrastructure. Technological advances have begun to erode and absorb many traditional intermediary roles. In turn, however, technology is providing many new opportunities for intermediaries to redefine themselves and evolve.

I want to talk first about the functions traditionally performed by financial intermediaries—their various roles in the financial marketplace. After discussing these traditional functions, I will discuss the impact technology and electronic trading has had and will have on these traditional roles. Finally, I will present some thoughts on what will be the new face of the financial intermediary as a result of electronic trading.

I. Intermediaries Before the Advent of E-Commerce

A. Overview of Intermediaries Functions

Traditionally, market intermediaries have played a variety of roles. Of these traditional roles, five are perhaps most significant. First, intermediaries bring customers and necessary liquidity to exchanges by providing a market portal. They market and advertise to attract investors and bring them to the market. Second, intermediaries screen customers and provide risk disclosure to ensure customers have at least a minimum of market sophistication and financial suitability. Third, they provide information, education, and investment guidance.

Fourth, they perform the actual mechanics of trading—taking and transmitting orders and matching buyers and sellers on the market floor. And fifth, intermediaries provide a degree of risk buffering by being responsible to the market for their customers' obligations thereby relieving the market from directly taking the credit risk of the traders.

B. Specific Functions

1. *Advertising and Marketing*

Most individual and institutional customers have accessed exchanges through intermediaries—Futures Commission Merchants (FCMs) on the futures side and securities broker/dealers on the securities side. For traditional exchanges, the intermediary serves as the portal to the market and the exchanges rely heavily on the intermediaries to bring business to their floors. By taking clients' orders to the exchanges to trade, the intermediaries create the necessary liquidity for the various exchanges to operate effectively.

In order to be successful, intermediaries must attract clients to invest in products traded on the exchanges where they hold memberships. Were it not for this marketing and advertising function of the intermediaries, exchanges would be required to spend money to advertise and market themselves directly to the individual customers.

2. *Risk Disclosure and Screening Customers for Suitability*

Intermediaries in both the futures and securities industries provide risk disclosure and screen potential customers for financial suitability—functions designed to protect the exchanges, the customers, and the intermediaries. This being said, the burden on securities brokers to “know their customers” and make subjective evaluations of customer suitability is substantially different than what is required of FCMs on the futures side.

a. Securities Brokers

The self-regulatory body of the United States' securities industry, the National Association of Securities Dealers, Inc. ("NASD"), requires securities brokers to "know their customers." This is to say that before making recommendations to securities customers, a securities broker is required to have reasonable grounds for believing the recommendations being given are suitable for the particular customer. The broker must make reasonable efforts to obtain information concerning the customer's financial and tax status as well as the customer's investment objectives. Based on this information, the broker must then assess the investment sophistication of the customer and give advice and risk disclosures accordingly. Because the universe of securities present a wide range of risk, securities brokers, who are presumed to understand the various levels of risk, essentially are required to disqualify certain customers from investments that are unsuitable to them.

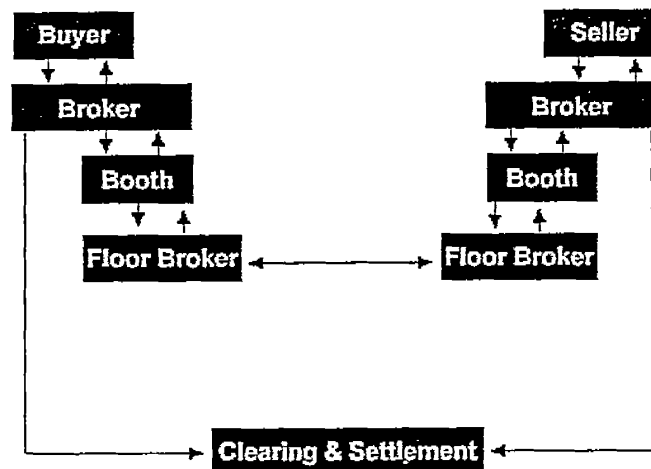
b. Futures Brokers

In contrast, there is little difference in the risks posed by various futures contracts. Hence, FCMs are not required to disqualify customers from trading futures contracts. Instead FCMs are required to make sure their customers understand the risks. FCMs are required to give all customers a standard risk disclosure. In addition, the self-regulatory body of the futures industry, National Futures Association ("NFA"), requires an FCM to obtain information from a prospective customer relating to the customer's occupation, age, financial status, and futures trading experience and to provide to that customer particular risk disclosures needed by that individual. This exchange of information from the customer and risk disclosure from the FCM is not required for institutional investors. FCMs are not required to refuse anyone as a customer.

3. *Information and Educational*

Intermediaries often also provide information and advice to customers. This advisory role has been a way for brokers to set themselves apart from their peers—full service brokerages distinguish themselves from discount brokerage firms on the basis of the advice and information given to customers. Intermediaries provide quotes, charts, commentary, and market diaries. They are a source for financial news. Most importantly, however, intermediaries are able to organize information into portions easily digested by customers and give advice based upon the information they have gathered. They serve as guides through the jungle of numbers and statistics that quantify the markets and influence investment. Beyond this informational and advisory role, many intermediaries provide in depth educational services in areas helpful to investors of all levels and sophistication.

4. *Operational*



Perhaps the most crucial traditional intermediary function is the mechanical execution of a trade. Actual trading on futures exchanges with a trading floor is performed by floor brokers. As futures exchanges permit only their members to conduct floor trading, a non-member's bid or

offer reaches the trading floor through an intermediary. The customer contacts the FCM with an order, the FCM transfers that order to a booth on the trading floor where it is time stamped and relayed to a broker in a trading pit by either hand signal ("flashing") or electronically. At this point, the floor broker indicates by open outcry the bid or offer so that a trader in the pit who wishes to take the opposite side of the trade can do so. Completed trades are transferred to a clearing association who assumes the role of guarantor of contract performance.

I should note, trades made on existing exchange after-hours systems follow the same intermediated process. A customer must still trade through an intermediary, however, physical execution is performed electronically rather than through open outcry.

5. Risk Buffer and Risk Absorption

Intermediaries operate to absorb the risk of customer default by guaranteeing their customers' contract performance. If a customer defaults on a contract it is not the exchange that bears the loss but rather the intermediary.

Since intermediaries are required to protect the exchange, they, in turn, provide themselves a degree of protection from customer default by requiring customers to post a performance bond margin prior to trading. The purpose of these margin accounts is to provide a source of funds calculated to adequately buffer any losses sustained by a customer within a reasonably short period. In the event the account is reduced by losses to a point where there is a possibility further losses would not be covered by the money in the account, the brokerage makes a margin call to the customer. At this point, the customer may have the option to either deposit more money into the margin account or have his positions closed. You should note, however,

that intermediaries do not buffer their customers from the risk of exchange default. In fact, using an intermediary exposes a customer to the separate risk of intermediary default.

II. Technology's Impact on Traditional Intermediary Functions

A. Overview of Technology's Impact

Technology is reshaping the market infrastructure and forcing financial intermediaries operating under the previous structure to redefine their roles in order to stay relevant. Very simply, the infrastructure is changing because the ability to trade electronically virtually eliminates the need to have a physical trading space. Also, current technology is such that it is possible for an exchange to deal directly with an increasingly large circle of traders. With the advent of electronic trading, many functions that had previously belonged exclusively to intermediaries are either disappearing or being provided by the exchanges themselves.

B. Specific Functions

1. *Advertising and Marketing*

Access to exchanges not tied to physical trading spaces opens direct trading to greater numbers of individuals without the need for intermediaries. While this could lead to increased product liquidity, it will be up to the exchanges themselves to attract customers. Electronic exchanges that exist without intermediaries serving as portals, lose the benefit of the intermediaries bringing business to the exchange. Therefore, non-intermediated exchanges must advertise and market their own products. For larger established exchanges that do not suffer from lack of liquidity in their products, the conversion to non-intermediated screen trading may not have an adverse affect on liquidity. However, new electronic exchanges that do not have the benefit of name recognition nor a history of liquidity in their products will be forced to spend on

advertising and marketing if they hope to exist without intermediaries attracting and providing business.

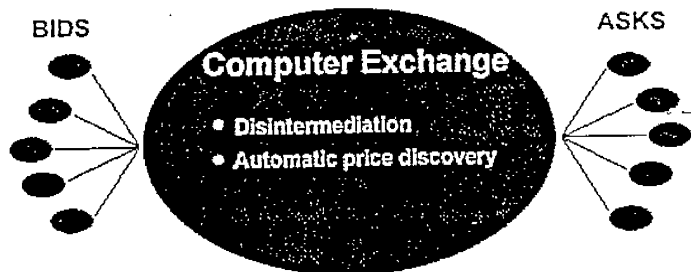
2. Risk Disclosure and Screening Customers for Suitability

With no formal requirements to screen for customer suitability and provide risk disclosures, traders who enter non-intermediated exchanges may be at greater risk than those who enter through an intermediary. Currently, regulations exist to monitor intermediaries and ensure intermediaries provide customers with risk disclosures. The regulators do not screen individual traders and neither do they require exchanges to screen them. Hence, there is a potential that no one is screening for suitability except to the extent an exchange may do so in order to establish creditworthiness. In this environment, a non-intermediated exchange may be an appropriate trading forum only for sophisticated institutional customers.

3. Information and Education

There is no question the internet creates a source of financial information heretofore unseen. Price discovery powered by the internet essentially levels the playing field for all market participants and the ease of tracking, quantifying, and presenting financial information by electronic exchanges will certainly create more transparent markets. What is missing without the intermediary, however, is guidance to accompany the data. The advisory role of traditional intermediaries cannot easily be replaced.

4. Operational



Current technology, both computational power and network speed, makes it possible to automate many functions previously performed by intermediaries. Instead of entering bids or offers through an intermediary, a customer can simply access the markets via its own computer. In addition to access, electronic exchanges can more quickly and efficiently process trades, match orders electronically, and process orders in precisely the sequence in which they are taken. All the functions currently performed by floor brokers can now be done with simple algorithms. The floor broker has no role in an automated exchange.

5. Risk Buffer and Risk Absorption

Non-intermediated electronic exchanges relieve customers from the risk of default by an intermediary. While intermediaries serve as a risk buffer for exchanges in case of customer default, their role in this regard is asymmetrical as they likely afford no protection to customers in the event of exchange default. From the exchange-side, however, loss of the risk buffer and absorption provided by intermediaries means the risk of customer default will now fall squarely on their clearing associations. Non-intermediated exchanges will need to control this risk through credit checks and security deposit requirements.

III. New Exchanges and New Roles for Intermediaries

With new exchanges emerging and old exchanges abandoning their brick and mortar operations in favor of screen trading, there has become competition between the exchanges and the intermediaries for the business of traders. While it is unlikely the exchanges will be able to completely take over the roles currently performed by intermediaries, intermediaries are being forced to redefine themselves and their roles.

There are two primary paths these intermediaries are taking. First, they are competing directly with the new electronic exchanges for the business of traders. Second, they are cooperating and partnering with electronic exchanges by creating trading platforms with multiple market portals.

A. Exchanges versus Intermediaries

In the competition between exchanges and intermediaries for customers, intermediaries may have the opportunity to shed their intermediary functions altogether and evolve into exchanges themselves. Rather than attracting customers to trade *through* them, they can attract customers to trade *at* them. They are already a market portal and can continue to be so—now just to their own market.

Many large intermediaries have non-intermediary attributes that would allow them to compete readily with established exchanges for customer business. These evolutionary intermediaries would have several advantages. Most notably, they have a pre-existing relationship with their customers and sufficient name recognition to attract new customers. Additionally, they have the ability to transact business in a variety of financial products. They have invaluable experience and in many cases already have the needed technology. Finally,

these financially robust intermediaries can prey upon the primary weakness of non-intermediated electronic exchanges—the electronic exchanges difficulty in absorbing risk and clearing trades.

B. Exchange / Intermediary Alliances

Another possible solution for intermediaries is to form partnerships with new or evolving electronic exchanges. In these instances, many of the traditional roles of the intermediary would remain unchanged. They would still play the role of gatekeeper for the exchanges and would continue to advise and inform customers. Additionally, the intermediary would provide the technology needed to transact business by providing the order processing platform to support the exchange. The value-added and uniquely technological services offer intermediaries the opportunity to continue to be indispensable.

C. BrokerTec Example

One recently formed company, BrokerTec Global LLC, provides an example of a company proceeding down both paths simultaneously. BrokerTec is a consortium of large securities dealers who have established electronic inter-dealer brokerage services for fixed income securities and derivatives. Inter-dealers are the middlemen in the over-the-counter bond market who essentially offer off-exchange trading between intermediaries. From the starting point of this inter-intermediary trading, BrokerTec has announced its intention to pursue the development of a global electronic exchange platform for futures trading. It hopes to achieve this by either establishing such a global exchange itself or through partnerships and alliances with existing exchanges, clearinghouses, and service providers. BrokerTec recently filed with the U.S. Commodities Futures Trading Commission seeking approval to establish both a futures exchange and a clearing corporation and intends to begin trading U.S. Treasury bond futures in the first half of 2001.

Conclusion

Most of the functions performed by intermediaries will continue to be available to them despite the conversion to electronic trading. While obviously the mechanical function of executing a trade will be lost to technology, the other functions of offering advice, screening customers, absorbing risk, and generally acting as a conduit to the market will remain tasks open to intermediaries. Presuming intermediaries take full advantage of the opportunities presented by the changing infrastructure, the continuation of their place in the system is secure. Technological advances open as many doors to intermediaries as they close.

Joseph H. Harrison, Jr.
Sidley & Austin
Bank One Plaza
10 S. Dearborn
Chicago, IL 60603
phone: 312-853-7043
fax: 312-853-7036
jharriso@sidley.com

APPLYING A NEW REGULATORY FRAMEWORK TO ELECTRONIC MARKETS

Paul M. Architzel
Chief Counsel
Division of Economic Analysis
Commodity Futures Trading Commission

Do electronic exchanges require a new regulatory framework?

- Adaptability of the regulatory structure depends upon role technology plays
- technology that increases efficiency of current models fits current regulatory structures or raises discreet issues
- technology that changes fundamental nature of the markets raise more regulatory issues

Issues:

- Do electronic exchanges or other new technologies require a new regulatory framework?
- What challenges do regulators face in regulating electronic markets and other new technologies?
- How is the CFTC responding? Should regulations be uniform or tailored to differing types of markets?
- How is the CFTC redefining the regulation of an "exchange"?

Technology that increases efficiency; adapting existing regulation to new technology

- 1989 Globex approved by CFTC
- 1990 IOSCO Principles
- 1992 CBT Project A approved
- 1992 NYMEX ACCESS approved
- 1998 Cantor Financial Futures Exchange

Technology modifying nature of a market challenges the regulatory scheme

- FUTURECOM approved 3/13/2000
- disintermediation
- product customization
- uncoupling of services (trade execution and clearing)
- form of business organization
- increased globalization

Ensure regulations match regulatory goals

- Analyze regulations in relation to four objectives of the Act:
 - Market and price integrity
 - Protecting against manipulation
 - Protecting financial integrity
 - Customer protection

Staff Task Force Project Goals

- Rationalize regulations to match the goals of the Act to the products and participants trading
- Modernize CFTC regulation
- Reinforce legal certainty for OTC derivative transactions

Should rules be uniform or vary by market/participant?

- Degree of regulation appropriate to particular characteristics of each market
- Where possible, offer equivalent regulatory treatment to various markets, no regulatory preference to particular trading platform
- Where appropriate, distinguish regulation based on the sophistication of market participant

Factors Considered in Tailoring the Regulations

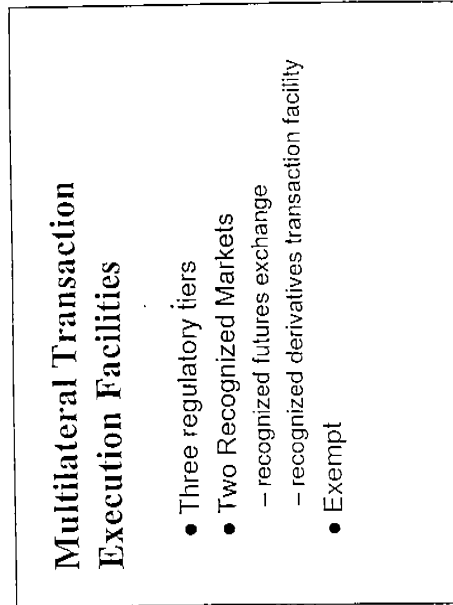
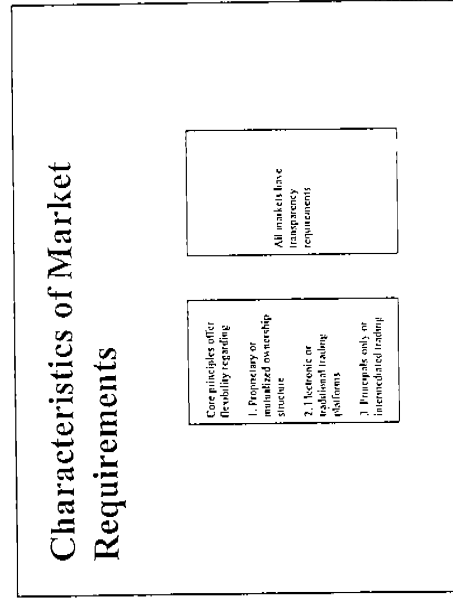
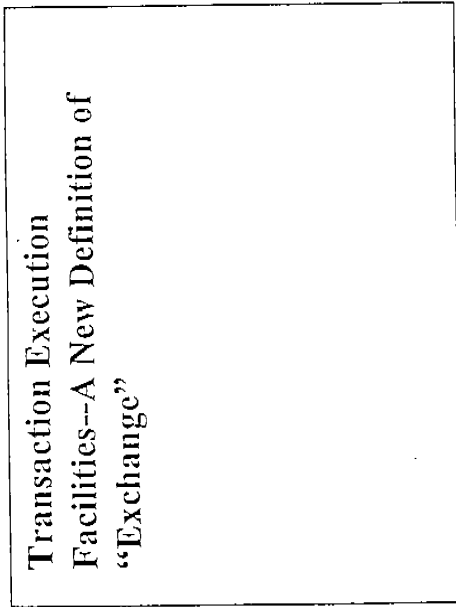
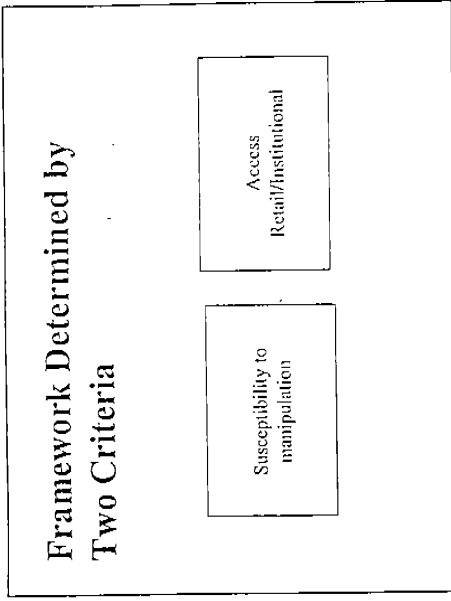
- Nature of underlying commodity
- Type of trading platform
- Use of intermediation
- Use of clearing
- Means of governance
- Nature of the customer

Four Staff Task Force Recommendations

- 1. Use CORE PRINCIPLES and Statements of Best Practices
 - separately address market functions of trade execution, services by intermediaries, and clearing, not the trading system itself
 - performance standards should be broad enough to encompass all technologies and different organizational structures

What regulatory changes is the CFTC making to respond?

- 2. Regulations reflect differences due to the nature of the commodity, sophistication of the trader and use of intermediation.
- 3. Reserve CFTC recognition for markets that meet widely-accepted, minimum international regulatory standards
- 4. Permit flexibility for markets to choose their regulatory tier



- Audit trail
- Financial integrity framework and standards
- Protecting customers
- Dispute resolution
- Governance
- Recordkeeping
- Competition (antitrust)

MARKET	CHARACTERISTICS	REQUIREMENT
Recognized Futures Exchange (RFE)	1. Any commodity; 2. Any traders	Fifteen Core Principles
Recognized Derivatives Transaction Facility (DTF)	1a. Commodities listed below, or b. Case by case; OR 2. Only commercials	Seven Core Principles
Exempt Multilateral Transaction Facility (Exempt MTEF)	1. Only specified commodities that cannot be manipulated, or No cash market AND 2. Only institutional traders	1. Anti-fraud section of the CEA; 2. Anti-manipulation section of the CEA; 3. May not hold self out as regulated

MARKET	CHARACTERISTICS	REQUIREMENT
Recognized Futures Exchange (RFE)	1. Any commodity; 2. Any traders	Fifteen Core Principles
Recognized Derivatives Transaction Facility (DTF)	1a. Commodities listed below, or b. Case by case; OR 2. Only commercials	Seven Core Principles
Exempt Multilateral Transaction Facility (Exempt MTEF)	1. Only specified commodities that cannot be manipulated, or No cash market AND 2. Only institutional traders	1. Anti-fraud section of the CEA; 2. Anti-manipulation section of the CEA; 3. May not hold self out as regulated

- Fifteen CORE PRINCIPLES:**
- Rule enforcement
 - Products not readily manipulated
 - Monitoring markets
 - Monitoring positions
 - Emergency authority
 - Public information of contract terms etc.
 - Price transparency
 - Fair trading system or mechanism

Seven CORE PRINCIPLES:

- Enforce rules
- Oversee, monitor markets
- Disclose operational rules
 - contract terms, trading mechanism and financial integrity
- Price transparency
- Fitness
- Recordkeeping
- Competition (anti-trust)

Markets Can Opt for a Higher Level of Regulation

- Markets that qualify to be exempt MTEFs (institutional traders, non-manipulable commodity) can opt to be recognized as DTF or RFE
- Markets that qualify to be DTFs can opt to be an RFE

MARKET	CHARACTERISTICS	REQUIREMENT
Recognized Futures Exchange (RFE)	<ol style="list-style-type: none"> Any commodity; Any traders 	Fifteen Core Principles
Recognized Derivatives Transaction Facility (DTF)	<ol style="list-style-type: none"> Commodities listed below, or Case-by case; OR Only commercials 	Seven Core Principles
Exempt Multilateral Transaction Facility (Exempt MTEF)	<ol style="list-style-type: none"> Only specified commodities that cannot be manipulated, or No cash market AND Only institutional traders 	<ol style="list-style-type: none"> Anti-fraud section of the CEAC; Anti-manipulation section of the CEAC; May not hold self as regulated

Uncoupling clearing from “exchange”

- Clearing organization may be independent of an execution facility
- For CFTC recognition clearing organization must meet 14 Core Principles

Process

- All changes in the framework can be accomplished through rulemaking

**COMMODITY FUTURES TRADING COMMISSION
10TH ANNUAL TRAINING SEMINAR ON REGULATION OF
DERIVATIVES PRODUCTS, MARKETS AND FINANCIAL INTERMEDIARIES
FOR INTERNATIONAL MARKET AUTHORITIES**

**PRESENTATION ON LEGAL ISSUES
PANEL ON CROSS-BORDER MARKET ALLIANCES**

**By
Kathryn M. Trkla, Partner
Chicago Office of Foley & Lardner**

October 18, 2000

CFTC TRAINING SEMINAR
PRESENTATION ON LEGAL ISSUES
PANEL ON CROSS-BORDER MARKET ALLIANCES
By Kathryn M. Trkla
Partner, Foley & Lardner
October 18, 2000

I. **Starting Premises**

- A. Advances in technology and telecommunications are reshaping the structure of financial markets in fundamental ways. Electronic trading is becoming the norm.
- B. Financial markets today are global and trade across national and regulatory boundaries. Market users have come to expect, and demand, near instantaneous access to markets to execute their orders around the clock.
- C. Financial markets (e.g., securities, futures and OTC derivatives) are becoming even more interrelated.
- D. Electronic trading technology is attracting new market facilities in a variety of forms, increasing competition among marketplaces and blurring traditional distinctions between exchanges and over-the-counter markets.

