

§ 190.03

17 CFR Ch. I (4-1-01 Edition)

Notwithstanding the foregoing, an open commodity contract must be offset if: such contract is a futures contract which would otherwise remain open beyond the last day of trading, or the first day on which notice of intent to deliver may be tendered with respect thereto, whichever occurs first; such contract is a long option on a physical commodity which cannot be settled in cash and would be automatically exercised, has value and would remain open beyond the last day for exercise; such contract is a short option on a physical commodity which cannot be settled in cash; or, as otherwise specified in these rules.

(2) *Specifically identifiable property other than open commodity contracts.* Specifically identifiable property other than open commodity contracts to the extent that:

(i) The fair market value of such property is less than 90% of its fair market value on the date of entry of the order for relief; or

(ii) The trustee has not received instructions to return, or has not returned, such property upon the terms contained in §190.08(d)(1) on or before the end of the period set forth in paragraph (b)(1) of this section.

(3) *All other property.* All other property not required to be transferred or returned pursuant to customer instructions which has not been liquidated in accordance with paragraphs (f)(1) and (f)(2) of this section.

(g) *Treatment of open commodity contracts—(1) Margin payments by the trustee.* Prior to the primary liquidation date, the trustee may make variation and maintenance margin payments to a commodity broker carrying the account of the debtor, as appropriate, pending liquidation of any open commodity contracts required to be liquidated under paragraph (f)(1) of this section, whether or not such contracts are specifically identifiable to a particular customer: *Provided, That:*

(i) No payments may be made on behalf of accounts which are in deficit,

(ii) No payments may be made on behalf of non-public customers or the debtor from funds which are segregated for the benefit of public customers,

(iii) The trustee must make margin payments if payments of margin are re-

ceived from customers after bankruptcy in response to margin calls, and

(iv) No payments need be made to restore initial margin.

(2) *Margin calls.* The trustee, or in the case of an involuntary bankruptcy, the commodity broker against which the petition is filed or the trustee if a trustee has been appointed, must issue margin calls with respect to any account in which the funded balance less the value on the date of return or transfer of any property previously returned or transferred does not equal or exceed:

(i) 100% of the maintenance margin requirements of the applicable board of trade with respect to the open commodity contracts in such account; or

(ii) If there are no such maintenance margin requirements, 100% of the clearing organization margin requirements applicable to the open commodity contracts in such account; or

(iii) If there are no maintenance margin requirements or clearing organization margin requirements, then 50% of the initial margin applicable to the open commodity contracts in such account;

Provided, That no margin calls need be made by the trustee to restore initial margin. A margin call for such accounts should be made as soon as possible following the order for relief and the trustee shall be authorized, but not obligated, to liquidate any account for which such margin call is not met within a reasonable time as defined in §190.04(e)(4): *Provided, That* the trustee must immediately liquidate any account which is in deficit.

(3) *Margin payments by the customer.* The full amount of any margin payment by a customer in response to a margin call under paragraph (g)(2) of this section must be credited to the funded balance of the particular account for which it was made.

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

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

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

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

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

margin calls need be made to restore initial margin.

(4) *Margin payments.* The trustee may make variation or maintenance margin payments to the broker carrying any account referred to in paragraph (a)(1) of this section as appropriate if such payments do not exceed the balance of the statement of account generated under paragraph (a)(1) of this section with respect to which such contracts are credited. Any customer for which commodity contracts remain open subsequent to the primary liquidation date will not be relieved of the obligation to make margin payments by reason of the bankruptcy of the commodity broker: *Provided,* That the full amount of any margin payment made by a customer subsequent to the primary liquidation date must be credited to the account referred to in paragraph (a)(1) of this section for which it was made.

(5) *Distribution.* No distribution of equity may be made to or on behalf of customers by the trustee with respect to an account established in accordance with paragraph (a)(1) of this section, except pursuant to paragraph (a)(4) of this section and to § 190.08(d).

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

(1) Any payment of margin would result in a deficit in the account in which they are held;

(2) The customer for, or on whose behalf, the account is held fails to meet a margin call within a reasonable time;

(3) The trustee has received no customer instructions with respect to such contract by the close of business on the fifth business day after entry of the order for relief;

(4) The commodity contract has not been transferred in accordance with § 190.08(d)(2) on or before the close of business on the tenth business day after entry of the order for relief; or

(5) The commodity contract would otherwise remain open beyond the last day of trading in such contract or the first day on which notice of delivery may be tendered with respect to such contract, whichever occurs first.

(c) *Liquidation of specifically identifiable property other than open commodity contracts.* All specifically identifiable property other than open commodity contracts which have not been liquidated prior to the primary liquidation date, and for which no customer instructions have been timely received must be liquidated, to the extent reasonably possible, no later than the close of business on the fifth business day after final publication of the notice referred to in § 190.02(b)(1). All other specifically identifiable property must be liquidated or returned, to the extent reasonably possible, no later than the close of business on the tenth business day after final publication of such notice.

§ 190.04 Operation of the debtor's estate—general.

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

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

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

(2) *Accessibility.* The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, parties in interest, the Commission and the U.S. Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the U.S. Department of Justice immediate access

to all records of the debtor, including records required to be retained in accordance with § 1.31 of this chapter and all other records of the commodity broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

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

(ii) *Book entry.* Notwithstanding paragraph (1), in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit offsetting open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset such trades on the books of the commodity broker using an execution price equal to the weighted average of the liquidation prices for contracts in the same commodity for the same delivery month on the same contract market which are not matched on the books of the commodity broker, or if there are no such unmatched contracts, using the average of the opening price and the settlement price of contracts in the same commodity for the same delivery month on the same contract market as of the close of business on the market day of the order for relief.

(2) *Liquidation only.* Nothing in this part shall be interpreted to permit the trustee to purchase or sell new commodity contracts for customers of the debtor except to offset open commodity contracts or to transfer any transferable notice received by the debtor or the trustee under any commodity contract: *Provided, however*,