II. **Cross Border Alliances Among Exchanges**

- A. **The Business Case:** An exchange with aspirations to become or remain a global player must attract market interest, i.e., order flow, from around the globe. One way to "export" the exchange franchise is through cross border alliances with other exchanges.
- B. **The Challenges:**
 - 1. Structuring and successfully operating an international alliance during a period of rapid market change, when the very concept of an exchange is undergoing revision.
 - 2. Structuring and successfully operating an international alliance subject to the national laws of multiple countries and, possibly, multiple regulatory frameworks within countries, especially at a time when regulatory structures are also undergoing major revision in many jurisdictions. (The CFTC's regulatory reform proposal is one example.)
- C. **Examples of Cross Border Exchanges Alliances:**
 - 1. The Chicago Board of Trade/Eurex Alliance, called a/c/e (for alliance/cbot/eurex). Trading on the shared electronic trading platform commenced on August 27th.

2. Chicago Mercantile Exchange Cross-Exchange Trading rules, permitting link arrangements with foreign exchanges, such as Marché à Terme International de France (MATIF).
3. New York Mercantile Exchange linkages with Sydney Futures Exchange, Hong Kong Futures Exchange and Singapore Exchange Derivatives.

III. Contractual Issues

- A. As with any complex transaction, a cross border alliance between exchanges raises a number of difficult contractual issues, many of which derive from actual or perceived legal differences in the home jurisdiction of each exchange. Cultural differences can also be a factor.
- B. The types of issues that will likely arise during negotiations include:
 1. Legal structure of the alliance (influenced by considerations such as management flexibility; tax implications and limiting the liability of the equity owners);
 2. Governance issues;
 3. Choice of law and dispute resolution;
 4. Protection of intellectual property;
 5. Cross-market access to one another's products;
 6. Anti-trust; and
 7. Cooperation to obtain necessary legal or regulatory approvals and remedies in the event of "regulatory frustration."

IV. Regulatory Approvals and Oversight: National Laws/International Markets

- A. **Multiple Approvals.** A market operating in multiple countries may need approval from one or more market authorities in each country. Market intermediaries may also need special regulatory approval to provide access to international markets.
- B. **Determining Jurisdiction.** Jurisdictional issues need to be addressed on a country by country basis.
 1. What types of "contacts" within the country's borders will trigger domestic jurisdiction over the non-domestic market facility? Over the market intermediaries providing access to that market facility?
 - a. Placement of trading or order routing terminals within the country's borders to provide electronic access to the market facility's trading platform?

- b. Solicitation of customers located in the country to trade on the non-domestic market facility?
2. What are the consequences of falling within a regulatory framework within a particular country?
- a. Does the market facility need to register? In what capacity? Are there exemptive or no-action procedures that may be available? Same questions for market intermediaries.
 - b. What on-going regulatory requirements will apply?

Determining what approvals, if any, may be required can be complex and the answers are often not clear cut. A variety of factors may come into play, such as the nature of the market facility, nature of the products, nature of market users and means of access to the exchange's markets.

C. **Examples of the Myriad Ways Jurisdictional Lines May be Drawn**

1. **Product Distinctions:** In the U.S., jurisdiction over securities derivatives is divided between the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC).
- a. A non-U.S. exchange seeking to offer stock index futures within the U.S. must receive a no-action ruling from CFTC staff.
 - b. In contrast, the SEC regulates exchange trading of options on stock indexes and options on individual securities.
 - c. A non-U.S. exchange could, if permitted under its home jurisdiction, list single stock futures, but could not legally offer those products to customers in the U.S. The CFTC and SEC have agreed to a legislative proposal that, if enacted, would permit single stock futures to trade in the U.S. on either a futures exchange or a securities exchange, subject to oversight by both agencies.

NOTE: the London Financial Futures and Options Exchange (LIFFE) last September announced plans to launch trading of futures on individual securities of leading U.K., European and U.S. companies, including AT&T, Cisco Systems, Citigroup, Nokia, Glaxo Wellcome and Deutsche Telecom. Trading is scheduled to commence on January 29, 2001.

2. **Nature of the Financial Intermediary's Relationship with Customers:** Under rule changes recently adopted by the CFTC, a non-U.S. futures broker may accept futures orders directly from certain U.S. based customers for execution on a non-U.S. exchange, without having to register as a "futures commission merchant" in the U.S., provided that:

- a. The customer or its designated representative meets certain requirements intended to ensure that it is a sophisticated investor;
- b. The customer is placing the orders for an omnibus account carried at the non-U.S. broker that a qualifying futures commission merchant (FCM) has established;
- c. The customer is authorized by the FCM to place such orders; and
- d. The FCM meets heightened capital requirements.

If the above conditions are met, the U.S. based customer can transmit futures orders to the non-U.S. broker over automated order routing terminals located in the U.S. that route the orders to (and through) the non-U.S. broker to the foreign exchange's trading platform for trade matching or execution.

Cross-Border Markets

Coordination and
Cooperation

1

Key Issue

- Markets need one set of rules
- Markets operating in more than one jurisdiction
 - Multiple approvals
 - New model needed

3

Challenges of Regulating Markets

- Regulatory Categories
- Concepts of Jurisdiction
- Concepts of Authority
- Regulating Markets is different from regulating intermediaries and products

2

Experience in Canada

- Before 1999
 - Products - MRRS model
 - Intermediaries
 - Markets
- 1999
 - Products
 - Intermediaries - CRD
 - Markets Exchange Restructuring

4

Exchange Restructuring

- What does it mean for the exchanges
- What does it mean for the regulators

5

CDNX Application

- Application for Exemption
- Exemption Order - Terms and Conditions
 - Oversight by Lead Regulator
 - MOU for Oversight has not been terminated
 - Reporting Issuer By-Laws
 - Process

7

Oversight Model

- To recognize or not to recognize - does it matter
- Principles of Oversight
 - Lead Regulator
 - Identifying minimum standards for oversight and oversight program
 - Information Sharing
 - Committee and Reporting

6

IOSCO WP2 Discussions

- Background
 - appropriateness of ten *Principles for the Oversight of Screen-Based Trading System for Derivative products* (the "1990 Principles")
 - Affirmed 1990 Principles and establishes four new principles relating to cross-border markets

8

4 New Principles

- Develop Cooperative arrangements and coordinate supervisory responsibilities
- Regulatory authorities should be prepared to share information in an efficient and timely manner

9

4 New Principles Continued

- Cooperation arrangements should take into consideration whether the other jurisdiction applies IOSCO principles

11

4 New Principles Trends continued

- Applicable regulatory requirements and framework for coordination should be transparent to the extent possible

10

Chart

- Purpose of Chart - sets out how regulatory interests and methods for cooperation are being approached in practice
- Organization - based on functions of markets
- Viewpoints of Initial and Access jurisdiction

12

Content of the Chart

- **Product Regulation**
 - standards and process for admission to trading
- **Market Regulation**
 - Member/participant admission
 - trading process
 - market abuse

13

Content of the Chart Continued

- **Monitoring**
 - market rules
 - market abuse
 - customer abuse
- **Enforcement**

15

Content of the Chart Continued

- **Market Regulation continued**
 - technical standards
 - clearing and settlement
- **Member Regulation**
 - conduct of business

14

Conclusions

- Special issues relating to markets requires new solutions
- One model will not fit all
- IOSCO Paper will help to identify and possible solutions

16



Risk Based Auditing - Our Experiences:

- Audit staff has a fuller, more well-rounded picture of the firm and its activities.
- Resources have been better utilized by allowing us to focus on firms which present more risk to the exchange.
- Rewards firms with stronger internal controls - less time spent on audit issues.
- Encourages firms with weaker controls to improve their policies and procedures.
- Has not necessarily reduced our workloads, but has allowed us to delve more deeply into riskier areas.

Risk Based Auditing:

Our Conclusions:

We believe our financial oversight responsibilities are better performed with risk based approaches to capital and auditing. Our financial surveillance requires a greater analytical assessment of the firm's risks, controls, financial resources, etc. A robotic, one-size-fits-all approach to financial surveillance is no longer acceptable in today's global marketplace. Both exchange and firm resources are better utilized.

Risk Based Auditing - A New Approach:

- Similar to the approach taken by the equity exchanges, the futures exchanges have developed a risk based approach to auditing.
- Firms with problems are reviewed more frequently. Less time is spent at strong firms.
- All areas are reviewed at least once in a three review cycle.
- The scope of testing must be fully documented.

Risk Based Auditing:

- ② Audit the financial health and sales practices of the FCMs.
- ③ Exchange information regarding the financial and operational condition of their respective members.
- The members of the JAC use a standardized audit program to test financial balances and regulatory processes.

Risk Based Auditing:

A significant amount of time is spent upfront assessing the risks at a firm. The following factors are taken into account:

- Business lines.
- Account base.
- Financial levels and trends - capital, customer funds, etc.
- Significant changes - in capital, operations, management, systems.
- Disciplinary history.
- Customer complaints.
- Evaluations of internal controls - through questionnaires.

Risk Based Auditing:

- Historically, U.S. futures exchanges were required to follow rigid audit programs, regardless of the type of business at the firm in question. Essentially, every balance or process had to be reviewed in detail.
- All firms were treated similarly regarding the frequency of audits (detailed audits every two years; limited reviews in the off-year.)
- For those firms with strong risk management and operational controls, this resulted in wasted resources for both the audited firm and the exchange.

Financial & Segregation Interpretation No. 4-2

- Permits SROs to adopt a risk-based auditing system.
- Audits performed on a 9- to 18-month basis.
- Scope of each examination is determined by the SRO's scope setting process.
- SRO must completely document the scope setting process.
- Each audit must be of sufficient scope to satisfy the SRO that the firm is in compliance with applicable capital, segregation, recordkeeping and reporting rules.

Risk Based Auditing - Overview

- Allows self regulators to utilize resources in a more effective and efficient manner.
- Provides a more global assessment of a firm's risk.
- Allows financial surveillance tools to more accurately focus on the risk at an entity.

Risk Based Auditing - Part of Overall Financial Surveillance Program

- Risk based auditing is one component of a robust financial surveillance program. Other components include:
 - ④ Adequate screening of new applicants prior to acceptance for clearing membership (financial health, disciplinary history, credit reviews, etc.)
 - ④ Routine review of financial statements, including for trend analysis.
 - ④ Review of daily settlement flows.
 - ④ On-going discussions with firm personnel on changes in operations, business lines, personnel, etc.

Risk Based Auditing:

- Every FCM which is a member of more than one futures exchange is assigned a designated self regulatory organization which has primary oversight responsibility for that firm. DSROs are assigned by the Joint Audit Committee.
- The JAC was formed in the late 1970's and includes all US futures exchanges and the NFA. Its objectives are to:
 - ④ Delegate the responsibility for auditing and monitoring FCMs (the NFA is primarily the DSRO for non-exchange member FCMs.)

Financial & Segregation Interpretation No. 4-1

- ☒ Sets minimum standards for carrying out financial surveillance to ensure compliance with SRO and Commission financial, segregation, and related reporting and recordkeeping rules.
- ☒ Emphasis on firms that hold customer funds.
- ☒ SRO staffing levels and independence.
- ☒ Commission notification of material violations.
- ☒ Review of financial reports.
- ☒ Daily collection of financial data.


Risk Based Auditing - A New Approach for a Global Marketplace

Statutory Requirements

- ☒ Commodity Exchange Act and Commission regulations require SROs to adopt and enforce rules setting minimum financial and related reporting requirements for all members that are registered FCMs or IBs.
- ☒ SRO financial and reporting requirements must be no less stringent than those set by the Commission.

Financial & Segregation Interpretation No. 4-1

- ☒ Requires program that combines ongoing financial surveillance and on-site examination of member's books and records.
- ☒ Full scope financial audit must be performed once every two years.
- ☒ Limited scope audit performed in the "off" year.




What is the Role of a Clearing House?

Chicago Federal Reserve


October 16, 2000

Phupinder Gill




Clearing House Business Benefits

- Capital and credit line relief
- Operational efficiencies
- Centralized collateral services
- Multi-lateral payment netting
- Enhanced business and growth
- Documentation reduction



Role of a Clearing House


- Performance guarantee to marketplace
- Financial safeguards to members
- Reduced credit and counterparty risk
- Systemic risk reduction





Role of a Clearing House


Performance guarantee


- Financial guarantee for matched trades
- Principle of substitution
 - Buyer to every seller
 - Seller to every buyer
- Intermediary role for physical deliveries


	<h3>Role of a Clearing House</h3> <h4>Financial Safeguards</h4> <ul style="list-style-type: none">• Stringent membership requirements• Rigorous financial surveillance• Performance bond collateral• Daily reset via mark-to-market• Capital resources to back guarantee
---	--


	<h3>Role of a Clearing House</h3> <h4>Credit and Counterparty Risk</h4> <ul style="list-style-type: none">• Counterparty risk is shifted to Clearing House• Collateralized credit risk• Daily removal of accumulated credit risk through mark-to-market
---	---


	<h3>Role of a Clearing House</h3> <h4>CME Financial Safeguards</h4> <ul style="list-style-type: none">• \$20b in performance bond collateral• Twice daily mark-to-market - \$1b• Real-time position posting• Daily stress testing• Risk management reviews• Security deposit - \$350m• Mutualization of risk - Common Bond
---	--


	<h3>Role of a Clearing House</h3> <h4>Systemic Risk Reduction</h4> <ul style="list-style-type: none">• Multi-lateral netting reduces payment flows• Cross-margining programs provide netting across markets• Financial safeguards contain default consequences
---	--


	<h3>Clearing House Business Benefits</h3> <p>Capital and Credit Line Relief</p> <ul style="list-style-type: none">• Central counterparty obligations move off balance sheet• Novation frees up counterparty credit lines
---	---

	<h3>Clearing House Business Benefits</h3> <p>Centralized Collateral Services</p> <ul style="list-style-type: none">• Eliminates bi-lateral collateral administration• Exposure netting across counterparties reduces collateral requirements• Common banking arrangements reduce collateral costs across markets• Efficient collateral valuation and mark-to-market
---	--

	<h3>Clearing House Business Benefits</h3> <p>Operational Efficiencies</p> <ul style="list-style-type: none">• Centralized trade processing• Centralized confirmation processing• Standardized counterparty interfaces• Centralized computing power
---	---

	<h3>Clearing House Business Benefits</h3> <p>Multi-Lateral Payment Netting</p> <ul style="list-style-type: none">• Netting of obligations across multiple trading counterparties• Netting of obligations across multiple product lines• Cross-margining provides netting of payment obligations across markets• Eliminates bi-lateral netting arrangements• Significantly reduced payment flows
---	---


<h3>Clearing House Business Benefits</h3>
<p>Enhanced Business and Growth</p> <ul style="list-style-type: none">• Eliminates counterparty credit evaluation process• Wider counterparty selection improves market pricing• Reduces balance sheet constraints• Reduces credit line usage


<h3>Clearing House Business Benefits</h3>
<p>Documentation Reduction</p> <ul style="list-style-type: none">• Clearing House rules replace bi-lateral relationship documentation process• Centralized trade reporting reduces bi-lateral deal documentation• Mark-to-market eliminates bi-lateral reset tracking

The Board of Trade

Clearing Corporation

- Independent Corporation
- 100% Clearing Member Owned
- 75 Years of Clearing Service
- Providing Clearing Service for the CBOT and MidAm Exchanges

10/16/2000

Current Requirements

- Leverage An Existing Menu of Services
 - Consulting
 - Trade Management
 - Banking and Collateral Management
 - Risk Management Services
 - Guarantee
 - System Hosting
 - Network Access

10/16/2000

B2B Experiences

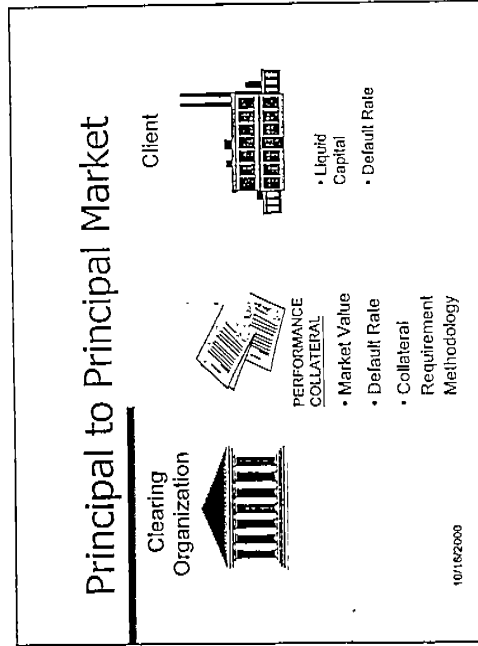
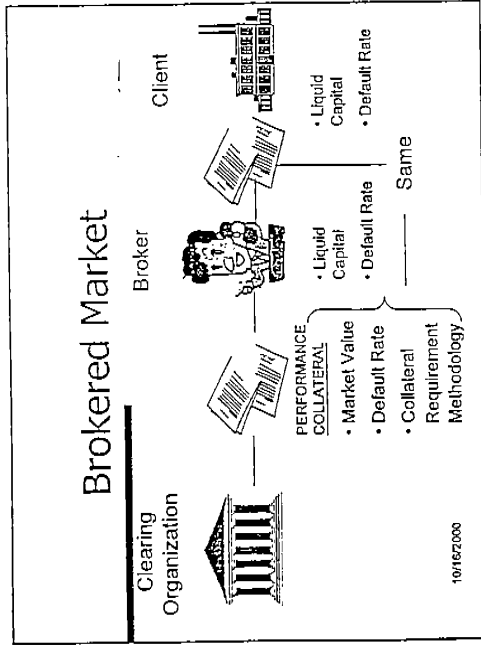
- Past Year Clearing Discussions with 70+
- Continuing Discussions
- Varying Levels of Market Services
 - Vertical
 - Horizontal
 - Transaction Execution Service Providers

10/16/2000

Current Risk Management Requirements

- Trade and Position Valuation & Credit Assessment
 - Low Volume/Large Contract Valuations
- Settlement and Collateral Management
- Risk Management Tools and Guarantee Interfaces

10/16/2000



Future Risk Management Requirements

- New Guarantee Models
 - Broader Participation
 - Menu of Choices
 - Self funding
 - Insured
 - Bilateral
 - Net
- A Level of Standardization Which Support Customized Products
- Stronger Interfaces Between Execution and Clearing Systems

10/16/2000

Don't Be Surprised (a.k.a EEK!:Commerce)

- Exclusive/Non-Exclusive?
- Is It a Challenge to Current Clearinghouse Membership Structure?
- Commercial Based
- Organization
- Existing Market Support Conflict
- Technology Investment

10/16/2000



CFTC Seminar
October 2000

Clearing new products ; cross-
border risk management issues

Andrew Lamb



II U.S. & Europe compared

- ⇒ U.S. (institutions and banks & broker-dealers) as innovators
- ⇒ But European integration (clearing of all instruments under one roof) contrasting with U.S. fragmentation



I Expanded role of clearing

- ⇒ Some of expansion = diminution of perceived importance of trading
- ⇒ Some very real
 - globalisation of futures and options
 - expansion of f&o clearing model to cash, near cash and derivatives



III Challenges of new products

- ⇒ Adaptation of current techniques
- ⇒ Consistency and coherence of policies
- ⇒ Politics - CSDs / settlement systems
 - perceived value-added

r°/6 PM 2:45 ~ 3:45

IV Cross-border



- ⇒ Not new – more of the same
- ⇒ More 'remote' members
- ⇒ Legal risks – default rules ; collateral

V Regulatory-legislative challenges



- ⇒ Who claims oversight of clearing houses ?
- ⇒ Formality of capital adequacy requirements
- ⇒ Treatment of margin : consistency
- ⇒ Insolvency law carve-outs ; a priority

附 錄 三



PURPOSE OF REGULATORY OVERSIGHT OF FUTURES MARKETS



Regulatory Issues for Exchange Derivatives Markets

- In the U.S., Congress stated that futures markets:
 - Are affected with a national public interest,
 - Are used by persons engaged in the business of buying or selling the commodity for pricing and hedging,
 - Are susceptible to manipulation and other disruptions, to the detriment of persons dealing in the underlying commodities.
- Economic benefits go beyond the exchange, affecting not only the individual users but also the industry involved, the national economy and, in some cases, the international economy
- Similarly, the economic harm caused by market abuses is broad and extends beyond the exchange.



Economic Purposes of Futures Markets

- Hedging -- risk management
- Price Basing -- establishing cash transaction prices.
- Price Discovery -- “finding” market values



Proper contract design & surveillance needed to assure that:

- the market operates properly.
- commercial users can use the market for hedging and/or price basing
- the price “discovered” is a fair representation of actual supply and demand.



Why Manipulation, Price Distortion, and Other Abuses are of Concern?

- Undermine the economic purpose of futures market
- Make hedging less effective or ineffective
- Send false signals to commercial users/regulators/etc.
- May result in uneconomic cash market transactions



What is Market Manipulation?

Definition :

“ ... any planned operation or transaction or practice calculated to produce an artificial price in the futures market itself or in its relation to other markets.”

The purpose of manipulation is:

- Not to facilitate movement of the commodity at prices freely responsive to supply and demand.
- Goal is to profit from futures trading by using of a dominant futures market position to distort futures or cash market prices



What is Price Distortion?

- Buying or selling in a manner calculated to produce an abnormal effect upon prices.
- This frequently takes the form of concentrated or rapid buying or selling.
- Also, distorted prices may be caused by issuing false reports of conditions that affect price.
 - Becoming easier to accomplish with publishing software
 - Easier to disseminate with internet & chat rooms



How Can The Threat of Market Manipulation and Price Distortion be Minimized?

Regulatory Oversight

- Market Surveillance -- ongoing monitoring of the market
- Contract Design -- intended to ensure that the contract is not susceptible to manipulation
 - Based on theory that the market abuses or less likely to occur and are more difficult to accomplish if contract terms are properly specified
- Market surveillance and appropriate contract design are complementary -- neither alone is sufficient.



Market Surveillance



Appropriate Contract Design Helps Prevent Manipulation and Facilitates Effective Surveillance

- Necessary because even well-designed contracts can be subject to manipulation.
- Can compensate for less than optimal cash market conditions.
- May include large trader reporting, limits on the sizes of speculative positions or trader accountability provisions, and routine gathering of information about on-exchange activity (positions, prices, delivery intentions).
- Different market authorities (the exchange, another SRO, or a government authority) may have a role in contract design and review
- Governmental oversight may involve prior review and/or approval of terms, informal consultations with the government authority, or oversight after the terms are adopted.
- The relevant market authority(ies) should take into account the Standards of Best Practice in exercising its design and review functions.



Contract Design Standards of Best Practice for Design and Review

- **Accountability:** the market authority should establish a clear framework as to design and review criteria, it should be accountable for compliance, and it should have authority to address terms that create market abuses. or procedures.
- **Economic Utility:** contracts should meet the risk management needs of potential users and/or promote price discovery.
- **Correlation with Cash Market:** contract terms and conditions should reflect the operation of the underlying cash market and avoid impediments to delivery.
- **Settlement and Delivery Reliability:** settlement and delivery procedures should reflect the underlying cash market and promote price convergence.
- **Responsiveness:** the views of potential market users should be taken into account in designing commodity contracts.
- **Transparency:** information concerning the contract's terms and conditions, as well as relevant information concerning delivery and pricing should be readily available.

[Key elements of proper design are set forth in the Tokyo Communiqué on Commodity Futures Markets (1997)]



Criteria for the Design of Derivative Contracts

There is great diversity among underlying commodities.

Markets can be grouped according to their settlement provisions.

- physical delivery of a tangible commodity or delivery (transfer) of a financial instrument;
- cash settlement based on a commodity or financial instrument
- cash settled indexes



Contract Design: Physical Delivery Tangible Commodities

- Usually there is greater opportunity or manipulation due to potential for limit supplies, transportation difficulties and nature of production and consumption
- Terms should reflect cash market practice to the extent possible
- Deviations acceptable if necessary to ensure the economic utility or functioning of the futures market
 - use of shipping certificate to effect delivery
 - fixed differentials for alternative delivery grades, locations, etc.
- Most important issue is whether contract terms result in adequate delivery supplies



Contract Design: Physical Delivery Financial Instruments

- Generally fungible where delivery and payment is easy and cheap
- Need to consider possible oversight of underlying financial instruments by other regulators.
- Underlying cash markets tend to be deeper, liquid, transparent and more readily arbitrated.
- **However**, if deliverable supply is a narrow segment of the market, about adequacy of supply are relevant.

Conditions for Stock Index Contracts



- Stock market liquidity should be fairly high
- Stocks should be well-capitalized
- Low potential for tampering with index calculation
- Trading on stock market is transparent
- Little or no restrictions on ownership
- Currency is convertible
- No impediments to arbitraging stocks and futures
- Regulatory coordination between futures/stock markets

Debt Instrument Contracts



- Viewed as benchmark for cash trading?
- Minimal risk of default
- Deep & liquid market, with many buyers and sellers
- Transparent information on prices, supply and demand
- Limited government intervention
- Deliverable supply consists of a basket of deliverable issues having similar maturity



Standards for Cash Settled Contracts -- I Independent Third Party Indexes:

- Third party must not object to use of its price series
- Third party should be a reliable publisher of cash market data.
- Appropriate safeguards against distortion must be in place.
- No premature release of the index, unless based on publicly available information (such as stock prices).
- Manipulation may be effected by distorting the prices in the cash market used to establish the index.
 - Need to evaluate the size and liquidity of the cash market to ensure that the presence of the futures market does not create undue incentives to manipulate the cash market.
 - If cash market is susceptible to manipulation, may need to adopt special futures trading terms, such as speculative limits or using multiple index values taken at random times to derive the cash settlement price.



Standards For Cash Settled Futures Contracts -- 2 Exchange-Derived Indexes

- The calculation procedures should be specified,
- Safeguards should be built into the process to protect against manipulation.
- Market data used in the calculation must be reliable.
- If entities are to be surveyed, the polling sample should be representative and knowledgeable of the market. CFTC experience suggests that a minimum of 4 non-trading entities (brokers) or 8 entities that trade for own account should be polled.
- There should be procedures in place to exclude extreme (nonrepresentative) values, such as eliminating high and low quotes.
- Cash market data should be available so that traders can independently verify the accuracy of the cash settlement price to enhance its integrity.



Conclusions

- Need to Consider Appropriate Oversight Functions of Regulators and Market Authorities
- Key Role is the Prevention of Manipulation, Price Distortion, and Trading Abuses
- Even well designed contracts may be susceptible to manipulation or price distortions under certain circumstances.
- A well designed market surveillance program is necessary for ongoing monitoring of the market.

UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY EXCHANGE AUTHORITY
WASHINGTON

200

May 25, 1966

To: Deputy Administrator, Division Directors and Regional Directors

From: Alex C. Caldwell, Administrator

Subject: Definitions of certain trade practices prohibited by CEAct

From time to time we are called upon to define certain trade practices which are prohibited by the Commodity Exchange Act. For your information, I am listing below various definitions which were entered in the record during our appearance before the House Appropriations Committee on March 3, 1966.

Wash trading - Entering into or purporting to enter into transactions for the purpose of giving the appearance that purchases and sales are being or have been made but without actually taking a position in the market.

Bucketing - Directly or indirectly taking the opposite side of a customer's order into the handling broker's own account or into an account in which he has an interest, without bona fide execution in accordance with the rules of a contract market.

Cross trading - Indirectly bucketing a customer's order, or indirectly offsetting the buying order of one customer against the selling order of another customer, or wash trading by means of transactions with another floor broker who is engaged in a similar type of trading.

Prearranged trading - Trading between brokers in accordance with an expressed or implied agreement or understanding which results in their trading with each other.

Fictitious trading - Wash trading, bucketing, cross trading or any other device, scheme or artifice whereby the execution of a trade is reported or recorded but in fact no bona fide execution has occurred.

Offsetting orders - Directly or indirectly filling a customer's purchase order against another customer's sale order without bona fide execution of such orders in accordance with the rules of a contract market.

Accommodation trading - Wash trading entered into by one broker to assist another broker to make cross trades, wash trades, etc.

Alex C. Caldwell

DESIGNING A MARKET SURVEILLANCE PROGRAM

I. REGULATORY OBJECTIVES AND NATURE OF MARKET AFFECT PROGRAM DESIGN

- Regulatory programs are derived from the intent and scope of our laws
- Is the surveillance program to be preventive or reactive?
- Market surveillance programs also should look at the nature of the markets
- International guidance on surveillance programs is provided by IOSCO

See: "The Tokyo Communiqué on Supervision of Commodity Futures Markets", October 1997, and "The Application of the Tokyo Communiqué to Exchange-Traded Financial Derivatives Contracts", September 1998.

II. CFTC MARKET SURVEILLANCE

- Prevention of price manipulation is the purpose of CFTC market surveillance.
- The surveillance program is intended to protect the integrity of the price determination process.
- This is a critical function because futures prices affect domestic and international commerce, not just futures traders.
- Prevention of manipulation requires timely access to information on futures and cash market positions of large traders.

III. SURVEILLANCE REQUIRES TIMELY INFORMATION

- The core of the CFTC's surveillance system is our daily large trader reporting system.
- These reports are augmented by special information requests as needed, and routine contacts with large traders and exchange surveillance staff.
- Routine large trader reports and special information requests are premised on specific statutory authority and basic recordkeeping requirements.
- The Commission would not have the authority to obtain routinely all of this surveillance information for all markets under the proposed legislation, or under the Commission's proposed new regulatory framework.

VI. SURVEILLANCE IS A TEAM EFFORT

- Market surveillance is conducted in a coordinated manner with the exchanges.
- The CFTC has broader authority to collect information than exchanges which have limited authority to get information from nonmembers.
- Using all available information, the CFTC surveillance staff identifies potential manipulation threats and seeks to prevent them in the least intrusive manner commensurate with the situation at hand.
- The Commission is engaged in the surveillance process through its weekly surveillance meetings.

V. ALTERNATIVE SURVEILLANCE ACTIONS

When a market threat is identified, the Commission and exchange have a range of alternative actions to deal with the threat.

- "Jawbone" the trader and/or the firm clearing the trader's position.
- Make special information requests to evaluate the trader's overall position and intentions.
- Issue formal warning to the trader.
- Emergency action by the Commission or the Exchange to:
 - raise margins,
 - limit trading to liquidating transactions,
 - impose or reduce position limits,
 - require liquidation of positions,
 - close the market, or
 - do whatever else is deemed appropriate to prevent the manipulation.

THE CFTC MARKET SURVEILLANCE PROGRAM

The CFTC conducts a market surveillance program to detect and prevent price manipulation in futures and option markets. The principal goals of market surveillance are to spot adverse situations in these markets and to pursue appropriate remedial actions, in coordination with the involved exchange, to avoid market disruption. To accomplish these objectives the market surveillance staff must determine when a trader's position in a futures market becomes so large relative to other market factors that the trader is capable of causing prices to diverge from legitimate supply and demand conditions. The surveillance staff routinely collects and analyzes daily data concerning overall supply and demand conditions in the cash market, cash and future prices and price relationships, and the sizes of hedgers' and speculators' positions in the futures market.

At the heart of the CFTC's market surveillance system is its large-trader reporting system. In order to identify potentially disruptive futures positions, the CFTC staff uses its reporting system to collect and analyze data on large trader positions in all commodities. Reportable positions—daily reports of futures positions above specified levels set for reporting purposes—are obtained from futures commission merchants, clearing members and foreign brokers. Exchanges also provide the daily positions that each clearing member is carrying in each futures and options contract on each underlying commodity.

The Market surveillance process is not conducted exclusively at the CFTC. If a problem develops, it is usually handled jointly the CFTC and the affected exchange. Relevant surveillance information is shared and, when appropriate, corrective actions are coordinated. The Commission customarily gives the exchange the first opportunity to resolve the problem itself, either informally or through emergency action. If an exchange fails to take actions that the Commission deems appropriate, the Commission has emergency powers under which it can order the exchange to take actions specified by the Commission.

October 11, 1999

Surveillance of Electronic Trading

The following presents the principles that may be employed in the surveillance of electronic trading.

Surveillance of Open Outcry Markets

Since we will be making use of the knowledge and experience we have gained in our surveillance of open outcry markets and since we believe that many, or most, of the kinds of violative activity in those markets are translatable into the electronic trading context, I will first sketch our general approach to the surveillance of open outcry trading. We begin by listing the various elements of such trading: the customers who wish to trade; the personnel who receive and handle customer orders; the back office personnel who process those trades and customer accounts; the floor brokers who execute customer orders in the trading pits; the local traders who trade for their own accounts and "make markets" for customers; the audit trail for orders received from customers, transmitted to the trading floor and into the pits; the order fills reported out of the pits and to the customers and the clearing system; and the trade matching and clearing system and procedures. We then note that detection of potential violative activity and, in fact, evidence of such activity depends upon the identification of certain patterns of illegal trading. The elementary patterns are identified in our training materials. It thereafter depends upon the creative imagination and persistence of individual investigators to identify variations and particular instances of violative activity.

In order to gain data necessary to identify potential violations, our staff develops pit profiles, which contain "descriptions" of the various "players" in the market, the locals, the brokers, the firms, the customers. These descriptions are created from routine physical surveillance of the trading floor and analysis of trade data from the Exchange Database System. At the same time background fundamental data are gathered from available sources of information. By identifying routine or regular trading behavior, it then becomes possible to identify unusual activity which could indicate illegal activity. The development of pit profiles is an ongoing project, never completed, because of the constantly changing environment.

Physical surveillance of the trading floor enables the Futures Trading Specialist to observe where the traders are located relative to each other, how they actually conduct their trading, when they trade, in what typical quantities, with whom, etc. Analysis of the trade data enables the gathering of more specific information, about all trading and over an extended period of time. The standard goal for our staff is the routine review of each contract at least once per quarter. The more active contracts are expected to get more attention. The focus of any analysis depends upon the knowledge/experience of the FTS, using leads from any available source or simply a review of a randomly selected period.

The amount of data reviewed depends upon the amount of data that can reasonably and expeditiously be analyzed. Analysis primarily consists of identification of particular patterns of illegal activity. It will also include profit/loss analysis to identify potential accounts for further review. To complete the catalog of review packages, the staff also conducts analyses of errors and outrades.

In addition, our staff conducts what we call "back office reviews", to more readily detect certain types of violative activity, such as churning and misallocation. For these reviews, our staff reviews account activity statements for possible patterns of such activity. Although it is technically possible to detect such patterns using Exchange Database System data, it has been much more effective to do so by reviewing trading documents. Enhancements to the EDS will enable such analyses to be effectively conducted without on-site visits. This capability will be important for the surveillance of electronic markets.

Potential Abuses in the Electronic Markets

In discussing potential abuses in an exchange electronic trading system context, I will present them against the backdrop of open outcry trading. That is, I will discuss whether violations which are known to occur in the open outcry environment continue to exist, even if in an altered form because of the different environment. In fact, we vigorously disagree with the position taken by some that electronic trading effectively eliminates most of the violative activity available in the open outcry market. We believe that, particularly in the early and transition stages, violative activity could occur in electronic markets much as they occur in open outcry markets. Some are misled by the fact that electronic markets utilize some computer algorithm to match opposite sides of trades. They naively fail to recognize that in an illiquid market it would still be possible to accomplish much of the goals of illegal trading activity. It should also be remembered that there are, in principle, a limited number of types of violations against customers. There are also a limited number of ways to accomplish other goals, such as money passing or manipulation. It remains only to determine the ways in which these methods can be translated into the electronic context. In this light, the methods of surveillance for types of violative activity will likewise be limited. I will also discuss potential abuses that are unique to an electronic context.

In the electronic context, we must consider the marketplace to be, not just a trading pit in a very specific physical location, but rather a far-flung, indeed potentially world-wide, area, accessible by computer terminals. In a physical trading pit, traders may require key card access to the trading floor area, wear badges with their unique identifying symbols, and be recognized by other traders who see each other on a daily basis. In the electronic system, the user must have a unique identification and password in order to access the system. But, as is well-known, when computer terminals are left unattended, but logged on, anyone else can take advantage of the access. It is not possible to be certain that the user who logged into the system continues to be the user, or even logged in (in the case of a stolen password). It is even necessary to ensure that sufficient security protects the integrity of the system. If a system allows multiple log-ins by the same individual, or if

multiple individuals are allowed to log-in under the same identity, it would be difficult to precisely determine who is trading at any particular time. [One of these situations existed in a proposed electronic trading system.] Further, in the trading pit, it should be possible to see when two or more traders collaborate in the prearranged execution of a trade. It is not readily possible to see what activity is occurring near one or more terminals with respect to the execution of an electronic trade.

A recently developing twist in the aspect of entry into an electronic trading system is the advent of Internet access. Although theoretically possible to identify the geographic location of the order entry, it becomes increasingly more difficult to do this, and still more difficult to verify the actual terminal operator.

It should also be noted that there may be some time before users will use electronic trading systems by themselves and effectively. There will always be some question of the nature and extent of the human/electronic system interface. It has been learned that, at this time, there are experienced traders who choose to place orders with brokers for two reasons. First, these traders believe that they lack the proficiency to enter their own orders into the system accurately and quickly; hence, they turn to more experienced data entry people who work for their brokers. Second, these traders believe that their brokers have access to more information and more quickly than they do, perhaps because of their access to other customers; hence, they give discretion to their brokers to enter their orders at the appropriate time. This situation would lend itself to some kinds of abuse.

Moving next to the area of dual trading abuses, in the open outcry context, we have distinguished on-trading floor and off-trading floor violations. Because of the nature of the electronic market, that distinction is not really appropriate--everywhere and anywhere there is a terminal it may become part of the electronic trading floor.

Trading ahead of customers must be seen on a number of levels. Traditionally we have focused (I might say, "picked on") on the individual floor broker who, because dual trading generally is allowed in the futures market, could trade for him/herself ahead of an executable customer order. In the electronic context, the parallel would be whether the terminal operator who enters customer orders into the system is allowed to place orders for him/herself as well. In the open outcry context, there generally is an order ticket with a timestamp independently affixed, i.e., not placed by the floor broker. It is thereafter possible to determine whether that order was likely to be in the floor broker's hand and executable if and when he/she traded for a personal account. Given some of the inherent difficulties with this system (which I, nevertheless, do not wish to overstate), this violation has been difficult, but not impossible, to prove.

In the electronic context, we cannot rely exclusively upon the time affixed by the system when the customer order is entered into the system. The order may have been withheld (a separate violation in the open outcry context) until the operator has placed his/her order. This may be detectable through surveillance (and comparison) of order entry times in the electronic system and the telephone recording system (which many firms, but not all,

have) used to record the placing of customer orders. We allow the entering of customer orders directly into the trading system without requiring the preparation of a separate order ticket, if the order is immediately entered. We require an order ticket if the order is not immediately entered. In the former case, we would have no way of determining that the order was immediately entered or not, unless there is a separate recording system of telephone communications. [If or when orders can be submitted by customers electronically, e.g., through the Internet, we would expect there to be some timing mechanism to record when the customer order was received by the system.]

At the same time we do not know, as we know to be the case in some firms, whether multiple terminals are closely situated. If such is the case, it is clearly possible for one terminal operator to place an order with a fellow operator seated nearby for entry just before the customer order is entered. [The geographic proximity of terminal operators will provide similar opportunity for other violations, to be discussed below.]

It is also important (for completeness) to include frontrunning, i.e., trading ahead of a customer in a related market. Although this is a very difficult violation to effect, it will be necessary to surveil for such possible activity.

In the Central Region Contract Markets Unit we also look closely at the possibility that trading ahead of a customer may be done using a proprietary house account. In other words, in looking at the meaning of dual trading in a wider context, the firm which handles the customer business could also trade ahead of its customers. We believe that this is the neglected side of dual trading in the securities market, which trumpets its non-dual trading practice. Parallel to an individual operator trading for a personal account ahead of a customer, the operator could trade, i.e., execute an order, for a proprietary house account ahead of a customer order, whether directly (since surveillance programs may look only for personal accounts) or indirectly, using a fellow operator (and the programs may look only for accounts of the operator and not also of fellow operators).

In the open outcry context, trading against a customer, which we call "bucketing", may be direct or indirect. Because of the prima facie nature of the direct method, trading against customer order schemes generally use accommodating traders to mask the scheme. There will be parallels in the electronic context. The direct bucketing scheme will be too readily detectable, and thus trading against customer orders will probably occur opposite accommodating operators trading for personal or proprietary accounts. [We will discuss below the obvious objection that operators cannot control who trades opposite whom.]

The crossing of orders in the open outcry system, i.e., trading on behalf of different principals at the same time, is made more difficult in the electronic context, where each order is entered in sequence and there is no facility to enter multiple opposing orders at the same time. Thus, such crossing would appear to require the cooperative efforts of two operators. Surveillance, therefore, would seek to detect patterns of activity between pairs of terminal operators or sets of terminal locations.

The matching of orders, i.e., the offset of equal quantities of buys and sells and the sending of only the net difference to the trading pit, would seem to be prevented in the electronic context, since all trades must go through the system and be matched against other trades in the system. It would not seem to be possible to send buy and sell trades with the price arrived at in the trade for the net difference, because all of those trades, once entered, would be subject to trading and, hence, different prices.

In two areas of possible violative activity, which do not directly affect customers, money-passing and price manipulation, similar considerations as described above exist. Money-passing trades can be effected by conspiring operators who enter trades at the same time for execution opposite each other. By designing sets of trades in which one party will obtain a profit while the opposite party incurs a loss, a transfer of money can be accomplished through an electronic system.

At this point it will be appropriate to discuss an objection that will be raised about the above-described scenarios. It is true that the trade matching algorithm, given that it has been approved as one which fairly matches opposite sides of trades, functions in a purely mechanical manner. As such it can be objected that traders cannot ensure, i.e., cannot control, that their particular orders/trades will be matched opposite the desired parties' orders/trades. Generally, that will be true in a developed, liquid market. On the other hand, if the market is illiquid and thinly traded, it is very possible to structure a trade that will, for the most part, be matched against a desired other party. Even if part of the order is taken by the market, it is more likely that the vast majority of the order will be matched against a specifically designed order.

To develop this point further, there are various scenarios in which control can be exercised. In an illiquid market, perhaps at certain times of the trading day, when volume is at its lowest, opposing trades may be entered, with increased possibility that they will be matched opposite each other. Even if there may be some resting orders in the system, if both orders are filled at nearly the same time and price, the parties will essentially have accomplished their goal.

On another level, depending upon the nature of the system and the level of complexity of orders that the system is able to accept, traders can enter fairly complex orders with increased chance of their being matched together. It takes some time for traders to see an order in the system and be able to react after first deciding whether to trade or not. That delay will be all that is necessary for certain trades to be matched together.

Thus, in an illiquid market, a combination of complexity and size of orders, along with the timing of placement of orders at less active times, could enable traders to effect certain types of violative trading described above. Furthermore, since trading occurs away from a physically central location, where the actions of traders can be observed, it is not possible to witness, and hence discourage, conversations or planning of such activities.

Manipulation has also been seen to occur in an illiquid market. An individual who had discretionary trading authority over a very large account would first place orders (to buy at a certain point above the market or to sell at a certain point below the market) for the account of a relative. He would then place very large orders which would move the market sufficiently to elect the orders of his relative. Thereafter he would let the market find its "true" price, and then offset the relative's position, resulting in a profit.

Of particular relevance here is the allowance of pre-execution discussions regarding GLOBEX trades. The stated justification is that customers would like some assurance that someone will be ready and willing to take the other side of their orders. The firm is allowed to discuss possible execution of an order with potential contra-parties, provided that the parties engaged in such discussion wait a reasonable period of time before entering the opposite side. That reasonable period of time is deemed to be 15 seconds in the case of a futures order and 30 seconds for an options order. Here, too, it seems that the amount of liquidity in a market is a factor to be considered. In a liquid futures market 15 seconds is a considerable amount of time. In an illiquid market, however, 15 seconds may afford interested parties with advance knowledge a distinct advantage, in that other market participants may not have time to react. The same holds true in the options market, where more complex calculations generally are required to determine whether to trade.

Surveillance of Electronic Markets

Most of the principles and methods of surveillance of the open outcry markets are applicable in the electronic context. The development of pit, or market, profiles is essential. Every trader exhibits regular trading patterns, whether in an open outcry or an electronic context. Identification and cataloging of these patterns will provide the primary tool for detecting potential violative activity. It will be necessary to monitor all terminal operators and the physical locations of all terminals. [It will be pertinent, for example, to know that two or more terminals are located in the same room.] Of course, the apparent locations of terminals should be checked periodically, such as during routine financial and recordkeeping audits by the exchanges, the National Futures Association and the Commission. At the same time, such audits could be the occasion to compare the times of receipt of customer orders and the times of their entry into the trading system.

Using the Exchange Database System, or rather a version suitably modified to conduct such analyses [it will, in fact, become critical that staff be able to use more sophisticated computer support], our staff will profile activity by terminal, terminal operator, account, firm, etc., as well as among sets of such trading entities. Analogous to what is done in the surveillance of open outcry markets, the staff will routinely review activity in the electronic markets, looking for possible illegal patterns such as described generally above and specifically in our training materials. We will appropriately expand the materials to include insights into the electronic trading environment. [Although it is unlikely that difficulties will arise in this way, we should also keep in mind the need to periodically

verify that the trade matching algorithm is the approved version.] For these purposes, it will be necessary to routinely obtain additional data from the exchanges in electronic form. We have managed with hard copy lists of exchange members who can trade because the number was manageable. With the proliferation of individuals who can enter order on terminals, it will become necessary to utilize computer assistance.

(1) directly or indirectly to buy or sell, or agree to buy or sell, in any contract of sale of such commodity for future delivery on or subject to the rules of a contract market or markets to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market in excess of any position limit fixed by the Commission for or with respect to such commodity; *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order. [As amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205, 96 Stat. 2294, 2299—2300; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.315.001.

§ 1043]

[Hedging Transactions Exception]

(c) No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions, as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this Act and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following the date of enactment of the Futures Trading Act of 1982. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975; Sec. 404, 88 Stat. 1413; as amended April 16, 1975, Sec. 4, P.L. 94-16, 89 Stat. 77; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205(4), 96 Stat. 2294, 2300. Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1974 amendment.—Prior to the 1974 amendment, Section 4a(3) read as follows:

(3) No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions. For the purposes of determining the bona fide hedging transactions or positions of any person under this paragraph (3), they shall mean sales of, or short positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such sales or short positions are offset in quantity by the ownership or purchase of the same cash commodity by the same person or, conversely, purchases of, or long positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such purchases or long positions are offset by sales of the same cash commodity by the same person. There shall be included in the amount of any commodity which may be hedged by any person—

(A) the amount of such commodity such person is raising, or in good faith intends or expects to

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12.385.001.

§ 1044]

[Applicability of Section 4e]

(c) This section shall apply to a person that is registered as a futures commission merchant, an introducing broker, or a floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof. [As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.375.001.

§ 1045]

[Speculative Limit Violations]

(c) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities traded on or subject to the rules of such contract market or such board of trade; *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission; *Provided*, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits. [As added by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205(6), 96 Stat. 2294, 2300; amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12.385.001.

§ 1051]

[FRAUDULENT TRANSACTIONS PROHIBITED]

Sec. 4b. (a) It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

- (i) to cheat or defraud or attempt to cheat or defraud such other person;
- (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;
- (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order thereof.

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market in excess of any position limit fixed by the Commission for or with respect to such commodity; *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order. (As amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205, 96 Stat. 2294, 2299—2300; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.)

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.315.001.

[§ 1043]

[Hedging Transactions Exception]

(c) No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions, as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this Act. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this Act and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following the date of enactment of the Futures Trading Act of 1982. (As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 404; 88 Stat. 1413; as amended April 16, 1975, Sec. 4, P.L. 94-16, 89 Stat. 77; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205(4), 96 Stat. 2294, 2300; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.)

.01 1974 amendment.—Prior to the 1974 amendment, Section 4a(3) read as follows:

(3) No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions. For the purposes of determining the bona fide hedging transactions or positions of any person under this paragraph (3), they shall mean sales of, or short positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such sales or short positions are offset in quantity by the ownership or purchase of the same cash commodity by the same person or, conversely, purchases of, or long positions in, any commodity for future delivery on or subject to the rules of any contract market made or held by such person to the extent that such purchases or long positions are offset by sales of the same cash commodity by the same person. There shall be included in the amount of any commodity which may be hedged by any person—

(A) the amount of such commodity such person is, or is to be, in good faith intends or expects to

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12.335.001.

[§ 1044]

[Applicability of Section 4a]

(c) This section shall apply to a person that is registered as a futures commission merchant, an introducing broker, or a floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof. (As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.)

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.375.001.

[§ 1045]

[Speculative Limit Violations]

(e) Nothing in this section shall prohibit or impair the adoption by any contract market or by any other board of trade licensed or designated by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market, or under options on such contracts or commodities traded on or subject to the rules of such contract market or such board of trade. *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 4c of this Act for any commodity option, then the limits fixed by the bylaws, rules, regulations, and resolutions adopted by such contract market or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this Act for any person to violate any bylaw, rule, regulation, or resolution of any contract market or other board of trade licensed or designated by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission. *Provided*, That the provisions of section 9(c) of this Act shall apply only to those who knowingly violate such limits. (As added by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 205(6), 96 Stat. 2294, 2300; amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(1) and (2), P.L. 102-546, 106 Stat. 3590, 3624.)

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12.385.001.

[§ 1051]

[FRAUDULENT TRANSACTIONS PROHIBITED]

Sec. 4b. (a) It shall be unlawful (1) for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any contract market, for or on behalf of any other person, or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof.—

(1) to cheat or defraud or attempt to cheat or defraud such other person;

(ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(iii) willfully to receive or attempt to receive such other person by any means whatsoever in regard to such order or contract or the disposition or execution of any such order

or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(iv) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

(b) Nothing in this section or any other section of this Act shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity (or future delivery in the same month, from executing such buying and selling orders at the market price. *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange. *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(c) Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 405, 88 Stat. 1413; and Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10, 1986, Sec. 101, 100 Stat. 3557; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(3), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1974 amendment.—The 1974 amendment substituted the words "a commodity" for the word "cotton" in the second paragraph of Section 4b and added the last proviso at the end of the section.

.02 1986 amendment.—For historical comment on amendments made by Futures Trading Act of 1986, see § 12,645.001.

.03 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12,645.001 and 12,675.001.

§ 1061] WASH SALES, OPTION TRANSACTIONS AND SIMILAR TRANSACTIONS PROHIBITED

Sec. 4c. (a) It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale; or

(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission. [Sec. 4c(a) as amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Secs. 103, 492, 88 Stat. 1392, 1412; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 3(1), 92 Stat. 865, 867; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 206(1), 96 Stat. 2294, 2301.]

.01 1974 amendment.—The 1974 amendment added the designation "(a)" in the first paragraph;

(2) Amended subsection (b) which prior to the 1974 amendment read as follows:

(B) if such transaction is of the character of, or is commonly known to the trade as, a "privilege", "indemnity", "bid", "offer", "put", "call", "advanced guaranty", or "decline guaranty", or words substituted the word "Commission" for the words "Secretary of Agriculture" and

(4) Deleted from the end of the second paragraph the following sentence:

§ 1062] Options Trading

(b) No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advanced guaranty", or "decline guaranty", or "contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 402(c), 88 Stat. 1412; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 3(2), 92 Stat. 865, 867; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 206(2), 96 Stat. 2294, 2301.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see § 12,825.001.

§ 1063] Options Bon

(c) Not later than 90 days after the date of the enactment of the Futures Trading Act of 1986, the Commission shall issue regulations—

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe. [As added by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 3(3), 92 Stat. 865, 867; as amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 206(3), 96 Stat. 2294, 2301; Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10, 1986, Sec. 102, 100 Stat. 3557.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12,830.001.

§ 1064] Dealer Option Exemption

(d) Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

Nothing in this section or section 4d shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see § 12,800.001.

.03 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12,750.001.

[11242] [Court Review of Commission Orders]

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 5 of this Act or that such board of trade, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the board of trade is filed and conclusive, unless within fifteen days after such suspension or revocation by the Commission such board of trade appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 13(2), 92 Stat. 865, 871; Act of Nov. 8, 1984, Fed. Dist. Ct. Org. Act of 1984, Sec. 402, Pub. Law 98-620, 98 Stat. 3357; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 209(a), 402(1), and 402(9), P.L. 102-546, 106 Stat. 3590, 3606, 3624-3625.]

.01 1974 amendment.—The 1974 amendment deleted from the first sentence of subsection (a) of Sec. 6 the words "the Secretary of Agriculture or" which preceded the words "the Commission thereunder," and deleted from the third sentence the words "the Secretary of Agriculture, who shall thereupon notify the other members of" which preceded the words "the Commission".

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see § 10,825.001.

.03 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 6615.001, 6665.001, and 10,825.001.

[11243] [Proceedings before the Commission—Civil Penalty—Court Review]

(c) If the Commission has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Commission and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be suspended or annulled. Said hearing may be held in Washington, District of Columbia, or elsewhere before the Commission or before an Administrative Law Judge designated by

(B) For purposes of subparagraph (A)(i)(D) the Commission shall find that the volume of trading at an exchange is relatively small. If, among other things, the Commission determines that the average daily trading volume for each contract market for which the board of trade is designated is less than the threshold trading level established for the contract market under section 4(a)(4).

(6) Any rule or order adopted by the Commission under paragraphs (4) and (5) shall become effective thirty legislative days or ninety calendar days, whichever is later, after submission of such rule or order to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. For purposes of this paragraph, the term "legislative day" means any day on which either House of Congress is in session. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 201(a), P.L. 102-546, 106 Stat. 3590, 3595-3597.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 6535.001 and 8950.001.

[11231] [AUTHORITY TO SUSPEND OR REVOKE CONTRACT MARKET DESIGNATION]

Sec. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules, regulations, or orders of the Commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in section 6(b) of this Act. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 209(b)(3), P.L. 102-546, 106 Stat. 3590, 3607.]

.01 1974 amendment.—The 1974 amendment deleted the words "the Secretary of Agriculture or" which had preceded the words "the Commission".

[11241] [APPLICATION FOR DESIGNATION—HEARING]

Sec. 6. (a) Any board of trade desiring to be designated a "contract market" shall make application to the Commission for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements. The Commission shall approve or deny an application for designation as a contract market within one year of the filing of the application. If the Commission notifies the board of trade that its application is materially incomplete and specifies the deficiencies in the application, the running of the one-year period shall be stayed from the time of such notification until the application is resubmitted in completed form. *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate as a "contract market" any board of trade that has made application therefor, such board of trade shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 13(1), 92 Stat. 865, 871; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 218, 96 Stat. 2294, 2308; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 209(a), P.L. 102-546, 106 Stat. 3590, 3606.]

.01 1974 amendment.—The 1974 amendment substituted the word "Commission" for the words "Secretary of Agriculture".

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1982, see § 6575.001.

.04 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 6525.001.

.01 1974 amendment.—Prior to the 1974 amendment, Sec. 6(a) read as follows:

(b) If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or has willfully made any false or misleading statement of a material fact in any registration application on any report filed with the Secretary of Agriculture under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Secretary of Agriculture or the Commission thereunder, he may serve upon such person a complaint stating his charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any contract market, and directing that all contract markets refuse all trading privileges to such person, until further notice of the Secretary of Agriculture, and to show cause why the registration of such person, if registered as futures commission merchant, or as floor broker hereunder, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Secretary of Agriculture or before a referee designated by the Secretary of Agriculture, which referee shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture. For the purpose of securing effective enforcement of the provisions of this Act, and for the purpose of any investigation or proceedings under this Act, the provisions, including penalties, of the Interstate Commerce Act, as amended and supplemented (49 U.S.C. 12), relating to the attendance and testimony of witnesses and the production of documentary evidence, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture (or any person designated by him),

§ 1244]

[Cease and Desist Orders—Fines]

(d) If any person (other than a contract market) manipulates or attempts to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmation of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to

the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in the fifth sentence of this subsection) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing. A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission, or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Commission, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner's principal place of business listed on petitioner's application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person, praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. (As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Secs. 103, 204(b), 205(b), 212, 408, 88 Stat. 1392, 1397, 1400, 1403, 1414, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 13(3), 92 Stat. 865, 871; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 219, 96 Stat. 2294, 2308; and Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10, 1986, Sec. 103; 100 Stat. 3557; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 209(a), 212(b), 771 701 402(1) 402(6) 402(7), and 402(9), P.L. 102-546, 106 Stat. 3590, 3606, 3609, 3617,

the Commission, and any referee designated pursuant to the provisions of this Act, and to any person subject thereto. Upon evidence received, the Secretary of Agriculture may prohibit such person from trading on or subject to the rules of any contract market and require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant, or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Secretary of Agriculture, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business a written petition, praying that the order of the Secretary of Agriculture be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28, United States Code. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture, as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see § 10,170.001.

.03 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 10,170.001.

.04 1986 amendment.—For historical comment on amendments made by the Futures Trading Act of 1986, see § 10,170.001.

.05 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 7955.001 and 10,170.001.

of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph 9(a) or 9(b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense. (As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Secs. 103, 212(c), 88 Stat. 1404; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 209(a) and 212(b), P.L. 102-546, 106 Stat. 3590, 3606, 3609.)

.01 1974 amendment.—The 1974 amendment deleted the words "the Secretary of Agriculture, or" which preceded the words "the Commission" the first time they appear in subsection (c), substituted the word "Commission" the second time it appears in subsection (c) for the word "Secretary", and substituted the words "not more than \$100,000" for the words "not less than \$500 nor more than \$10,000".

.02 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 10,175,001, 10,195,001, and 10,205,001.

[¶ 1245] [Amount of Money Penalty]

(e)(1) In determining the amount of the money penalty assessed under subsection (c), the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under subsection (c) shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by subsection (c) has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

- (A) such person shall be prohibited automatically from trading on all contract markets; and
- (B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under subsection (c) takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

- (A) such person shall be prohibited automatically from trading on all contract markets; and
- (B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmation of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. (As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 212(a)(3), 88 Stat. 1403; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 209 (a), P.L. 102-546, 106 Stat. 3590, 3606.)

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1990, see ¶ 11,365,001.

[¶ 1246] [Telemarketing Rules]

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially

persons' business as a futures commission merchant, floor broker, or floor advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it. (As added by Act of August 16, 1994 (Telemarketing and Consumer Fraud and Abuse Prevention Act), effective August 16, 1994, Sec. 3(e), P.L. 103-297, 108 Stat. 1545.)

.01 1994 amendment.—For historical comment on amendments made by the Telemarketing and Consumer Fraud and Abuse Prevention Act, see ¶ 11,370,001.

[¶ 1251] [CONTRACT MARKET MEMBERSHIP—CASH COMMODITY BUSINESS]

Sec. 6a. (a) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the Commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided*, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such Commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said Commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 6(b) of this Act, but such order shall not be stayed by the court pending review. (As amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 209(b)(4) and 402(8), P.L. 102-546, 106 Stat. 3590, 3607, 3625.)

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 6625,001.

[¶ 1252] [Compensation by Cooperative Association]

(b) No rule of any board of trade designated as a contract market shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or

1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 226, 96 Stat. 2294, 2316.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 5499.001.

[§ 1338] [Commission Oversight, Deficiency Orders]

Sec. 8e. (a) ASSESSMENTS.—At least once every two years, to the extent practicable, the Commission shall assess whether the trade monitoring system of each contract market satisfies section 5a(b).

(b) DEFICIENCY ORDERS.—

(1) CAUSES.—The Commission may issue a proposed deficiency order in accordance with paragraph (2), or take such other administrative or enforcement action as the Commission determines is appropriate, if, based on its assessment or on other information, the Commission at any time has reason to believe that a contract market's trade monitoring system implemented pursuant to section 5a(b) does not satisfy one or more of the requirements of such section.

(2) CONTENTS.—A proposed deficiency order issued under this subsection shall specify—

(A) the deficiencies the Commission has reason to believe exist in the trade monitoring system of the contract market and a statement of reasons supporting the Commission's belief that these deficiencies exist;

(B) the corrective action that the Commission believes that the contract market must take and an acceptable timetable for such corrective action; and

(C) a date, not less than twenty days from the date of issuance of the proposed deficiency order, when such deficiency order will become final, subject to subsection (d).

(3) REMEDIES.—On becoming final, the Commission deficiency order may—

(A) require the contract market to—

(i) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies noted therein;

(ii) satisfy stated objective performance criteria to correct such deficiencies;

(iii) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources; or

(B) revoke any exemption of the contract market from the regulations prohibiting the privilege of dual trading under section 4(a), if the deficiency noted in such deficiency order relates to—

(i) the audit trail system the contract market is required to maintain under paragraphs (2), (3), or (4) of section 5a(b); or

(ii) the prevention, detection, or disciplining of violations attributable to such trading at such contract market, subject to the standards, exceptions, and duration provisions of section 4(a); or

(C) take any combination of the actions described in subparagraphs (A) and (B).

(4) REMOVAL.—If the Commission finds, after notice and opportunity for a hearing on the record prior to such deficiency order becoming final, that a named officer, director, committee member, or employee of such contract market has willfully—

(A) violated this Act, the rules or regulations of the Commission thereunder, or the rules of such contract market;

(B) abused the authority of such person; or

(C) without reasonable justification or excuse, failed to enforce compliance with any provision of the rules of such contract market by any member or person associated with a member thereof,

the Commission may issue a deficiency order under this section to remove such officer, director, committee member, or employee.

(5) DESIGNATION AS CONTRACT MARKET.—Notwithstanding section 6, during the period that a proposed or final deficiency order under this section is in effect, the Commission may refrain from approving any application for designation as a contract market made by the board of trade whose contract market is the subject of such deficiency order.

(6) DELEGATION.—The Commission shall not delegate the authority to issue deficiency orders under this subsection.

(c) RESCISSION, MODIFICATION, OR DELAY OF DEFICIENCY ORDERS.—Before any proposed deficiency order issued by the Commission under subsection (b) may become final, the Commission shall—

(1) provide the affected contract market with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the contract market, through an oral presentation of views and comments to the Commission, in order to petition the Commission to rescind, modify, or delay such deficiency order; and

(2) rule on such petition, not less than twenty days before the deficiency order takes effect, making findings, as appropriate, as to whether—

(A) the deficiencies cited by the Commission have been corrected or are being corrected under an expeditious timetable acceptable to the Commission;

(B) the trade monitoring system of the contract market is deficient as noted in the deficiency order; or

(C) the timetable for corrective action by the contract market in the proposed deficiency order, and the particular corrective action proposed, is appropriate in light of the deficiencies noted and the purposes of this Act.

(d) PENALTIES.—Violation of a final deficiency order issued under subsection (c) shall be considered a violation of an order of the Commission for purposes of—

(1) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 6b or 6c; or

(2) initiating proceedings under section 5b or 6(a).

(e) JUDICIAL REVIEW.—

(1) PERSONS.—Any person, other than a contract market, aggrieved by a deficiency order issued under subsection (b)(4), may obtain review of such deficiency order when issued by the Commission under the terms and conditions in section 6(b).

(2) CONTRACT MARKETS.—Any contract market that has petitioned the Commission to rescind, modify, or delay any proposed deficiency order issued under subsection (b) may obtain judicial review of any final such deficiency order only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5, United States Code. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 202, P.L. 102-546, 106 Stat. 3590, 3598-3600.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 5300.001.

[§ 1341]

[CRIMINAL PENALTIES]

[Felony Violations]

Sec. 9. (a) It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this Act, or any employee or agent thereof, to employ, use, or convert to his or her own use, or to the use of another, any money, securities, or property having a value

in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireline, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 4, section 4b, subsections (a) through (c) of subsection 4c, section 4h, section 4e(1) or section 19.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder or any undertaking contained in a registration statement required under this Act, or by any contract market or registered futures association in connection with an application for membership, or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a contract market, board of trade, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

(5) Any person willfully to violate any other provision of this Act, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 212(d)(1), 88 Stat. 1404; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 19(1), 92 Stat. 865, 875; Act of January 11, 1983 (Futures Trading Act of 1983), effective January 11, 1983, Sec. 227(1), 96 Stat. 2294, 2316; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 212(a)(1)(A) and 212(a)(1)(C), P.L. 102-546, 106 Stat. 3590, 3608-3609.]

.01 1974 amendment.—The 1974 amendment substituted "\$100,000" for "\$10,000".

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,605.001.

.04 1992 amendments.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 10,310.001 and 10,605.001.

[¶ 1342]

[Sanctions]

(b) Any person convicted of a felony under this section shall be suspended from registration under this Act and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such suspension, denial and market

bar and for good cause shown reduce the period thereof. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 212(d)(2), 88 Stat. 1404; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 19(2), 92 Stat. 865, 875; Act of January 11, 1983 (Futures Trading Act of 1983), effective January 11, 1983, Sec. 227(2), 96 Stat. 2294, 2316—2317; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 212(a)(1)(A) and 212(a)(1)(C), P.L. 102-546, 106 Stat. 3590, 3608-3609.]

.01 1974 amendment.—The 1974 amendment substituted "\$100,000" for "\$10,000".

.02 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,310.001.

[¶ 1344]

[Insider Trading]

(c) It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 401, 88 Stat. 1412; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 19(4), 92 Stat. 865, 875; Act of January 11, 1983 (Futures Trading Act of 1983), effective January 11, 1983, Sec. 227(4), 96 Stat. 2294, 2317—2318; Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10, 1986, Sec. 106, 100 Stat. 3558, 3561; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 212(a)(1)(B) and 212(a)(2), P.L. 102-546, 106 Stat. 3590, 3608-3609.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,350.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 10,350.001.

[¶ 1345]

[Insider Information]

(d) It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", in any transaction for the delivery of any commodity under a

standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 401, 88 Stat. 1412; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 19(5), 92 Stat. 865, 875; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 22(5), 96 Stat. 2294, 2318; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 212(a)(1)(B) and 212(a)(3), P.L. 102-546, 106 Stat. 3590, 3608-3609.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,370.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 10,370.001.

¶ 1346

[Prohibition Against Insider Trading]

(C) It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, contract market, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, contract market, or registered futures association. Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 214(a), P.L. 102-546, 106 Stat. 3590, 3610-3611.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 10,390.001.

¶ 1351

[VALIDITY OF ACT]

Sec. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby.

¶ 1361

Reserved.

Sec. 11. (Repeated)

[As repealed by Act of November 10, 1986 (Futures Trading Act of 1986), effective November 10, 1986, Sec. 10, 100 Stat. 3561.]

¶ 1371

[OPERATIONS OF COMMISSION]

[Cooperation with Other Agencies]

Sec. 12. (a) The Commission may cooperate with any department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

[Authority to Employ Personnel]

(b) (1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5 of the United States Code, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5 of the United States Code.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this Act, including, but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5, United States Code) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on the date of enactment of this sentence.

[Expenses]

(c) All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

[Appropriations]

(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through 2000.

[Off-Exchange and State Jurisdiction]

(e) Nothing in this Act shall supersede or preempt—

(1) criminal prosecution under any Federal criminal statute;

(2) the application of any Federal or State statute, including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest (A) that is not conducted on or subject to the rules of a contract market, or, in the case of any State or local law that prohibits or regulates gaming or the operation of "bucket shops" (other than antiraid provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 4 of this Act, or (B) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions, or (C) that is not subject to regulation by the Commission under section 4e or 19 of this Act; or

(3) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation.

The Commission may refer any transaction or matter subject to such other Federal or State statutes to any department or agency administering such statutes for such investigation, action, or proceedings as that department or agency shall deem appropriate.

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity subject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least \$5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below \$5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this Act prior to enactment of the Commodity Futures Trading Commission Act of 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest. *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest. [As added by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 3(3), 92 Stat. 865, 867-869; as amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 206(4), 96 Stat. 2294, 2301; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(4), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see § 12.835.001.

.02 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.835.001.

11 1000] [Authority to Ban Dealer Options]

(c) The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest. [As added by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 3(3), 92 Stat. 865, 869.]

[11 1066] [Currencies Traded on Securities Exchanges]

(i) Nothing in this Act shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange. [As added by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 102, 96 Stat. 2294, 2296.]

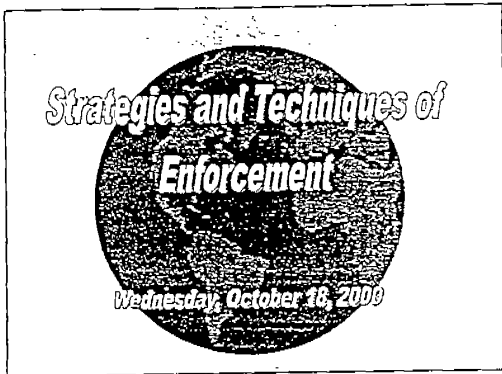
[11 1067] [Oral Orders]

(g) The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market placed by a member of the contract market who is present on the floor at the time such order is placed. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 203, P.L. 102-546, 106 Stat. 3590, 3600.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see § 12.850.001.

[The next page is 1575.]

附 錄 四



Commission Inspection Powers and Record Keeping Provisions

- Section 4g(a)
- Section 4g(b)
- Section 4g(c)
- Section 4g(d)
- Section 4n(3)(A)

**ENFORCEMENT PANEL
INTERNATIONAL
REGULATORS SEMINAR
OCTOBER 18, 2000**

Commission Inspection Powers and Record Keeping Provisions

- Regulation 1.31(a)
- Regulations 1.31(b) & 1.31(d)
- Regulation 4.23
- Regulation 4.7(a)(2)(iv)
- Regulation 4.33
- Regulation 4.7(b)(2)(ii)

**INVESTIGATIVE
TECHNIQUES
USED BY THE CFTC
DIVISION OF
ENFORCEMENT**

Gather Documents and Information Informally

- **Materials Available Using Inspection Powers**
 - New Account Papers
 - Daily and Monthly Account Statements
 - Floor Orders, Office Orders, Trading Cards, and Brokerage Cards
 - Listing of Cleared Trades and Out Trades

Gather Documents and Information Informally

- *Materials Available Using Inspection Powers*
 - Delivery Records
 - Promotional Materials
 - Correspondence
 - Employment, Payroll, Commission Payment Records

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - Reportable Trader Information
 - Reports Identifying Reportable Traders
 - Reports Filed by Reportable Traders
 - Positions of Reportable Traders

Gather Documents and Information Informally

- *Materials Available Using Inspection Powers*
 - Bank Records for Debits and Credits to Commodity Accounts
 - Bank Account Records
 - Time and Sales or Time and Price Records

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - NFA's Data Bases and Information
 - MRRS
 - FACTS
 - BASIC

Gather Documents and Information Informally

- *Materials Available Using Inspection Powers*
 - Exchange and NFA Audit, Investigative, and Disciplinary Files
 - Complaints Filed with Exchanges and NFA
 - Compliance Manuals, written internal procedures, and policies

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - Print outs from the Exchange Data Base System
 - Cleared trades sorted as requested
 - Limited trading statistics
 - Time and Sales Information

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - Audit files including work papers, reports, and correspondence
 - Trader profiles and pit profiles maintained by T&M staff

Gather Documents and Information Informally

- *Request Materials From Other State and Federal Agencies*
 - Securities and Exchange Commission
 - Federal Trade Commission
 - U.S. Postal Inspection Service
 - U.S. Department of Agriculture

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - Data base printouts
 - Clearing firm numbers
 - Trader acronyms and numbers
 - Broker Association Members
 - Reparations complaints and associated filings

Gather Documents and Information Informally

- *Request Materials From Other State and Federal Agencies*
 - Federal Bureau of Investigation
 - State Securities Regulators
 - State Attorney Generals

Gather Documents and Information Informally

- *Materials Available Within the Commission*
 - Other Enforcement Actions
 - Other Investigative Files
 - Historical Price Information

Gather Documents and Information Informally

- *Outside Information Sources*
 - Internet
 - Telephone numbers and Reverse Look-Ups
 - E-Mail Addresses
 - Maps and directions
 - Regulatory Sites
 - Exchange and NFA Sites
 - Subject Sites

Gather Documents and Information Informally

- *Outside Information Sources*
 - ChoicePoint
 - Lexis
 - Consumer Sentinel
 - Compliance Data Center, Inc.

Analyze Documents

- *Review Promotional Material and Verbal Claims Made to Customers*
 - Identify claims
 - Determine Who Claims Made To
 - Determine Reliance
 - Test for Truth of Claims

Gather Documents and Information Informally

- *Informal Interviews*
 - Write up Reports of Interview
 - Prepare Declarations or Sworn Statements
- *Take Voluntary Sworn Testimony*

Analyze Documents

- *Review and Analyze Account Opening Documents*
 - Power of Attorney
 - Customer's Experience
 - Customer's Income and Assets
 - Customer's Name, Address and Telephone Number

Obtain a Formal Order of Investigation

- *To Obtain Additional Evidence*
- *Empowers Staff*
- *Subpoena Documents*
- *RFPA Bank Subpoenas*
- *Subpoena Testimony*

Analyze Documents

- *Review and Analyze Trading Account Statements*
 - Summarize Gains and Losses
 - Summarize Open Positions and Account Value
 - Summarize Commissions Charged

Analyze Documents

- *Review and Analyze Trading Account Statements*
 - Compute Commission to Equity Ratios
 - Compute Commission to Investment Ratios
 - Tally Trade Duration

Analyze Documents

- *Review Trading Records*
 - Identify Audit Trail Irregularities
 - Compile Statistics
 - Reconstruct Trade Sequence
 - Compare Trade Sequence to Price Changes

Analyze Documents

- *Review and Analyze Trading Account Statements*
 - Compare actual trades to agreed upon trading strategy
 - Compute Gains/Losses on Trades Initiated without Account Identification

Analyze Documents

- *Review Trading Records*
 - Determine if Trades Cleared as Recorded
 - Identify Suspect Trade Patterns
 - Compare Office and Floor Orders
 - Review Out-Trade Documentation

Analyze Documents

- *Review Bank Records*
 - Determine Source of Money
 - Determine Where the Money Went
 - Compute Receipts & Disbursements
 - Trace Money

Prepare Work Papers

- *Use Computer Software*
- *Organize and Sort Data*
- *Summarize Data*
- *Prepare Comparisons*
- *Search for Patterns*

Take Sworn Testimony

- *Compel Witnesses to Appear and Testify*
- *Witnesses Testify Under Oath*
- *Witnesses must Answer Each Question or Assert a Valid Privilege*

Firm X

- *Registered in US and Tradingland*
- *June 1998 joins Electronic Exchange*
- *Electronic Exchange is New Technology for Firm X*

Charlotte Ohlmiller
Beth Durbin

William Heitner



Beth Streit

Jackie Hamra

Vince McGonagle

New CFO

- *Not registered anywhere*
- *supervises all aspects of Tradingland office*
- *supervises retail solicitation (therefore should be registered - important for U.S. supervision charge)*

Jurisdictions

- U.S.
- Tradingland
- Computerburg

Customer Trading

- **Trader B**
 - Customer in Firm X's Tradingland office
 - Member of trading group (US Group)
 - Not registered in U.S.

Supervision - Regulation 166.3

- Commission Registrant (therefore applies to CFO)
- Must diligently supervise certain activity of its partners, officers, employees, agents (or persons occupying similar status or performing similar function)
- That activity
 - the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant
 - the handling of all other activities relating to its business as a Commission registrant

Document Request - Firm Y

- Account opening docs for 123
- Monthly and daily account statements
- Correspondence with Firm X

Unauthorized Trading by New CFO

- Potential Respondent for supervision claim - Firm X
- Duty to diligently supervise New CFO

Analysis

- Review cash journal, GL, and 123 acct statements to determine how New CFO accounted for transfers to Firm Y and trading gains and losses in account 123
- Review Firm X internal reports and correspondence to determine:
 - If New CFO was authorized to trade the account 123
 - If the Directors should have known that account 123 was open and New CFO was trading it.

Document Request - Firm X

- GL for all months account 123 traded
- Any documents used to prepare the financial statements
- Cash journals for all days cash wired to Firm Y
- Wire transfer notices
- Internal financial reports
- proprietary trading reports
- minutes of BOD meetings
- New CFO e-mails

Interviews

- Firm Y 123 account executive
 - To determine how account was reopened and how wires were handled
- Firm X Directors
 - How was New CFO supervised
 - What was done to close account 123
 - What financial statements did they review

Interviews (cont.)

- *Firm X accounting staff*
 - what were Firm X's internal accounting and wire transfer procedures
 - who directed wire transfers to Firm Y
- *New CFO*
 - Most likely would exercise 5th amendment right not to answer questions

Request to Electronic Exchange

- *Report listing all of Trader B's trades and execution times on selected days*
- *Report listing Give-up / Take-up times for Trader B's trades on the selected days*

Customer Trading Issues: Trader B

- *Potential Respondent – Firm X*
- *Duty to diligently supervise New CFO and other staff*
- *Policies / Procedures*

Analysis

- *Review daily statements to determine Trader B's position limits*
- *Analyze electronic exchange reports to calculate Trader B's position throughout each selected day*
- *Determine if Trader B breached his limits*
- *Analyze take-up / give-up reports to determine when Firm X should have known that Trader B breached limit*

Document Request - Firm X

- *All Trader B monthly and daily account statements*
- *All Trader B order tickets*
- *Account opening documents*

Analysis

- *Analyze Trader B's trading to identify days with high volume or P/L*

Request from Firm X

- *All documents used by New CFO to review trading on electronic exchange*
- *Internal memos and e-mail*
- *Employee personnel files*
- *Procedures manual maintained in Tradingland office*

Analysis

- *Review these documents to determine*
 - What were Firm's X procedures for monitoring trading on electronic exchange
 - If there were red flags that should have alerted New CFO to potential problems
 - If there were discussions among Firm X personnel related to B's trading

Interviews (cont.)

- *New CFO*
 - How was Tradingland office supervised
 - Describe training provided by Firm X
 - What did New CFO do to follow up on red flags
 - What were the risk management procedures in Tradingland office
 - What was his experience in supervising risk management
 - Contact with Trader B

Interviews

- *Tradingland Office personnel*
 - Procedures for monitoring electronic exchange traders
 - Problems with monitoring Trader B
 - How was the main office made aware of those problems
 - Communication of limits to Trader B

Interviews (cont.)

- *Firm X Directors*
 - What were Firm X risk management procedures
 - What training provided to New CFO and other staff
 - What were New CFO's responsibilities
 - What did they do to supervise New CFO
 - Discussion / knowledge of Trader B

Interviews (cont.)

- *Trader B*
 - What was he told about his trading limits (intra-day and overnight)
 - What was he told about use of an execution broker
 - What happened when he went over his limits

Coordinating The Investigation with Foreign Regulatory Counterparts

- *The Mission: Find out What Happened Assess Who Is At Fault*
- *MOU or Cooperative Arrangement*

The Benefits of Cooperation

- *Understand the Whole Picture*
- *Complete the Investigation More Quickly*
- *Signal a United Front to the Industry*
- *Take Advantage of Foreign Counterparts Expertise*
- *Most Efficient Use of Everyone's Resources*
 - Documents

DOCUMENTS SUBJECT TO INSPECTION

(b) Investigatory materials—(1) In general. Unless otherwise ordered by the Commission or the Administrative Law Judge, the Division of Enforcement shall make available for inspection and copying by the respondents, prior to the scheduled hearing date, any of the following documents that were obtained by the Division prior to the institution of proceedings in connection with the investigation that led to the complaint and notice of hearing:

(i) All documents that were produced pursuant to subpoena issued by the Division or otherwise obtained from persons not employed by the Commission together with each subject or witness in respect of relevant portions thereof, that resulted in the furnishing of such documents to the Division; and

(ii) All transcripts of investigative interviews and all exhibits in those interviews.

Challenges to Cross-border Investigations

- *Different Legal Theories*
- *Different Remedies*

DOCUMENTS THAT MAY BE WITHHELD

(2) Documents that may be withheld. The Division of Enforcement may withhold any document that would disclose:

(i) The identity of a confidential source;

(ii) Confidential investigatory techniques or procedures;

(iii) Separately, the market positions, business transactions, trade secrets or names of customers of any person other than the respondents, unless such information is relevant to the resolution of the proceeding;

(iv) Information that a person or entity would reasonably expect to be confidentially held by the Commission, or that the Commission or its agents or employees will determine to be confidential to the Commission or the proceeding; or

(v) Information obtained from a domestic or foreign governmental entity or from a foreign justice authority that either is not relevant to the resolution of the proceeding or was provided on condition that the information not be disclosed or that it will be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding.

Suggestions for Cross-border Investigations

- *Establish Contact Early*
- *Maintain Regular Contact Throughout*
- *Identify points of Common Interest and Areas of Divergence*
- *Consider What Assistance You Need and How You Can Benefit Each Other*
- *Consider Who is in the Best Position to Prosecute*

OTHER PRIVILEGES OR PROTECTIONS

(3) Nothing in paragraphs (b)(1) and (b)(2) of this section shall limit the ability of the Division of Enforcement to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law.

When the investigation by the Division of Enforcement that led to the pending proceeding encompasses transactions, conduct or persons other than those involved in the proceeding, the requirements of (b)(1)(i) of this section shall apply only to the particular transaction, conduct and persons involved in the proceeding.

PRIVILEGE LOG

(4) Index of withheld documents. When documents are made available for inspection and copying pursuant to paragraph (b)(1) of this section, the Division of Enforcement shall furnish the respondents with an index of all documents that are withheld pursuant to paragraph (b)(2) or (b)(3) of this section, except for any documents that are being withheld because they disclose information obtained from a domestic or foreign governmental entity or from a foreign foreign authority on condition that the information not be disclosed or that it only be disclosed by the Commission as a representative of the Commission as evidence in an enforcement or other proceeding, in which case the Division shall inform the other parties of the fact that such documents are being withheld at the time it furnishes its index under this paragraph, but no further disclosures regarding those documents shall be required. This index shall describe the nature of the withheld documents in a manner that, to the extent practicable without revealing any information that itself is protected or protected from disclosure by law or these rules, will enable the other parties to assess the applicability of the privilege or protection claimed.

Horizontal lines for notes or additional information.

RIGHT TO SILENT PROTECTIVE ORDER

(7) Request for confidential informant, protective orders. If a person has requested confidential treatment of information submitted by him or her, either pursuant to rules adopted by the Commission under the Freedom of Information Act (p. 125 of this set of rules) or under the Commission's Rules of Procedure, including those part of this Chapter, the Division of Enforcement shall notify him or her, in writing, that the information is to be disclosed to parties to the proceeding, and he or she may apply to the Administrative Law Judge for an order protecting the information from disclosure, consideration of which shall be governed by Sec. 10.65(e)(2).

Horizontal lines for notes or additional information.

MOTION FOR PROTECTIVE ORDER

Rule 10.65 (e) Motions to quash subpoenas, protective orders.
(2) Disposition. After due notice to the person upon whose request the subpoena was issued, and after opportunity for response by that person, the Administrative Law Judge may:

issue a protective order sought under any other section of these rules upon a showing of good cause. In considering whether good cause exists to issue a protective order, the Administrative Law Judge shall weigh the harm resulting from disclosure against the benefits of disclosure. Good cause shall only be established upon a showing that the person seeking the protective order will suffer a clearly defined and serious injury if the order is not issued, provided, however, that any such injury shall be balanced against the public's right to access to judicial records. No protective order shall be granted that will prevent the Division of Enforcement or any respondent from adequately prosecuting its case.

Horizontal lines for notes or additional information.

Prepared by:
Charlotte A. Ohlmler
& Richard W.Q. Fung

Updated by Fung 9/93

THE MECHANICS OF FUTURES TRADING AND
THE ACCOMPANYING DOCUMENTATION

- A. Opening a Commodity Trading Account.
1. Customer Signature Card.
 - a. Contains vital and basic information about the customer.
 - b. Required by Section 1.37 of the regulations.
 2. Customer Agreement.
 3. Authorization to Transfer Funds.
 4. Hedge Letter.
 5. Letter of Hypothecation.
 6. Power of Attorney.
 7. Corporate Resolutions.
 8. Partnership Agreement.
 9. Risk Disclosure Letter.
 - a. Not required prior to 10/1/78 but frequently found.
 - b. Required by new Section 1.55 of the regulations effective 10/1/78.
 10. Documents Required by Exchanges.
 - a. CME Statement of Understanding.
 - b. CME Statement of Requirements for Controlled Accounts.
 11. Deposit of Margin.
- B. Placing an Order with a Futures Commission Merchant which is an Exchange Clearing Member.
1. Preparation of an Office Order or Office Ticket is required by Section 1.35(a-1)(1) of the regulations.
 - a. Instructions must include the quantity and commodity to be bought or sold and price instructions.
 - b. The customer's account and/or order number.
 - c. Must be timestamped at the time the order is received.
 2. Types of Orders.
 - a. Price Order.
 - b. Market Order.
 - c. Stop Loss Order.
 3. If the order is called directly to the floor, the office order becomes the floor order.
 4. If the order is not called directly to the floor, it must be transmitted to the trading floor.
 - a. Via telephone.
 - b. Via teletype.
 - c. Via messenger.
 5. Preparation of a floor order if the order is transmitted to the trading floor via telephone or teletype is required by Section 1.35(a-1)(2) of the regulations.
 - a. Handwritten.
 - b. Teletype.
- C. Execution of the Order.
1. Runner carries order to a floor broker in the trading ring or pit; or to broker's assistant (NOTE: broker groups).
 2. Floor broker executes the order by open outcry.
 3. Floor broker reports any price change to pit or exchange price reporter.
 4. Floor broker endorses the order and places information required by Section 1.35(d) of the regulations on the order.

- a. Floor broker's name, number or symbol.
- b. Opposite trader and house.
- c. Quantity executed and price.
5. Addendum - New Timing Requirements.
6. Floor broker drops order onto the floor outside the pit or hands to broker's assistant or runner.
7. Runner retrieves and carries back to the order desk.
8. Report of execution is made to office or customer and the order is timestamped to satisfy Section 1.35(a)(4) of the regulations.
9. Internal reports of execution.
10. Addendum - Flashing of Orders (See Memo to Commission).

Clearing an Executed Order.

1. For each trade executed, all details of the trade are entered on computer tapes or directly into clearing house system.
2. Tapes are submitted to the clearing house.
3. The computer matches purchases and sales by commodity, quantity, price, clearing firm, and opposite clearing firm.
4. All trades submitted by each firm which can't be matched by the computer to its opposite side are listed on a printout by firm. First matched trade listing can be printed now.
5. Each clearing firm obtains its unmatched trade printout in late afternoon and is responsible for checking the accuracy of the trade details and for resolving discrepancies with the opposite clearing firms.
6. After corrections are forwarded to the clearing house, the computer again matches trades. Second matched trade listing can be printed now.
NOTE: CME has implemented a four-way match clearing system.
7. The trade register is printed.
 - a. Shows all details of all trades executed that day by clearing firm.
 - aa. Commodity.
 - ab. Quantity bought or sold.
 - ac. Price.
 - ad. Settlement Price and Settlement Cost.
 - ae. Broker or Trader.
 - af. Opposite Trader or Broker.
 - ag. Opposite Clearing Firm.
 - ah. Card Number.
 - ai. Account or Order Number.
 - aj. Customer Type Indicator as required by Section 1.35(a) of the regulations.
 - ak. Time and sequence information required after June 13, 1977.
8. Other printouts using some or all of the same input.
 - a. Matched trade listing.
 - b. Broker run.
 - c. Recap.
 - d. Bought/Sold Report.
 - e. Open Commitments.
 - f. Margin Report.
9. Holdout Trades -- Trades left unmatched after printout of the trade register are returned to the firms for further study.
 - a. If details are subsequently agreed upon, the trade will be cleared with later days business but must be so marked, e.g., 991=one day late, 992=two days late. etc.
 - b. If details cannot be agreed upon, trade is "busted" and new trade must be executed. Price differences and other resulting disputes may be settled through procedures explained in exchange rules.

E. Accounting and Notification Supplied to Customer.

1. The information sent to the clearing is duplicated and sent to an accounting service.
2. The service adds to previously submitted and stored information and prints account statements.
 - a. Confirmation Statement.
 - b. Purchase and Sale Statement.
 - c. Open Trades Statement.
 - d. Monthly Activity Statement.
 - e. Margin Call.

F. Other Records Maintained by FCM.

1. Customer Equity and Margin Status Report.
2. Financial Ledger.
3. Trade Blotter.
4. Floor broker brokerage due.
5. Correspondence with customer.
6. Cancelled checks, bank statements, checkbooks or check stubs.
7. Several other types of computer printouts.

Placing an Order with a Non-Clearing Member FCM.

1. Omnibus Accounts.
2. Need for additional office ticket.
3. Difficulty in matching clearing firm's floor order with FCM's original order.
4. In most cases, FCM receives usual statement from clearing firm, but it lists all trades done for all customers with no breakdown by customer.
5. Trades confirmed to individual customers as above.

H. Floor Trader Trading for His Own Account.

1. Executes trade for himself.
2. Preparation of trading card containing trade details, as required by Section 1.35(d) of the regulations.
3. Until June 13, 1977, no timing information required. Now some type is required for exchange implementation of Section 1.35, but most current forms are handwritten. Addendum - New Timing Requirements.
4. Throughout day or after close, the trader turns his cards into his clearing firm.
5. His trades are handled as other customers' trades and, in most cases, his clearing firm confirms his trades in the same manner as other customers' trades.
6. A few sole-owner clearing members have no statements prepared and rely on their trade register.

I. Making and Taking Delivery.

1. Making Delivery.
 - a. Seller must already own or purchase cash commodity which meets exchange contract requirements as to grade, quality, quantity, method of accumulation, method of processing, storage in approved facility, etc.
 - b. If seller doesn't own the cash commodity, he can have his clearing firm arranged the purchase and bank loan, etc.
 - aa. Loan and purchase will be shown on P&S.
 - ab. A cash purchase confirmation will be in customer's file.
 - c. At specified time, the seller's clearing firm tenders Delivery Notice and other required papers to the clearing house.
 - d. The seller's firm is paid for the commodity (applicable settlement price x exact quantity of commodity + or - premiums or discounts due to allowable grade, quality, etc., variations).

- e. Seller's clearing firm turns over any remaining required documents.
 - f. Seller's clearing firm's trade register shows entry of delivery or short closed at applicable settlement price.
 - g. Seller's P&S shows credit for payment, short position offset by purchase at applicable settlement price. May also show storage, insurance, interest charge.
2. Taking Delivery.
- a. Delivery is assigned to clearing member with oldest long by tender of delivery notice.
 - b. Clearing member assigns to customer with oldest long.
 - c. If buyer has insufficient funds, buyer's clearing firm borrows money to pay for commodity (P&S will show loan as credit).
 - d. Buyer's clearing firm pays Seller's clearing firm or clearing house.
 - e. Buyer's firm obtains warehouse receipt, inspection certificate, etc., from seller's firm or clearing house.
 - f. Buyer's clearing firm's trade register shows entry received delivery or long closed at applicable settlement price.
 - g. Buyer's P&S shows payment for commodity and long position offset by "sale" at applicable settlement price, and possibly storage interest or insurance charge.

J. Other Records Prepared and Maintained by Exchanges.

- 1. Time and Sales Quotations.
 - a. Manual.
 - aa. Pit slips.
 - ab. Time and Price Journals.
 - b. Electronic.
 - aa. Over ticker.
 - ab. Printout at day's end or at anytime.
- 2. Daily trading volume by commodity and future.
- 3. Daily open interest by commodity and future.
- 4. Daily opening, high, low, closing, and settlement prices.
- 5. Broker code listings.
 - a. Alphabetical listing.
 - b. Numerical listing.
 - c. Initial code listing.
- 6. Clearing firm code listing.
- 7. Statistical annuals.
- 8. Other information of interest to traders.
- 9. Membership applications.
- 10. Audit and Investigation files.
- 11. Arbitration files.
- 12. Files relating to disciplinary proceedings.
- 13. CME Broker Group listing.

S] y general of any State, the ther official as a State may e been, are being, or may be n a contract market, clearing- or is about to engage in, any Act or any rule, regulation, or in equity or an action at law e compliance with this Act, or o obtain damages on behalf of ourt may deem appropriate.

ates courts of any territory, ict of Columbia, shall have er this section to enforce any r order of the Commission hereto. Upon proper applica- andamus, or orders affording isions of this Act or any rule, g the requirement that the r of violation of this Act or of a permanent or temporary

the shall serve written sion with a copy of its come in the suit or action and. B) file petitions for appeal.

ct court of the United States is an inhabitant or transacts is about to occur, and process fendant is an inhabitant or

section, nothing in this Act ate securities laws, or other rred on them by the laws of ffirmations or to compel the er evidence.

e of the United States, the territory or possession of the

thorized State official from any general civil or criminal

official from proceeding in a r than a floor broker, floor of an antifraud provision of t to Act.

ice of its intent to proceed subsection and shall furnish upon instituting any such in the proceeding and, upon e a petition for appeal. The district court of the United oval otherwise provided by ty days after service of the all have the right to appear ptember 30, 1978 (Futures .865, 872-873; as amended

©1999, CCH INCORPORATED

by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 221, 96 Stat. 2294, 2308—2309; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 207(b)(1) and 207(b)(2), P.L. 102-546, 106 Stat. 3590, 3604.]

.01 1983 amendment.—For historical com- ing Practices Act of 1992, see ¶ 11,640.001 and ment on amendments made by the Futures Trad- 11,672.001. ing Act of 1982, see ¶ 11,672.001.

.02 1992 amendment.—For historical com- ment on amendments made by the Futures Trad-

[¶ 1281] [VACATION OF CONTRACT MARKET DESIGNATION]

Sec. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Commission requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Commission in the manner herein provided for an original application. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 103, 88 Stat. 1392.]

.01 1974 amendment.—The 1974 amendment "Secretary of Agriculture" and changed in the substituted the word "Commission" for the words related grammatical reference of "its" for "his".

[¶ 1291] [INVESTIGATIONS OF OPERATIONS OF BOARDS OF TRADE]

Sec. 8. (a)(1) For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this Act, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this Act; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding commenced involving a receiver appointed in a judicial proceeding by the United States or the Commission, or in any proceeding under title 11 of the United States Code in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

Commodity Futures Law Reports

Sec. 8 ¶ 1291

Strategies and Techniques of Enforcement
Wed. Oct. 18, 2000

tion or any other provision determines necessary, to al agencies in the conduct agencies. The Commission such undercover operations ding Practices Act of 1992, - authority for the Commis- be necessary.

of Trade]

ation that would separately or names of customers of gressional proceeding, in an ny receivership proceeding under this Act, or in any or in which the Commission States Code. This subsection by the Commission from a

deems necessary, or such w, relative to the conduct of ty of violating the provisions n thereunder in proceedings on. Commission may set fered in subsection (b) of closed publicly in connection al proceeding brought under

on with existing governmen- commodities and commodity ese commodities, cost to the also compile and furnish to special reports, or by such ng the commodity markets. conditions in this and other

such information has previ- f this section, the names and ity markets with respect ion in the possession of the or sold by each such trader. acting within the scope of its e names and addresses of all mission has information, and ating to the amount of any quest of any department or e scope of its jurisdiction, the n of this Act. However, any tment or agency shall not be proceeding under the laws of States is a party. Upon the al subdivision thereof, acting rity, or any department or reof, acting within the scope itures authority, department obtained in connection with ny department or agency of y such department or agency

©1999, CCH INCORPORATED

except in connection with an adjudicatory action or proceeding brought under this Act or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority, is a party.

[Subpoena Information]

(f) The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice.

This subsection shall not apply to congressional subpoenas or congressional requests for information.

[Disclosure to Federal and State Agencies]

(g) The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

[Report to Congress on Commission Operations]

(h) The Commission shall submit to Congress a written report within one hundred and twenty days after the end of each fiscal year detailing the operations of the Commission during such fiscal year. The Commission shall include in such report such information, data, and legislative recommendations as it deems advisable with respect to the administration of this Act and its powers and functions under this Act.

[Reviews and Audits of Commission]

(i) The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organizations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction. [Sec. 8, as amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Secs. 103, 105, 88 Stat. 1392; Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 16, 92 Stat. 865, 873-874; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 222, 96 Stat. 2294, 2309—2310; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 205, 304, 305, and 402(7), P.L. 102-546, 106 Stat. 3590, 3600-3601, 3623-3624.]

.01 1974 amendment.—The 1974 amendment substituted the word "Commission" for either "Secretary of Agriculture", "Secretary", or "Department of Agriculture", changed related gram-

matical references, and added the last two paragraphs to Sec. 8.

.02 1978 amendment.—For historical comment on amendments made by the Futures Trad-

Commodity Futures Law Reports

Sec. 8 ¶ 1291

Strategies and Techniques of Enforcement
Wed. Oct. 18, 2000

1. 21, 1976, 41 F.R. 3191
 re Feb. 20, 1976; Nov. 3, 1981,
 1,263), effective Dec. 3, 1981.]

RECORD KEEPING

[§ 2159]

§ 1.31 Books and records; keeping and inspection.

(a) (1) All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

(2) A copy of any book or record required to be kept by the Act or by these regulations shall be provided, at the expense of the person required to keep the book or record, to a Commission representative upon the representative's request. Instead of furnishing a copy, such person may provide the original book or record for reproduction, which the representative may temporarily remove from such person's premises for this purpose. All copies or originals shall be provided promptly. Upon request, the Commission representative shall issue a receipt provided by such person for any copy or original book or record received. At the request of the Commission representative, such person shall, upon the return thereof, issue a receipt for any copy or original book or record returned by the representative.

(b) Except as provided in paragraph (d) of this section, immediate reproductions on either "micrographic media" (as defined in paragraph (b)(1)(i) of this section) or "electronic storage media" (as defined in paragraph (b)(1)(ii) of this section) may be kept in that form for the required time period under the conditions set forth in this paragraph (b).

(1) For purposes of this section:

(i) The term "micrographic media" means microfilm or microfiche or any similar medium.

(ii) The term "electronic storage media" means any digital storage medium or system that:

(A) Preserves the records exclusively in a non-rewritable, non-erasable format;

(B) Verifies automatically the quality and accuracy of the storage media recording process;

(C) Serializes the original and, if applicable, duplicate units of storage media and creates a time-date record for the required period of retention for the information placed on such electronic storage media; and

(D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph

upon the request of representatives of the Commission or the Department of Justice.

(2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:

(i) Have available at all times, for examination by representatives of the Commission or the Department of Justice, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;

(ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission or Department of Justice may request;

(iii) Keep only Commission-required records on the individual medium employed (e.g., a disk or sheets of microfiche);

(iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and

(v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:

(A) The location of any particular record stored on the media may be immediately ascertained;

(B) The index is available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(C) A duplicate of the index is stored at a location separate from the original index; and

(D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.

(3) In addition to the foregoing conditions, persons using electronic storage media must:

(i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved machine-readable media as defined in § 15.00(1) of this chapter which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an "audit system") designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

[The next page is 2171-3.]

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records ("Electronic Recordkeeper") shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant ("Technical Consultant") who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the "Representative"), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic

storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD-ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in § 1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to § 1.35(a), (a-1)(1), (a-1)(2) and (d) must be retained in hard-copy for the required time period.

[Secs. 4, 4g, 4i, 5, 5a, amended, 42 Stat. 999 et seq., 49 Stat. 1491 et seq., 69 Stat. 535, 82 Stat. 28 et seq., 7 U.S.C. 6, 6g, 6i, 7, 7a, 12a; 36 F.R. 22286, Nov. 24, 1971; amended Jan. 21, 1976, 41 F.R. 3192 (§ 20,130), effective Feb. 20, 1976; Jan. 2, 1981, 46 F.R. 21 (§ 21,132), effective Feb. 2, 1981; May 10, 1993, 58 F.R. 27458 (§ 25,648), effective June 9, 1993; May 10, 1993, 58 F.R. 27465 (§ 25,673), effective Aug. 9, 1993; May 2, 1997, 62 F.R. 24026 (§ 27,034), effective Oct. 1, 1997; May 27, 1999, 64 F.R. 28735 (§ 27,635), effective June 28, 1999; 64 F.R. 36568, 1.31(b)(4) effective Sept. 27, 1999.]

§ 1.2160

§ 1.32 Segregated account; daily computation and record.

Each futures commission merchant must compute as of the close of each business day:

§ 1.32 § 2160

Commodity Futures Law Reports

Strategies and Techniques of Enforcement
Wed. Oct. 18, 2000

[§ 2162]

§ 1.33a [Reserved.]

[30 F.R. 15210, Dec. 9, 1965; amended Nov. 1, 1974, 39 F.R. 32981; deleted, July 24, 1978, 43 F.R. 31886 (¶ 20,642), effective Oct. 1, 1978.]

[§ 2163]

§ 1.34 Monthly record, "point balance".

(a) Each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a statement commonly known as a "point balance," which accrues or brings to the official closing price, or settlement price fixed by the clearing organization, all open contracts of customers as of the last business day of each month or of any regular monthly date selected. *Provided, however,* That a futures commission merchant who carries part or all of customers' open contracts with other futures commission merchants on an "instruct basis" will be deemed to have met the requirements of this section as to open contracts so carried if a monthly statement is prepared which shows that the prices and amounts of such contracts long and short in the customers' accounts are in balance with those in the carrying futures commission merchants' accounts, and such statements are retained in accordance with the requirements of § 1.31.

(b) Each futures commission merchant shall prepare, and retain in accordance with the requirements of § 1.31, a listing in which all open commodity option positions carried for option customers are marked to the market. Such listing shall be prepared as of the last business day of each month, or as of any regular monthly date selected, and shall be by put or by call, by underlying contract for future delivery (by delivery month) or underlying physical (by option expiration date), and by strike price.

[27 F.R. 16272, Dec. 21, 1962; amended Nov. 3, 1981, 46 F.R. 54500 (¶ 21,263), effective Dec. 3, 1981; Dec. 22, 1982, 47 F.R. 56996 (¶ 21,635), effective Jan. 21, 1983.]

[§ 2164]

⇒ Reg. § 1.35 is proposed to be amended.
See ¶ 27,204. CCH.

§ 1.35 Records of cash commodity, futures, and option transactions.

(a) *Futures commission merchants, introducing brokers, and members of contract markets.* Each futures commission merchant, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in com-

modity futures, commodity options, and cash commodities. Each futures commission merchant, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its business of dealing in commodity futures, commodity options, and cash commodities. Among such records each member of a contract market must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission or the contract market. For purposes of this section, such documents are referred to as "original source documents."

(a-1) *Futures commission merchants, introducing brokers, and members of contract markets: Recording of customers' and option customers' orders.* (1) Each futures commission merchant and each introducing broker receiving a customer's or option 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, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, 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, the order is received.

⇒ Reg. § 1.35(a-1)(1) is amended as follows, effective 1998. See ¶ 27.

(1) Each futures commission merchant receiving a customer's or option 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, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification, order number, and the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

⇒ See ¶ 2211C for an amendment regarding the account identification requirement of Rule 1.35 pertaining to the practice of carrying accounts for different accounts into placement and execution.

(ii) Except as provided in paragraph (i) of this section:

(A) Each contract market member who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink including the account identification, order number and the date and time, to the nearest minute, the order is received; or

(B) When a contract market member on the floor places an order in the form of a written record, for his account over which he has control as a member of such contract market (1) the member placing such order shall immediately upon placement of the order shall record thereon, by time-stamp or other timing device, the date and time of placement to the r

¶ 2162 § 1.33a

©1999 CCH INCORPORATED

Commodity Futures Law Re

commodity options, and cash futures commission merchant, and member of a contract in the required records, data, in accordance with the requirements produce them for inspection and correct information and contents or the meaning thereof, as stated by an authorized representative of the United States Justice. Included among such records (filled, unfilled, or canceled checks, copies of statements of purchase orders, signature cards, street addresses, canceled checks, copies of statements of purchase orders, and memoranda prepared in the course of trading in commodity futures, commodity cash commodities. Among the records of a contract market member of a contract market for trade information are all such documents or information submitted to the rules or regulations of the Commission or the contract market of this section, such documents to be as "original source

commission merchants, introducing members of contract markets, and option customers' orders. Each futures commission merchant receiving a customer's order shall immediately upon receipt thereof prepare a written record including the account identification, order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, and in addition, for option customer's orders, the date and time, to the nearest minute, the order is received for execution.

(1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a-1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customer's orders, the time, to the nearest minute, the order is transmitted for execution.

➔ *Reg. § 1.35(a-1)(1) and (2)(i) will be amended as follows, effective October 26, 1998. See § 27,389.*

(1) Each futures commission merchant and each introducing broker receiving a customer's or option customer's order shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a-1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customer's orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a-1)(5) of this section or appendix C to this part, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

➔ *See § 2211C for an Interpretation regarding the account identification requirement of Rule 1.35(a-1)(2)(i) as it pertains to the practice of combining orders for different accounts into a single order for placement and execution.—CCH.*

(ii) Except as provided in paragraph (a-1)(3) of this section:

(A) Each contract market member who on the floor of such contract market receives an order from another member present on the floor which is not in the form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink 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, the order is received; or

(B) When a contract market member present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such contract market for execution: (1) the member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a

sequentially-numbered trading card maintained in accordance with the requirements of paragraph (d) of this section; (2) the member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (d) of this section; and (3) the member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to contract market personnel or the clearing member, in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(iii) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, that provide alternative requirements to those contained in paragraph (a-1)(2)(ii) of this section. Such rules shall, at a minimum, require that the contemporaneous written records: (A) contain the terms of the order; (B) include reliable timing data for the initiation and execution of the order which would permit complete and effective reconstruction of the order placement and execution; and (C) be submitted to contract market personnel or clearing members in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(3)(i) The requirements of paragraph (a-1)(2)(ii) of this section will not apply if a contract market maintains in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, which provide for an exemption where: (A) a contract market member places with another member of such contract market an order that is part of a spread transaction; (B) the member placing the order personally executes one or more legs of the spread; and (C) the member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d) of this section.

(ii) Each contract market shall, as part of its trade practice surveillance program, conduct surveillance for compliance with the recordkeeping and other requirements under paragraphs (a-1)(2) and (3) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order

or the order of another member of such contract market received in accordance with paragraphs (a-1)(2)(i) or (a-1)(2)(ii)(A) of this section, 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 report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in non-erasable ink.

→ *Reg. § 1.35(a-1)(4) will be amended and Reg. § 1.35(a-1)(5) will be added as follows, effective October 26, 1998. See ¶ 27,389.*

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of the contract market received in accordance with paragraphs (a-1)(2)(i) or (a-1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a-1)(5) of this section, and order number, by timestamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) Orders eligible for post-execution allocation. Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of this paragraph are met. The bunched order must be placed by an eligible account manager on behalf of eligible customer accounts and must be handled in accordance with contract market rules that have been submitted to the Commission pursuant to Section 5a(a)(12)(A) of the Act and § 1.41.

(i) Eligible account managers. The person placing and directing the allocation of an order eligible for post-execution allocation must be one of the following who has been granted investment

discretion with regard to eligible customer accounts:

(A) A commodity trading advisor registered with the Commission pursuant to the Act;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser who provides advice solely to foreign persons and who is subject to regulation by a foreign regulator or self-regulatory organization that has been granted an exemption pursuant to § 30.10 of this chapter or has entered into a Memorandum of Understanding or other arrangement for cooperative enforcement and information sharing with the Commission (for the purposes of this section, referred to as a "foreign authority"), provided that the certification required by paragraph (a-1)(5)(iv)(C) of this section is made.

(ii) Eligible customers. The accounts for which orders eligible for post-execution allocation may be placed and to which fills may be allocated must be owned by the following entities:

(A) A bank or trust company;

(B) A savings and loan association or credit union;

(C) An insurance company;

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.) or a foreign investment company performing a similar role or function subject to foreign regulation, provided that the investment company has total assets exceeding \$5,000,000;

(E) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign entity performing a similar role or function subject to foreign regulation, provided that the commodity pool or foreign entity has total assets exceeding \$5,000,000;

(F) A corporation, partnership, proprietorship, organization, trust, or other entity, provided that the entity has either a net worth exceeding \$1,000,000 or total assets exceeding \$10,000,000;

(G) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign entity performing a similar role or function subject to foreign regulation, with total assets exceeding \$5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.) or a

commodity trading advisor subject to regulation under the Act;

(H) Any governmental entity (United States, any state, or any political subdivision thereof), international or supranational organization, agency, or department of the foregoing;

(I) A broker-dealer subject to the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf;

(J) A futures commission merchant, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject to foreign regulation, acting on its own behalf;

(K) An eligible account manager as defined in paragraph (a-1)(5)(i) of this section;

(L) Any natural person with net worth exceeding \$10,000,000.

(iii) Disclosure. Before placing an order eligible for post-execution allocation, the account manager must disclose the following information to the customer to whom the order is to be allocated:

(A) The general nature of the commodity the account manager will trade;

(B) The standard by which the account manager will judge the fairness of the allocation;

(C) The ability of the customer to compare its results with relevant customers; and

(D) Whether accounts in which the account manager may have any interest are included in the bunch for post-execution allocation.

(iv) Account certification. Each order eligible for post-execution allocation must be provided to the account manager by each futures commission merchant as part of the order:

(A) If not previously provided in writing, that the account manager will remain in compliance with the requirements of this paragraph. This certification shall remain in effect until revoked by the account manager; and

(B) If not previously identified, the name of each eligible customer account to which the order is to be allocated.

(C) Foreign advisers must advise the account manager of any certification from a foreign authority that the foreign adviser's activities are subject to regulation by that foreign authority.

¶ 2164 § 1.35

©1999, CCH INCORPORATED

Commodity Futures Law Rep

regard to eligible customer

dity trading advisor registered
sion pursuant to the Act;

ent adviser registered with the
change Commission pursuant to
divers Act of 1940;

nsurance company, trust com-
and loan association subject to
gulation; or

adviser who provides advice
persons and who is subject to
eign regulator or self-regulatory
has been granted an exemption
O of this chapter or has entered
um of Understanding or other
operative enforcement and in-
with the Commission (for the
ction, referred to as a "foreign
led that the certification re-
h (a-1)(5)(iv)(C) of this section

omers. The accounts for which
post-execution allocation may
ich fills may be allocated must
owing entities:

st company;

nd loan association or credit

ompany;

it company subject to regula-
stment Company Act of 1940
seq.) or a foreign investment
g a similar role or function
gulation, provided that the
has total assets exceeding

pool formed and operated by
egulation under the Act or a
ming a similar role or func-
m regulation, provided that
or foreign entity has total
0,000;

partnership, proprietorship,
- other entity, provided that
er a net worth exceeding
sets exceeding \$10,000,000;

benefit plan subject to the
t Income Security Act of
ty performing a similar role
o foreign regulation, with
\$5,000,000 or whose invest-
ade by a bank, trust com-
pany, investment adviser
nder the Investment Advis-
J.S.C. 80b-1, et seq.) or a

9, CCH INCORPORATED

commodity trading advisor subject to regulation
under the Act;

(H) Any governmental entity (including the
United States, any state, or any foreign govern-
ment) or political subdivision thereof, or any mul-
tinationl or supranational entity or any
instrumentality, agency, or department of any of
the foregoing;

(I) A broker-dealer subject to regulation under
the Securities Exchange Act of 1934 (15 U.S.C.
78a, et seq.) or a foreign person performing a
similar role or function subject to foreign regula-
tion, acting on its own behalf;

(J) A futures commission merchant, floor bro-
ker, or floor trader subject to regulation under the
Act or a foreign person performing a similar role
or function subject to foreign regulation, acting on
its own behalf;

(K) An eligible account manager, as defined in
paragraph (a-1)(5)(i) of this section; or

(L) Any natural person with total assets exceed-
ing \$10,000,000.

(iii) Disclosure. Before placing the initial order
eligible for post-execution allocation, the account
manager must disclose the following to each of its
customers to be subject to post-execution
allocation:

(A) The general nature of the allocation meth-
odology the account manager will use;

(B) The standard by which the account man-
ager will judge the fairness of allocations;

(C) The ability of the customer to review sum-
mary or composite data sufficient for that cus-
tomer to compare its results with those of other
relevant customers; and

(D) Whether accounts in which the account
manager may have any interest may be included
with customer accounts in bunched orders eligible
for post-execution allocation.

(iv) Account certification. Before placing an
order eligible for post-execution allocation, the
account manager must provide the following to
each futures commission merchant clearing any
part of the order:

(A) If not previously provided, certification, in
writing, that the account manager is aware of,
and will remain in compliance with, the require-
ments of this paragraph. This certification shall
remain in effect until revoked by the account
manager; and

(B) If not previously identified, the identity of
each eligible customer account to which fills will
be allocated.

(C) Foreign advisers must also provide a writ-
ten certification from a foreign authority stating
that the foreign adviser's activities are subject to
regulation by that foreign authority and the for-

eign authority will provide, upon request of the
Commission or Department of Justice, informa-
tion that relates to the foreign adviser's compli-
ance with the requirements of this paragraph.

(v) Allocation. Orders eligible for post-execution
allocation must be allocated in accordance with
the following:

(A) Allocations must be made only to the ac-
counts of eligible customers.

(B) Allocations must be made as soon as practi-
cable after the entire transaction is executed, but
no later than the end of the day the order is
executed.

(C) Allocations must be fair and equitable. No
account or group of accounts may receive consist-
ently favorable or unfavorable treatment.

(D) The allocation methodology must be suffi-
ciently objective and specific so that the appropri-
ate allocation for a given trade can be verified in
an independent audit.

(E) The allocation methodology must be con-
sistently applied.

(vi) Recordkeeping. The following recordkeep-
ing requirements apply to orders eligible for post-
execution allocation:

(A) Prior to order placement, each account
manager must create and timestamp an order
origination document reflecting the terms of the
order and expected allocation thereof. Any subse-
quent determination to alter any terms or alloca-
tion of the order should likewise be documented.

(B) Each order must be identified by group
identifier or other code on the office and/or floor
order tickets at the time of placement. The group
identifier or other code on each order ticket must
relate back to the specific order origination docu-
ment required by paragraph (a-1)(5)(vi)(A) of this
section.

(C) Each transaction must be identified as part
of an order eligible for post-execution allocation on
contract market trade registers and other comput-
erized trade practice surveillance records.

(D) Each account manager must make availa-
ble, upon request of any representative of the
Commission or the United States Department of
Justice, the following records:

(1) The disclosure documents required pursuant
to paragraph (a-1)(5)(iii) of this section; and

(2) Records reflecting futures and option trans-
actions and other transactions and any other
records, including the order origination document,
that would identify the management strategy or
the allocation methodology or would relate to, or
reflect upon, the fairness of the allocations.

(E) Each account manager must make availa-
ble for review, upon request of an eligible cus-
tomer, summary or composite data sufficient for

Commodity Futures Law Reports

§ 1.35 ¶ 2164

that customer to compare its results with those of other relevant customers. These summary data may be prepared so as not to disclose the identity of individual account holders.

(vii) Self regulatory organization rule enforcement and audit procedures. As part of its rule enforcement program, each contract market that adopts rules that allow the placement of orders eligible for post-execution allocation must adopt audit procedures to determine compliance with the recordkeeping requirements identified in paragraph (a-1)(5)(vi) (B) and (C) of this section. Each contract market, or the designated self-regulatory organization of a member firm, must adopt audit procedures to determine compliance with the certification and allocation requirements identified in paragraphs (a-1)(5)(iv) and (a-1)(5)(v) (A) and (B) of this section.

(a-2)(1) *Futures commission merchants, introducing brokers, and members of contract markets.* Upon request of the contract market, the Commission, or the United States Department of Justice, each futures commission merchant, introducing broker, and member of a contract market shall request from its customers and, upon receipt thereof, provide to the requesting body documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(2) *Customers.* Each customer of a futures commission merchant, introducing broker, or member of a contract market shall create, retain, and produce upon request of the contract market, the Commission, or the United States Department of Justice documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions.

(3) *Contract markets.* Every contract market shall adopt rules which require its members to provide documentation of cash transactions underlying exchanges of futures for cash commodities or exchanges of futures in connection with cash commodity transactions upon request of the contract market.

(4) *Documentation.* For the purposes of this paragraph, documentation means those documents customarily generated in accordance with cash market practices which demonstrate the existence and nature of the underlying cash transactions, including, but not limited to, contracts, confirmation statements, telex printouts, invoices, and warehouse receipts or other documents of title.

(b) *Futures commission merchants, introducing brokers, and clearing members of contract markets.* Each futures commission merchant and each

clearing member of a contract market and, for purposes of paragraph (b)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer or option customer all charges against and credits to such customer's or option customer's account, including but not limited to customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future; and

(ii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery, or underlying physical strike price, and details of the purchase price of the option, including premium, mark-up commission and fees; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; and

(iii) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant carrying the account for which each commodity futures and commodity option transaction was executed on that day.

Provided, however, that where reproductions on microfilm, microfiche or optical disk are substituted for hard copy in accordance with the provisions of § 1.31(b) of this part, the requirements of paragraphs (b)(1) and (b)(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 in the same city as that in which such person's commodity or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and

(b)(2) of this section, on request of the Commission or the Department of Justice.

(c) *Clearing members of contract markets.* Each clearing member of a contract market, floor broker or floor trade participant, shall maintain a separate record of each transaction, the opposite floor trader, and the opposite clearing member with whom it was made.

(d) *Members of contract markets.* Each member of a contract market provided by the contract market, or sales of any commodity for commodity option on or subject to such contract market, shall prepare promptly a trading card or other such purchases and sales. Such record shall show the member's name, the clearing member, transaction specified in rules of the contract market, quantity, and, as applicable, unit, contract for future delivery or premium, delivery month or whether the transaction involved a put or call, and strike price. Such trading card shall also clearly identify the option or floor trader with whom the transaction was executed, and the opposite clearing member with whom the transaction was made in accordance with the rules of the contract market, such opposite clearing member's name, and the clearing member made known to the member).

(2) Each member of a contract market shall prepare a trading card for each purchase and sale on that day, and shall record such purchases and sales in the order of execution on separate trading card without skipping trades. Provided, however, that after the last execution record on a trading card, the remaining lines on the card shall be used for the next trading card.

(3) Each member of a contract market shall identify on his trading cards in accordance with the rules of the contract market purchases and sales executed during the day and closing periods designated by the contract market pursuant to paragraph (b)(3) of this section.

(4) Trading cards prepared by a contract market pursuant to paragraph (b)(3) of this section must contain:

(i) Pre-printed member identifying information on the trading cards of one member distinguished from those of all other members.

ber of a contract market and, for paragraph (b)(3) of this section, each broker, shall, as a minimum requirement, regularly and promptly, and keep in permanent form, the

cial ledger record which will show each customer or option customer debit and credits to such customer's broker's account, including but not limited to funds deposited, withdrawn, and charges or credits resulting from transactions on closed transactions;

of transactions which will show each account (including proprie-

ty futures transactions executed on, including the date, price, quantity and future; and

ty option transactions executed on, including the date, whether the option is a put or call, expiration date, underlying contract for future delivery, physical strike price, and details of the option, including pre-commission and fees; and

or journal which will separately record each day complete details of:

ty futures transactions executed on, including the date, price, quantity, strike price, future and the person for whom the transaction was made;

ty option transactions executed on, including the date, whether the option is a put or call, the expiration date, underlying contract for future delivery, physical, strike price, details of the option, including pre-commission and fees and the person for whom the transaction was made; and

of an introducing broker, the name and address required by this paragraph and the account for which each trade and commodity option transaction was made on that day.

that where reproductions on microfilm or optical disk are substituted for the original, in accordance with the provisions of this part, the requirements of paragraph (b)(2) of this section will be deemed to be satisfied if a person required to keep such records keeps them in duplicate in the same city as that in which the original is maintained, at the expense of the person required to keep the original copies which show the details of the transactions in paragraphs (b)(1) and

(b)(2) of this section, on request of any representative of the Commission or the U.S. Department of Justice.

(c) *Clearing members of contract markets.* In the daily record or journal required to be kept under paragraph (b)(3) of this section, each clearing member of a contract market shall also show the floor broker or floor trader executing each transaction, the opposite floor broker or floor trader, and the opposite clearing member with whom it was made.

(d) *Members of contract markets.* (1) Each member of a contract market who, in the place provided by the contract market for the meeting of persons similarly engaged, executes purchases or sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market, shall prepare regularly and promptly a trading card or other record showing such purchases and sales. Such trading card or record shall show the member's name, the name of the clearing member, transaction date, time (as specified in rules of the contract market which comply with the requirements of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call and strike price. Such trading card or other record shall also clearly identify the opposite floor broker or floor trader with whom the transaction was executed, and the opposite clearing member (if, in accordance with the rules or practice of the contract market, such opposite clearing member is made known to the member).

(2) Each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card without skipping lines between trades; Provided, however; That if lines remain after the last execution recorded on a trading card, the remaining lines must be marked through.

(3) Each member of a contract market must identify on his trading cards in the manner prescribed by the rules of the contract market the purchases and sales executed during the opening and closing periods designated by the contract market pursuant to paragraph (j)(7) of this section.

(4) Trading cards prepared by a member of a contract market pursuant to contract market rules must contain:

(i) Pre-printed member identification or other unique identifying information which would permit the trading cards of one member to be distinguished from those of all other members;

(ii) Pre-printed sequence numbers to permit the intra-day sequencing of the cards; and

(iii) Unique and pre-printed identifying information which would distinguish each of the trading cards prepared by the member from other such trading cards for no less than a one-week period.

(5) Trading cards prepared by a member of a contract market and collected pursuant to paragraph (j)(1) of this section must be timestamped promptly to the nearest minute upon collection by either the contract market or the relevant clearing member.

(6) Each member of a contract market shall be accountable for all trading cards prepared pursuant to contract market rules in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) Trading records prepared by a member of a contract market pursuant to contract market rules must:

(i) Be submitted in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section; and

(ii) Be completed in non-erasable ink. A member may correct any errors by crossing out erroneous information without obliterating or otherwise making illegible any of the originally recorded information. With regard to trading cards only, a member may correct erroneous information by rewriting the trading card; provided, however, that the member must submit a copy of the trading card, or in the absence of a copy the original trading card, that is subsequently rewritten in accordance with contract market rules which set forth the required collection schedule for trading cards and provided further that the member is accountable for any trading card that subsequently is rewritten pursuant to paragraph (d)(6) of this section.

(8) Each member of a contract market must use a new trading card at the beginning of each designated 30-minute interval required by paragraph (j)(1) of this section (or such lesser interval as may be determined appropriate by the applicable contract market) or as may be required pursuant hereto.

(e) *Contract markets.* Each contract market shall maintain or cause to be maintained by its clearing organization a single record which shall show for each futures or option trade: the transaction date, time (as described in paragraph (g) of this section), quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floor broker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member sell-

[The next page is 2179-3.]

ing, and symbols indicating the buying and selling customer or option customer types. The customer and option customer type indicators shall show, with respect to each person executing the trade, whether such person:

(1) Was trading for his own account or an account for which he has discretion;

(2) Was trading for his clearing member's house account;

(3) Was trading for another member present on the exchange floor, or an account controlled by such other member; or

(4) Was trading for any other type of customer or option customer. The record required by this paragraph (e) shall also show, by appropriate and uniform symbols, any transaction which is made non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission in accordance with the provisions of § 1.38, and trades cleared on dates other than the date of execution. Except as otherwise approved by the Commission for good cause shown, the record required by this paragraph (e) shall be maintained in a format and coding structure approved by the Commission (i) in hard copy or on microfilm as specified in § 1.31 and (ii) for 60 days in computer-readable form on compatible magnetic tapes or discs.

(f) Each contract market shall provide for the identification of floor brokers, floor traders, and clearing members, in the records required to be kept under paragraphs (c), (d), and (e) of this section, by the use of a distinctive, nonvariable designation for each such floor broker, floor trader, and clearing member.

(g) *Time of trade execution.* For purposes of paragraph (e) of this section: (1) The actual time of the execution of each side of a transaction must be obtained, or (2) if a contract market identifies and records the time of a transaction, a single actual time of execution for both sides of the transaction may be obtained. Actual times of execution shall be stated in increments of no more than one minute in length. If a contract market submits rules to the Commission, in accordance with the provisions of section 5a(a)(12)(A) of the Act and § 1.41, defining and separately identifying opening and closing time periods, the contract market may, for purposes of paragraph (e) of this section, use those time periods for trades occurring during the opening and closing periods. Contract market rules in effect prior to the effective date of this paragraph (g) upon which a contract market intends to rely in complying herewith must be submitted for this purpose to the Commission in accordance with the provisions of section 5a(a)(12)(A) of the Act and § 1.41.

(h) *Contract market price change register.* Each contract market shall establish and maintain a record of all changes in the price of futures or option transactions executed on the floor of the contract market. This record shall include the time of all changes in price to the nearest ten seconds.

(i) *Contract markets.* A contract market, in order to demonstrate that it is exercising due diligence in maintaining the continuing affirmative action program required by the Act and § 1.51, shall, at a minimum:

(1) Demonstrate effective use in its continuing affirmative action program of the information required to be obtained by paragraph (e) of this section to reconstruct rapidly and accurately transactions executed on or subject to the rules of such contract market; and

(2) Submit to the Commission such reports as the Commission or the Director of the Division of Trading and Markets, or such persons under the supervision of the Director as may be specified from time to time, may require concerning the accuracy of all information recorded under paragraph (e) of this section and the use of such information in the contract market's affirmative action program.

(j) *Contract markets.* Each contract market must maintain in effect rules which require that:

(1) Trading records prepared by a member of the contract market pursuant to paragraphs (a-1) and (d) of this section be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes, commencing with the beginning of each trading session. The time period permitted for the submission of trading records after the close of trading in each market shall not exceed 15 minutes from the close. Such documents should nevertheless be collected as often as is practicable by the contract market or relevant clearing member. Such contract market rules need not, however, require that those original source documents which cannot be relied upon by the contract market or clearing member for clearing purposes be submitted pursuant to this paragraph. Each contract market shall submit a written report to the Commission no later than nine months after the effective date of this paragraph describing with particularity the contract market's system(s) in place to comply with this paragraph and the level of compliance achieved to date.

(2) Trading cards collected pursuant to this paragraph must be timestamped promptly to the nearest minute upon collection by either the contract market or relevant clearing member.

(3) A member of the contract market must use a new trading card at the beginning of each desig-

nated 30-minute interval required by paragraph (j)(1) of this section.

(4) A member of the contract market must record trades in the manner prescribed by paragraph (d)(2) of this section.

(5) Trading cards prepared by a member of the contract market must contain the identifying information prescribed by paragraph (d)(4) of this section.

(6) A member of the contract market must be accountable for all trading cards prepared pursuant to contract market rules in exact numerical sequence, whether or not such trading cards are relied on as original source documents.

(7) A member of the contract market must identify on his trading cards trades executed during opening and closing periods either by drawing a line on the trading card to separate those trades from others recorded thereon or by some other method. Each contract market must designate as opening and closing periods for this purpose those periods upon which the opening and closing trading ranges are based for each of its markets.

(8) A member of the contract market must complete trades in non-erasable ink in the manner prescribed by paragraph (d)(7)(ii) of this section.

(k) *Collection of trading cards in intervals not to exceed 15 minutes.* The Commission, in its discretion, may publish a schedule in the *Federal Register* no earlier than 11 months after paragraph (j)(1) of this section becomes effective, indicating when the records required to be submitted pursuant to that paragraph must be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 15 minutes, commencing with the beginning of each trading session.

(l) A contract market which can demonstrate that it currently has available hand-held terminals or such other automated means for the recording of trades which can eliminate the opportunity for improper alteration or fabrication of trading records, may petition the Commission for an exemption from Regulations 1.35(a-1)(2) and (4), (d), (g) or (k), as appropriate.

[Sec. 4g, 49 Stat. 1496, sec. 5, 42 Stat. 1000, amended 7 U.S.C. 6g, 7; sec. 4f, added by sec. 5, 49 Stat. 1495, amended by sec. 7, 82 Stat. 28; sec. 8a, added by sec. 10, 49 Stat. 1500, amended, 69 Stat. 535, sec. 18, 82 Stat. 31; 7 U.S.C. 6f, 12a; Sec. 1.35 amended effective Sept. 30, 1974, 39 F.R. 28618; Jan. 21, 1976, 41 F.R. 3192 (§ 20.130), effective Feb. 20, 1976; Dec. 23, 1976, 41 F.R. 56134 (§ 20.242), effective June 13, 1977; Dec. 2, 1980, 45 F.R. 79753 (§ 21.112), effective Jan. 1, 1981; Nov. 3, 1981, 46 F.R. 54500 (§ 21.263), effective Dec. 3, 1981; Dec. 22, 1982, 47 F.R. 56996 (§ 21.635), effective Jan. 21, 1983;

¶ 2164A § 1.35a-(T)

Aug. 3, 1983, 48 F.R. 35248 (§ 21.792), effective Aug. 3, 1983; Jan. 21, 1986, 51 F.R. 2684 (§ 22.861), effective Oct. 1, 1986; paragraph (i)(1) effective Jan. 1, 1987; Aug. 17, 1989, 54 F.R. 33878 (§ 24.515), effective Nov. 15, 1989; Mar. 7, 1990, 55 F.R. 8127 (§ 24.608), effective May 7, 1990 and June 5, 1990; May 10, 1993, 58 F.R. 27458 (§ 25.648), effective June 9, 1993; June 1, 1993, 58 F.R. 31162 (§ 25.721), effective Aug. 30, 1993; July 28, 1993, 58 F.R. 40335 (§ 25.770), effective Oct. 26, 1993; Feb. 7, 1994, 59 F.R. 5525 (§ 25.952), effective Feb. 7, 1994; Aug. 20, 1996, 61 F.R. 42999 (§ 26.767), effective Oct. 21, 1996; Aug. 27, 1998, 63 F.R. 45699 (§ 27.389), effective Oct. 26, 1998; Aug. 27, 1998, 63 F.R. 45699 (§ 27.389), effective Oct. 26, 1998.]

¶ 2164A

§ 1.35a-(T) [Reserved.]

[Deleted May 10, 1983, 48 F.R. 20900 (§ 21.718), effective May 10, 1983.]

¶ 2165

§ 1.36 Record of securities and property received from customers and option customers.

(a) Each futures commission merchant shall maintain, as provided in § 1.31, a record of all securities and property received from customers or option customers in lieu of money to margin, purchase, guarantee, or secure the commodity or commodity option transactions of such customers or option customers. Such record shall show separately for each customer or option customer: a description of the securities or property received; the name and address of such customer or option 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 dates of return of such securities or property to such customer or option customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with the clearing organization of a contract market directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer or option customer, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers or option customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in § 1.31.

©1999, CCH INCORPORATED

(b) Each clearing organization which receives from the property belonging to particular customers of such member to margin, purchase, guarantee, commodity or commodity option customers or option customer notice that any such securities have been received by a bank or trust company as custodian for such clearing organization shall maintain, as provided in § 1.36, a record showing separately for each customer or option customer when such securities or property were received, the identity of the depository or other place where such securities or property are segregated, the dates such securities or property were received, together with the facts and circumstances of any other disposition including, but not limited to, the sale thereof.

[33 F.R. 14456, Sept. 26, 1968; 3, 1981, 46 F.R. 54500 (§ 21.263), effective Mar. 31, 1983; Mar. 1, 1983, 48 F.R. 45699, effective Mar. 31, 1983.]

¶ 2166

§ 1.37 Customer's or option customer's address, and occupation, guarantor or controller

(a) Each futures commission merchant, clearing broker, and member shall keep a record in permanent form showing for each commodity future account carried or introduced by such customer or option customer the name and address of the person for whom the account is carried or introduced and the occupation or business of such person; the name of any other person guaranteeing the account; the name of any other person exercising any trading control over such account. For each such account, the records kept by the futures commission merchant, introducing broker, or clearing member, shall also show the name of the person who has solicited and introduced each option customer's account, and the account numbers in such a manner to identify each account.

→ See § 12.827 for Commission's Rules for Option Traders.

(b) As of the close of the market each futures commission merchant shall maintain a record of the account for another futures commission merchant or foreign broker (as defined in § 1.31), member of a contract market, or member of a contract market, on an omnibus basis shall maintain a record for each such omnibus account of the open long contracts and the total open interest in each future and for each such account, the total open interest in each future and for each such account.

Commodity Futures Law

[§ 2281]

In an adjudicatory proceeding shall... of Enforcement, each responsive complaint and each person who intervenes pursuant to § 10.33 shall cease to be a party in the proceeding when (a) a judgment is rendered against him pursuant to the Commission accepts an offer of judgment pursuant to § 10.108 of these rules.

[§ 2282]

... of parties. ... for good cause shown the Administrative Law Judge may order a substitution of parties.

[§ 2283]

... as a party. ... leave to Intervene. Any person who is not a party to a proceeding may be affected substantially by the outcome of a proceeding and may be interested in a proceeding may apply to the Administrative Law Judge for leave to intervene in the proceeding at any time during the proceeding and before the final order is entered. The Administrative Law Judge shall set forth with specificity the reasons for his decision to grant or deny leave to intervene in the proceeding in which his interests may be affected. The Administrative Law Judge may, in his discretion, permit a petitioner requesting leave to intervene in a proceeding to be examined as to his interest in the proceeding.

... A petition for leave to intervene shall be served by the petitioner upon the Administrative Law Judge and a copy of the petition shall be filed with the Administrative Law Judge within ten days of the filing of the petition upon which the leave to intervene is sought. The Administrative Law Judge may, in his discretion, permit a petitioner requesting leave to intervene in a proceeding to be examined as to his interest in the proceeding.

... When granted. No person shall be permitted to intervene in a proceeding unless the Administrative Law Judge determines that (1) a substantial interest of the person is affected by the proceeding and his intervention will not materially prejudice the rights of any party, through the person's participation as a party to the proceeding; (2) the person's participation as a party to the proceeding is consistent with the public interest; and (3) the person's leave to be heard pursuant to the Commission's rules shall be upon the merits of the case. The Administrative Law Judge may, in his discretion, permit a petitioner requesting leave to intervene in a proceeding to be examined as to his interest in the proceeding.

999, CCH INCORPORATED

(d) *Rights of intervenor.* A person who has been granted leave to intervene shall from that time forward have all the rights and responsibilities of a party to the proceeding.

[§ 2284]

§ 10.34 Limited participation.

(a) *Petitions for leave to be heard.* Any person may, in the discretion of the Administrative Law Judge, be given leave to be heard in any proceeding as to any matter affecting his interests. Petitions for leave to be heard shall be in writing, shall set forth (1) the nature and extent of the applicant's interest in the proceeding; (2) the issues on which he wishes to participate; and (3) in what manner he wishes to participate. The Administrative Law Judge may direct any person requesting leave to be heard to submit himself to examination as to his interest in the proceeding.

(b) *Rights of a participant.* Leave to be heard pursuant to § 10.34(a) may include such rights of a party as the Administrative Law Judge may deem appropriate, except that oral argument before the Commission may be permitted only by the Commission.

[§ 2285]

§ 10.35 Permission to state views.

Any person may, in the discretion of the Administrative Law Judge be permitted to file a memorandum or make an oral statement of his views, and the Administrative Law Judge may, in his discretion, accept for the record written communications received from any person.

[§ 2286]

§ 10.36 Commission review of rulings.

Interlocutory review by the Commission of a ruling as to matters within the scope of §§ 10.33, 10.34 or 10.35 may be sought in accordance with the procedures set forth in § 10.101 of these rules without certification by the Administrative Law Judge.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery

[§ 2291]

§ 10.41 Prehearing conferences; procedural matters.

In any proceeding the Administrative Law Judge may direct that one or more conferences be held for the purpose of:

- (a) Clarifying issues;
- (b) Examining the possibility of obtaining stipulations, admissions of fact and of authenticity or contents of documents;

Commodity Futures Law Reports

(c) Determining matters of which official notice may be taken;

(d) Discussing amendments to pleadings;

(e) Limiting the number of witnesses;

(f) Considering objections to the introduction of documentary evidence and the testimony of witnesses identified in prehearing materials filed or otherwise furnished by the parties pursuant to Sec. 10.42;

(g) Discussing adoption of shortened procedures pursuant to § 10.92;

(h) Promoting a fair and expeditious hearing.

At or following the conclusion of a prehearing conference, the Administrative Law Judge shall serve a prehearing memorandum containing agreements reached and any procedural determinations made by him, unless the conference shall have been recorded and transcribed in written form and a copy of the transcript has been made available to each party.

[Amended Oct. 19, 1998, 63 F.R. 55784 (27,430), effective Nov. 18, 1998.]

[§ 2292]

§ 10.42 Discovery.

(a) *Prehearing Materials*—(1) *In general.* Unless otherwise ordered by an Administrative Law Judge, the parties to a proceeding shall furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge in the form of a prehearing memorandum or otherwise:

- (i) An outline of its case or defense;
- (ii) The legal theories upon which it will rely;
- (iii) The identity, and the city and state of residence, of each witness, other than an expert witness, who is expected to testify on its behalf, along with a brief summary of the matters to be covered by the witness's expected testimony;
- (iv) A list of documents which it intends to introduce at the hearing, along with copies of any such documents which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(2) *Expert witnesses.* Unless otherwise ordered by the Administrative Law Judge, in addition to the information described in paragraph (a)(1) of this section, any party who intends to call an expert witness shall also furnish to all other parties to the proceeding on or before a date set by the Administrative Law Judge:

- (i) A statement identifying the witness and setting forth his or her qualifications;
- (ii) A list of any publications authored by the witness within the preceding ten years;

§ 10.42 [§ 2292]

(iii) A list of all cases in which the witness has testified as an expert, at trial or in deposition, within the preceding four years;

(iv) A complete statement of all opinions to be expressed by the witness and the basis or reasons for those opinions; and

(v) A list of any documents, data or other written information which were considered by the witness in forming his or her opinions, along with copies of any such documents, data or information which the other parties do not already have in their possession and to which they do not have reasonably ready access.

(3) The foregoing procedures shall not be deemed applicable to rebuttal evidence submitted by any party at the hearing.

(4) In any action where a party fails to comply with the requirements of this paragraph (a), the Administrative Law Judge may make such orders in regard to the failure as are just, taking into account all of the relevant facts and circumstances of the failure to comply.

(b) *Investigatory materials*—(1) *In general.* Unless otherwise ordered by the Commission or the Administrative Law Judge, the Division of Enforcement shall make available for inspection and copying by the respondents, prior to the scheduled hearing date, any of the following documents that were obtained by the Division prior to the institution of proceedings in connection with the investigation that led to the complaint and notice of hearing:

(i) All documents that were produced pursuant to subpoenas issued by the Division or otherwise obtained from persons not employed by the Commission, together with each subpoena or written request, or relevant portion thereof, that resulted in the furnishing of such documents to the Division; and

(ii) All transcripts of investigative testimony and all exhibits to those transcripts.

(2) *Documents that may be withheld.* The Division of Enforcement may withhold any document that would disclose:

(i) The identity of a confidential source;

(ii) Confidential investigatory techniques or procedures;

(iii) Separately the market positions, business transactions, trade secrets or names of customers of any persons other than the respondents, unless such information is relevant to the resolution of the proceeding;

(iv) Information relating to, or obtained with regard to, another matter of continuing investigatory interest to the Commission or another domestic or foreign governmental entity, unless such

information is relevant to the resolution of the proceeding; or

(v) Information obtained from a domestic or foreign governmental entity or from a foreign futures authority that either is not relevant to the resolution of the proceeding or was provided on condition that the information not be disclosed or that it only be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding.

(3) Nothing in paragraphs (b)(1) and (b)(2) of this section shall limit the ability of the Division of Enforcement to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law. When the investigation by the Division of Enforcement that led to the pending proceeding encompasses transactions, conduct or persons other than those involved in the proceeding, the requirements of (b)(1) of this section shall apply only to the particular transaction, conduct and persons involved in the proceeding.

(4) *Index of withheld documents.* When documents are made available for inspection and copying pursuant to paragraph (b)(1) of this section, the Division of Enforcement shall furnish the respondents with an index of all documents that are withheld pursuant to paragraphs (b)(2) or (b)(3) of this section, except for any documents that are being withheld because they disclose information obtained from a domestic or foreign governmental entity or from a foreign futures authority on condition that the information not be disclosed or that it only be disclosed by the Commission or a representative of the Commission as evidence in an enforcement or other proceeding, in which case the Division shall inform the other parties of the fact that such documents are being withheld at the time it furnishes its index under this paragraph, but no further disclosures regarding those documents shall be required. This index shall describe the nature of the withheld documents in a manner that, to the extent practicable without revealing any information that itself is privileged or protected from disclosure by law or these rules, will enable the other parties to assess the applicability of the privilege or protection claimed.

(5) *Arrangements for inspection and copying.* Upon request by the respondents, all documents subject to inspection and copying pursuant to this paragraph (b) shall be made available to the respondents at the Commission office nearest the location where the respondents or their counsel live or work. Otherwise, the documents shall be made available at the Commission office where they are ordinarily maintained or at any other location agreed upon by the parties in writing. Upon payment of the appropriate fees set forth in

appendix B to part 145 of the Commission's rules, a respondent may obtain a photograph of any document made available for inspection prior to the hearing without the prior written consent of the Division of Enforcement. No respondent shall have the custody of any documents that are made available for inspection and copying, or to the Commission premises.

(6) *Failure to make documents available.* If a respondent fails to make available documents subject to inspection and copying pursuant to this paragraph, the Commission may, in its discretion, rehear or reconsideration of a matter heard or decided shall be required. If a respondent demonstrates prejudice as a result of the failure to make the documents available,

(7) *Requests for confidential treatment orders.* If a person has requested confidential treatment of information submitted to the Commission, either pursuant to rules adopted under the Freedom of Information Act (part 145 of this chapter) or under the Commission's Rules Relating To Investigation (part 145 of this chapter), the Division of Enforcement shall notify him or her, if possible, that the information is to be disclosed to parties to the proceeding. He or she may apply to the Administrative Law Judge for an order protecting the information from disclosure, consideration of which shall be governed by Sec. 10.68(c)(2).

(c) *Witness statements*—(1) A witness shall be available to an adjudicatory proceeding and to the other parties to the proceeding, and any person whom the party calls as a witness, as a witness that relates to the testimony of the witness and is in the possession. Such statements shall include:

(i) Transcripts of investigative, deposition or similar testimony given by the witness;

(ii) Written statements signed by the witness and

(iii) Substantially verbatim notes of the testimony, and all exhibits to the transcripts, statements and notes. For purposes of paragraph (c), "substantially verbatim" means notes that fairly record the testimony of the witness, subject to minor, inconsequential variations. Such statements shall include affidavits and other writings authored by the witness that contain information relating to the testimony. The Division of Enforcement shall produce witness statements pursuant to this paragraph prior to the scheduled hearing. A time to be designated by the Administrative Law Judge. Respondents shall produce statements pursuant to this paragraph at the close of the Division's case in chief in

relevant to the resolution of the

information obtained from a domestic or foreign governmental entity or from a foreign entity that either is not relevant to the proceeding or was provided on the information not be disclosed or disclosed by the Commission or a member of the Commission as evidence in the proceeding or other proceeding.

Nothing in paragraphs (b)(1) and (b)(2) shall limit the ability of the Division to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law. When the investigation of Enforcement that led to the proceeding encompasses transactions, other than those involved in the requirements of (b)(1) of this section only to the particular transactions and persons involved in the

withheld documents. When documents are made available for inspection and copying pursuant to paragraph (b)(1) of this section, Enforcement shall furnish the respondent with an index of all documents that are subject to paragraphs (b)(2) or (b)(3) of this section, except for any documents that are withheld because they disclose information about domestic or foreign governmental entities or future authority on confidential information not be disclosed or disclosed by the Commission or a member of the Commission as evidence in the proceeding, in which case the respondent shall inform the other parties of the documents that are withheld and shall include in its index under this paragraph further disclosures regarding those documents that are required. This index shall describe the withheld documents in a manner to the extent practicable without revealing information that itself is privileged from disclosure by law or these rules, to enable the other parties to assess the applicability of the privilege or protection claimed.

Requests for inspection and copying.—(1) In general. If a respondent, all documents made available for inspection and copying pursuant to this section shall be made available to the respondent or their counsel. If the respondent or their counsel otherwise, the documents shall be maintained at the Commission office where they are maintained or at any other location upon the parties in writing. The appropriate fees set forth in

appendix B to part 145 of this chapter, any respondent may obtain a photocopy of any document made available for inspection. Without the prior written consent of the Division of Enforcement, no respondent shall have the right to take custody of any documents that are made available for inspection and copying, or to remove them from Commission premises.

(6) *Failure to make documents available.* In the event that the Division of Enforcement fails to make available documents subject to inspection and copying pursuant to this paragraph (b), no rehearing or reconsideration of a matter already heard or decided shall be required, unless the respondent demonstrates prejudice caused by the failure to make the documents available.

(7) *Requests for confidential treatment; protective orders.* If a person has requested confidential treatment of information submitted by him or her, either pursuant to rules adopted by the Commission under the Freedom of Information Act (part 145 of this chapter) or under the Commission's Rules Relating To Investigations (part 11 of this chapter), the Division of Enforcement shall notify him or her, if possible, that the information is to be disclosed to parties to the proceeding and he or she may apply to the Administrative Law Judge for an order protecting the information from disclosure, consideration of which shall be governed by Sec. 10.68(c)(2).

(c) *Witness statements.*—(1) *In general.* Each party to an adjudicatory proceeding shall make available to the other parties any statement of any person whom the party calls, or expects to call, as a witness that relates to the anticipated testimony of the witness and is in the party's possession. Such statements shall include the following:

(i) Transcripts of investigative, deposition, trial or similar testimony given by the witness,

(ii) Written statements signed by the witness, and

(iii) Substantially verbatim notes of interviews with the witness, and all exhibits to such transcripts, statements and notes. For purposes of this paragraph (c), "substantially verbatim notes" means notes that fairly record the exact words of the witness, subject to minor, inconsequential deviations. Such statements shall include memoranda and other writings authored by the witness that contain information relating to his anticipated testimony. The Division of Enforcement shall produce witness statements pursuant to this paragraph prior to the scheduled hearing date, at a time to be designated by the Administrative Law Judge. Respondents shall produce witness statements pursuant to this paragraph at the close of the Division's case in chief during the

hearing. If necessary, the Administrative Law Judge shall, upon request, grant the Division a continuance of the hearing in order to review and analyze any witness statements produced by the respondents.

(2) Nothing in paragraph (c)(1) of this section shall limit the ability of a party to withhold documents or other information on the grounds of privilege, the work product doctrine or other protection from disclosure under applicable law.

(3) *Index of withheld documents.* When a party makes witness statements available pursuant to paragraph (c)(1) of this section, he or she shall furnish each of the other parties with an index of all documents that the party is withholding on the grounds of privilege or work product. This index shall describe the nature of the withheld documents in a manner that, to the extent practicable without revealing information that itself is privileged or protected from disclosure by law or these rules, will enable the other parties to assess the applicability of the privilege or protection claimed.

(4) *Failure to produce witness statements.* In the event that a party fails to make available witness statements subject to production pursuant to this section, no rehearing or reconsideration of a matter already heard or decided shall be required, unless another party demonstrates prejudice caused by the failure to make the witness statements available.

(d) *Modification of production requirements.* The Administrative Law Judge shall modify any of the requirements of paragraphs (a) through (c) of this section that any party can show is unduly burdensome or is otherwise inappropriate under all the circumstances.

(e) *Admissions.*—(1) *Request for admissions.* Any party may serve upon any other party, with a copy to the Proceedings Clerk, a written request for admission of the truth of any facts relevant to the pending proceeding set forth in the request. Each matter of which an admission is requested shall be separately set forth. Unless prior written approval is obtained from the Administrative Law Judge, the number of requests shall not exceed 50 in number including all discrete parts and subparts.

(f) *Objections to authenticity or admissibility of documents.*—(1) *Identification of documents.* The Administrative Law Judge, acting on his or her own initiative or upon motion by any party, may direct each party to serve upon the other parties, with a copy to the Proceedings Clerk, a list identifying the documents that it intends to introduce at the hearing and requesting the other parties to file and serve a response disclosing any objection, together with the factual or legal grounds there-

for, to the authenticity or admissibility of each document identified on the list. A copy of each document identified on the list shall be served with the request, unless the party being served already has the document in his possession or has reasonably ready access to it.

(2) *Objections to authenticity or admissibility.* Within 20 days after service or at such other time as may be designated by the Administrative Law Judge, each party upon whom the list described in paragraph (f)(1) of this section was served shall file a response disclosing any objection, together with the factual or legal grounds therefor, to the authenticity or admissibility of each document identified on the list. Except for relevance, waste of time or needless presentation of cumulative evidence, all objections not raised may be deemed waived.

(3) *Rulings on objections.* In his or her discretion, the Administrative Law Judge may treat as a motion in limine any list served by a party pursuant to paragraph (f)(1) of this section, where any other party has filed a response objecting to the authenticity or the admissibility on any item listed. In that event, after affording the parties an opportunity to file briefs containing arguments on the motion to the degree necessary for a decision, the ALJ may rule on any objection to the authenticity or admissibility of any document identified on the list in advance of trial, to the extent appropriate.

[Amended Oct. 26, 1995, 60 F.R. 54801 (¶ 26.521), effective Oct. 26, 1995; Oct. 19, 1998, 63 F.R. 55784 (¶ 27.430), effective Nov. 18, 1998; corrected Dec. 14, 1998, 63 F.R. 68829, effective Dec. 14, 1999.]

[¶ 2293]

§ 10.43 Stipulations.

The parties may by stipulation in writing at any stage of the proceeding, or orally made at hearing, agree upon any pertinent facts in the proceeding. It is desirable that the facts be thus agreed upon so far as and whenever practicable. Stipulations may be received in evidence at a hearing and when received in evidence shall be binding on the parties thereto.

[¶ 2294]

§ 10.44 Depositions and interrogatories.

(a) *When permitted.* If it appears that:

(1) A prospective witness will be unable to attend or testify at a hearing on the basis of age, illness, infirmity, imprisonment or on the basis that he is or will be outside of the United States at the time of the hearing (unless it appears that the absence of the witness was procured by the party seeking to take the deposition),

¶ 2293 § 10.43

(2) His testimony is material,

(3) It is necessary to take his deposition in the interest of Justice,

the Administrative Law Judge may by order direct that his deposition be taken either orally or in the form of written interrogatories, and may issue a subpoena to compel the attendance of the witness for deposition.

(b) *Application for Deposition.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge for an order to take deposition. In addition to the showing required in § 10.44(a), the application shall include:

(1) The name and post office address of the witness;

(2) The specific matters concerning which the witness is expected to testify and their relevance;

(3) The reasons why the deposition should be taken, supported by affidavits and a physician's certificate, where appropriate;

(4) The time when, the place where, and the name and address of the person before whom the deposition is to be taken;

(5) A specification of the documents and materials which the deponent is requested to produce;

(6) Application for any subpoenas.

(c) *Service and reply.* A copy of the application to take deposition shall be served upon every other party to the proceeding and upon the person sought to be deposed. Any party or the deponent may serve and file an opposition to the application within seven days after the application is filed.

(d) *Time when, place where, and officer before whom deposition is taken.* (1) Where the deposition is taken. Unless otherwise ordered or agreed to by stipulation, depositions shall be taken in the city or municipality where the deponent is located.

(2) *Officer before whom taken.* (i) Within the United States or a territory of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(ii) Within a foreign country, depositions may be taken before an officer or person designated by the Administrative Law Judge or agreed upon by the parties by a stipulation in writing to be filed with the Proceedings Clerk.

(e) *Procedures for taking oral depositions.* (1) Oral examination and cross-examination of witnesses shall be conducted in a manner similar to that permitted at a formal hearing. All questions and testimony shall be recorded verbatim, except to the extent that all parties present or repre-

sented may agree that a record.

(2) All objections made at the deposition, or to the manner of the evidence presented, or to the party, or any other objection to shall be noted by the officer upon and shall subsequently be determined by the Administrative Law Judge. Evidence shall be taken subject to the objections the parties may stipulate that, in addition to the form of questions, all matters testified to in a deposition for the hearing, whether or not recorded.

(3) During the taking of a deposition, the deponent may request and obtain permission to permit an application to be served on the Administrative Law Judge for an order to quash the deposition on grounds of the conduct of the examination, an harassment, oppression of a deponent, or improper questions. An attorney who obtains an adjournment for this purpose without good cause, promptly after the Administrative Law Judge has found the deponent guilty of contemptuous conduct with § 10.11(b) of these rules.

(f) *Procedures for use of interrogatories.* (1) In depositions, written interrogatories, the deponent shall be filed in triplicate with the Proceedings Clerk and served on the deponent after service, any party may file with the Proceedings Clerk, a copy of such interrogatories and may file cross-interrogatories as he desires to submit. Interrogatories shall have ten days to file the cross-interrogatories. Objections to interrogatories by the Administrative Law Judge.

(2) When a deposition is taken, the interrogatories and cross-interrogatories shall be present or represented by other than the witness, a stenographer, and the officer shall be present. The interrogatories and responses thereto shall be transcribed to writing.

(g) *Use of depositions at hearing.* (1) All or all of a deposition, to the extent admissible under rules of evidence applied at the hearing, may be used against a witness were then present and to the hearing, may be used against any other reasonable notice of the taking of the deposition by the Administrative Law Judge.

(i) The witness is dead;

©1999, CCH INCORPORATED

Commodity Futures Law Reporter

PART 166—CUSTOMER PROTECTION RULES

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6g, 6h, 6l, 6o, 12a, and 23, unless otherwise noted.
Source: 43 F.R. 31886, July 24, 1978 (§ 20,642), effective Oct. 1, 1978; 46 F.R. 54500, Nov. 3, 1981 (§ 21,263), effective Dec. 3, 1981; 48 F.R. 35248, Aug. 3, 1983 (§ 21,792), effective Aug. 3, 1983; 59 F.R. 5529, Feb. 7, 1994 (§ 25,961), effective Feb. 7, 1994.

[§ 3241]

§ 166.1 Definitions.

(a) The term "Commission registrant" as used in this Part means any person who is registered or required to be registered with the Commission pursuant to the Act or any rule, regulation, or order thereunder.

(b) The term "commodity interest" as used in this part means—

(1) Any contract for the purchase or sale of any commodity for future delivery, traded on or subject to the rules of a contract market or a foreign board of trade.

(2) Any agreement or transaction subject to Commission regulation under section 4c of the Act, including any such contract or transaction made or to be made on or subject to the rules of a foreign board of trade; or

(3) Any contract or transaction subject to Commission regulation under section 19 of the Act (7 U.S.C. 23).

(c) The term "customer" as used in this part means any person trading, intending to trade, or receiving or seeking advice concerning any commodity interest, including any existing or prospective client or subscriber of a commodity trading advisor or existing or prospective participant in a commodity pool, but the term does not include a person who is acting in the capacity of a Commission registrant with respect to the trade.

(d) The term "commodity account" as used in this part means the account of a customer in which any commodity interest is, or is intended to be, traded.

[Adopted July 24, 1978, 43 F.R. 31886 (§ 20,642), effective Oct. 1, 1978; amended Nov. 3, 1981, 46 F.R. 54500 (§ 21,263), effective Dec. 3, 1981; Aug. 5, 1987, 52 F.R. 28980 (§ 23,740), effective Jan. 4, 1988; Dec. 28, 1987, 52 F.R. 48811 (§ 24,017), effective date postponed to Feb. 1, 1988.]

[§ 3242]

§ 166.2 Authorization to trade.

No futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—

(a) Specifically authorized the futures commission merchant, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the cus-

tommer or person designated by the customer to control the account specifies (1) the precise commodity interest to be purchased or sold and (2) the exact amount of the commodity interest to be purchased or sold; or

(b) Authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; *Provided, however*, That if such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

[Adopted July 24, 1978, 43 F.R. 31886 (§ 20,642), effective Oct. 1, 1978; amended Jan. 22, 1979, 44 F.R. 4465, effective Jan. 20, 1979; Aug. 3, 1983, 48 F.R. 35248 (§ 21,792), effective Aug. 3, 1983; Aug. 5, 1987, 52 F.R. 28980 (§ 23,740), effective Jan. 4, 1988; Dec. 28, 1987, 52 F.R. 48811 (§ 24,017), effective date postponed to Feb. 1, 1988.]

[§ 3243]

§ 166.3 Supervision.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

[Adopted July 24, 1978, 43 F.R. 31886 (§ 20,642), effective Oct. 1, 1978; Aug. 3, 1983, 48 F.R. 35248 (§ 21,792), effective Aug. 3, 1983.]

[§ 3244]

§ 166.4 Branch offices.

Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

[Added Aug. 3, 1983, 48 F.R. 35248 (§ 21,792), effective Aug. 3, 1983.]

[The next page is 3311.]

Commodity Futures Law Reports

§ 166.4 ¶ 3244

Strategies and Techniques of Enforcement
Wed. Oct. 18, 2000

(1956 (12 U.S.C.

(2), require any
tain, maintain, or
finding that the
potential risks to
il information, the
reporting require-

ion with respect to
ments of a Federal

it to the affiliated

nation required is
ion determines that
with ensuring the
ant or the stability

nmission to require
amination report of
ysis contained in the

any Federal banking
iated person that is
sing agency may be
ction 8a(6)), without

any concerns of the
from the activities of
s subject to examina-

ny person or class of
mission shall provide
nd regulations issued
consider, among other

tion is available from
Financial Privacy Act
ilar State agency, the

the affiliated person's

n merchant's commod-

hant and its affiliated
assets devoted to, and
sets.

tion shall be subject to
withstanding any other
y information required
the Commission by any
operational condition of

(11) Nothing in paragraphs (1) through (10) shall be construed to supersede or to limit in any way the authority or powers of the Commission pursuant to any other provision of this Act or regulations issued under this Act. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 229(3), P.L. 102-546, 106 Stat. 3590, 3619-3622.]

.01 1992 amendment.—For historical comment or amendments made by the Futures Trading Practices Act of 1992, see ¶ 7110.001.

[¶ 1101]

[REPORTS—BOOKS AND RECORDS]

Sec. 4g. (a) Every person registered hereunder as futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice. [As amended by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Secs. 103, 415, 88 Stat. 1392, 1415; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 209(1), 96 Stat. 2294, 2302; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Secs. 207(b)(1) and 402(5), P.L. 102-546, 106 Stat. 3590, 3604, 3624.]

.01 1974 amendment.—The 1974 amendment designated the first paragraph of Sec. 4g as (1), substituted the word "Commission" the first time it appears in the section for the words "Secretary of Agriculture", substituted the word "Commission" the second time it appears in the section for the word "Secretary", and substituted the word "Commission" the third time it appears in the section for the words "United States Department of Agriculture".

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 8125.001.

.03 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 8125.001.

[¶ 1102]

[Daily Trading Records]

(b) Every clearinghouse and contract market shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 415, 88 Stat. 1415; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(5), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 8145.001 and 8701.001.

[¶ 1103]

[Customer Records]

(c) Floor brokers, introducing brokers, and futures commission merchants shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (b). [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 415, 88 Stat. 1415; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 6, 92 Stat. 865, 869; Act of January 11 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 209(2), 96 Stat. 2294, 2302; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(5), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 8150.001.

.03 1992 amendment.—For historical comment on amendments made by the Futures Trading Act of 1992, see ¶ 8150.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 8150.001.

[§ 1104]

[Form of Records]

(d) Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 415, 88 Stat. 1415; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(5), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 8175.001 and ¶ 8755.001.

[§ 1105]

[Volume of Trading]

(e) Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Commission deems necessary in the public interest and prescribes by rule, order, or regulation. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 415, 88 Stat. 1415; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(5), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 8785.001

[§ 1106]

[Separate Determinations]

(f) Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different clearinghouses, contract markets, and exchanges when such determinations are warranted in the judgment of the Commission. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 415, 88 Stat. 1415; as amended by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 402(5), P.L. 102-546, 106 Stat. 3590, 3624.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 8815.001.

[§ 1111] [EXECUTION BY OR THROUGH MEMBER OF CONTRACT MARKET]

Sec. 4h. It shall be unlawful for any person falsely to represent such person to be a member of a contract market or the representative or agent of such member, or to be a registrant under this Act or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any contract market. [As amended by Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 210, 96 Stat. 2294, 2302—2303.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 12,901.001.

[§ 1121] [REPORTS OF TRANSACTIONS EQUALING OR EXCEEDING FIXED LIMITS—BOOKS AND RECORDS]

Sec. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market—

- (1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

- (2) if such in any commodity as shall be fixed

unless such person Commission such rule (2) hereof as the Commission rules and regulation transactions and persons subject to the rule inventories and persons shall show complete commitments, including and shall be open Department of Justice transactions and persons directly or 1974 (Commodity 103, 88 Stat. 1392; 11, 1983, Sec. 211,

.01 1974 amendment substituted the word "Commission" for "Secretary of Agriculture" the fifth "United States Department

[§ 1131]

Sec. 4j. (a)(1) trading on each contract paragraph (3). The

- (A) shall not less than (B) shall appropriate, trading—

- (i) trading (ii) exchange (iii) annually the regulation graph, and (iv) characterizing (C) shall under paragraph to be submitted (D) shall trading volume daily average (E) shall paragraph (3) fundamental (2) As used in orders by a floor trade in the same (A) the actual

[OBLIGATIONS UNDER SECURITIES LAWS]

(2) Nothing in this Act shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 or the Securities Exchange Act of 1934 governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 205, 88 Stat. 1397, effective July 18, 1975, pursuant to CFTC action under Act of April 16, 1975, Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 8, 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 103, 96 Stat. 2294, 2296—2297.]

201 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 7762.001.

[¶ 1171] [COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS—REGISTRATION PROCEDURE]

Sec. 4n. (1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this Act by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions, or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

[Renewal of Registration]

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

[Books and Records]

(3)(A) Every commodity trading advisor and commodity pool operator registered under this Act shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

Commodity Futures Law Reports

Sec. 4n ¶ 1171

scribed by the
em necessary
se continue to
require. Such
tion, or order
(82), effective

or remain an
nown of facts
ons in section
facts and the
arily licensed.
May 11, 1983,

ADVISORS and
among other

furnished and
other arrange-
the mails and

omarily relate
of commodities

tially transac-
modity Futures
5, pursuant to

POOL

ommodity pool
any means or
uch commodity
of section
the preceding
en persons and
g advisor. The
r who is a (1)
ity specifically
utures Trading
membership,
ny commodity
he Commodity
ed in clause (1)
the conduct of
eedings under

INCORPORATED

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

[Statements of Account]

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest. [Sec. 4n, as added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 205, 88 Stat. 1397, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 9(1), (2), and (3), 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 213, 96 Stat. 2294, 2305.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 7655.001, 7685.001, 7705.001, 7715.001, 7765.001, and 7795.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 7655.001, 7685.001, 7705.001, 7715.001, 7765.001, and 7795.001.

[§ 1181] [FRAUDULENT TRANSACTIONS PROHIBITED]

Sec. 4o. (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator 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 any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this Act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this Act as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented. [Sec. 4o, as added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 205, 88 Stat. 1397, effective July 18, 1975, pursuant to CFTC action taken under Act of April 16, 1975, Sec. 1(c), 89 Stat. 77; as amended by Act of September 30, 1978 (Futures Trading Act of 1978), effective October 1, 1978, Sec. 10, 92 Stat. 865, 870; Act of January 11, 1983 (Futures Trading Act of 1982), effective January 11, 1983, Sec. 214, 96 Stat. 2294, 2305.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 10,625.001.

.02 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 10,625.001.

[§ 1191] [FITNESS STANDARDS]

Sec. 4p. (a) The Commission may specify by rules and regulations appropriate standards with respect to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 17 of this Act or contract markets may adopt written proficiency examinations to be given to applicants for registration, and charge reasonable fees

¶ 1181 Sec. 4o

CCH INCORPORATED

to such applicants to other provision of this terms and conditions a: to any written proficie demonstrated, through to protect the interests with whom such indivi Trading Commission amended by Act of Ja 1983, Sec. 215, 96 S Practices Act of 1992 3590, 3607.]

.01 1983 amendment. ment on amendments mad- ing Act of 1982, see ¶ 7145.

[§ 1192]

(b) The Commiss after receiving such attend periodic traini to the public under th of trade, any rule or market, registered in applicable Federa (Futures Tradi 102-546, 106 Stat. 35

.01 1992 amendment ment on amendments ma- ing Practices Act of 1992,

[§ 1201]

Sec. 5. The Co trade as a "contract carries out the follow

(1) When specified in the such board is so general value o of such comm inspection serv purpose: Provi "contract mar such contracts the Commissio Commission A October, 1980 Sec. 201(c), P.

.01 1974 amendmen added the words "or th words "Secretary of Ag the word "Commission of Agriculture".

[§ 1202]

(2) When board or any with the rule be prescribed entered into transactions

Commodity Futures

permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades shall be conducted: *Provided*, That any such determination, at a minimum, shall take into account the effect upon the liquidity of trading of each market: *And provided further*, That nothing herein shall be construed to prohibit the Commission from making separate determinations for different contract markets when such are warranted in the judgment of the Commission, or to prohibit contract markets from setting terms and conditions more restrictive than those set by the Commission. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), effective April 21, 1975, Sec. 203, 88 Stat. 1396; as amended by Act of April 16, 1975, Sec. 2, P.L. 94-16, 89 Stat. 77; Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 101, P.L. 102-546, 106 Stat. 3590, 3591.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 12,955.001.

¶ 1133 [Restrictions on Trading Among Members of Broker Associations]

(d)(1) Except as provided in paragraph (2), a floor broker may not execute an order of a customer if such floor broker knows the opposite party to the transaction to be a floor broker or floor trader with whom such trader or broker has a relationship involving trading on such contract market as—

- (A) a partner in a partnership;
- (B) an employer or employee; or
- (C) such other affiliation as the Commission may specify by rule.

(2) Paragraph (1) shall not apply—

(A) if the Commission has adopted rules that the Commission certifies to Congress require procedures and standards designed to prevent violations of this Act attributable to the trading described in paragraph (1); or

(B) to any contract market that has implemented rules designed to prevent violations of this Act attributable to the trading described in paragraph (1), except that, if the Commission determines, by rule or order, that such rules are not adequate to prevent such violations, paragraph (1) shall become effective with respect to such contract market after a reasonable period determined by the Commission. [As added by Act of October 28, 1992 (Futures Trading Practices Act of 1992), effective October 28, 1992, Sec. 102, P.L. 102-546, 106 Stat. 3590, 3594.]

.01 1992 amendment.—For historical comment on amendments made by the Futures Trading Practices Act of 1992, see ¶ 12,960.001.

¶ 1141 [REGISTRATION OF ASSOCIATED PERSONS]

Sec. 4k. (1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 204, 88 Stat. 1396, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as

¶ 1133 Sec. 4k

©1999, CCH INCORPORATED

Strategies and Techniques of Enforcement
Wed. Oct. 18, 2000

amended by Act of January 11, 1955, Sec. 212, 96 Stat. 2294, 2303—23

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 7425.001.

¶ 1142]

(2) It shall be unlawful for a person to be associated with a futures commission merchant as a partner, officer, employee, or performing similar functions), securities, or property for a partner or persons so engaged, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection. [As added by Act of October 23, 1974 (Commodity Futures Trading Commission Act of 1974), Sec. 204, 88 Stat. 1396, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as amended by Act of January 11, 1955, Sec. 212, 96 Stat. 2294, 2304.]

.01 1978 amendment.—For historical comment on amendments made by the Futures Trading Act of 1978, see ¶ 7540.001.

¶ 1143]

(3) It shall be unlawful for a person to be associated with a futures commission merchant as a partner, officer, employee, or performing similar functions), client's or prospective client's orders, unless such person is registered with the Commission under this Act as an associated person of such futures commission merchant and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this subsection. [As added by Act of October 1, 1978, Sec. 7(2), 92 Stat. 1396, effective July 18, 1975, pursuant to CFTC action under Sec. 1(c), 89 Stat. 77; as amended by Act of January 11, 1955, Sec. 212, 96 Stat. 2294, 2304.]

.01 1983 amendment.—For historical comment on amendments made by the Futures Trading Act of 1982, see ¶ 7475.001.

¶ 1144]

(4) Any person desiring to be associated with a futures commission merchant, of an introducing broker,

Commodity Futures Law Reports