

chapter. In determining net capital, the provisions set forth in § 1.17(c)(1) of this chapter shall apply;

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

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

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

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

(9) The safety factors set forth in § 1.17(c)(5) (viii) and (ix) of this chapter for undermargined commodity futures and commodity option customer and noncustomer accounts shall apply in a like manner to undermargined leverage customer and noncustomer accounts, respectively, and the term “leverage transaction merchant” shall be substituted for the terms “applicable boards of trade” or “clearing organization”; and

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

(c) No person shall be registered as a leverage transaction merchant unless, commencing on the date the person applies for such registration, the person prepares, and keeps current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as other-

wise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 2-FR or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

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

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

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

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

(b) No leverage transaction merchant shall offer to purchase or purchase a short leverage contract involving a leverage commodity from any leverage

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customer at any time when such leverage transaction merchant is not offering to resell to any of its leverage customers any short leverage contract, and is not offering to repurchase from any of its leverage customers any long leverage contract, involving the same leverage commodity previously purchased or sold by the leverage transaction merchant from or to a leverage customer.

[50 FR 36414, Sept. 6, 1985]

§31.11 Disclosure.

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

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

BECAUSE OF THE UNPREDICTABLE NATURE OF THE PRICES OF PRECIOUS AND OTHER METALS, LEVERAGE CONTRACTS INVOLVE A HIGH DEGREE OF RISK AND ARE NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. THE LEVERAGE CUSTOMER SHOULD BE AWARE THAT THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY PURCHASED BY A CUSTOMER ("LONG LEVERAGE CONTRACT") MUST EXCEED THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. SIMILARLY, THE VALUE OF A LEVERAGE CONTRACT ORIGINALLY SOLD BY A LEVERAGE CUSTOMER ("SHORT LEVERAGE CONTRACT") MUST BE LESS THAN THE BREAK-EVEN PRICE BEFORE IT IS POSSIBLE TO REALIZE A PROFIT ON THE CONTRACT. A FILLED IN VERSION OF THE CUSTOMER CONFIRMATION STATEMENT REFLECTING A SINGLE TRANSACTION IN A REPRESENTATIVE LEVERAGE COMMODITY FOR A LONG LEVERAGE TRANSACTION AND A SHORT LEVERAGE TRANSACTION

WHICH INCLUDES A FORMULA FOR CALCULATING AN ESTIMATE OF THE LEVERAGE CONTRACT'S BREAK-EVEN VALUE IS ATTACHED TO THIS DOCUMENT. THIS IS IN THE SAME FORMAT AS THE CONFIRMATION STATEMENT YOU WILL RECEIVE TO CONFIRM YOUR ACTUAL TRANSACTION. BE CERTAIN THAT YOU UNDERSTAND THE INFORMATION PROVIDED BY THIS STATEMENT BEFORE YOU ENTER INTO A LEVERAGE TRANSACTION.

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

YOU SHOULD ALSO BE AWARE THAT YOU ARE SUBJECT TO MARGIN CALLS. THE LEVERAGE FIRM RESERVES THE RIGHT TO LIQUIDATE YOUR POSITION IF YOU DO NOT RESPOND TO A MARGIN CALL WITHIN THE TIME SPECIFIED IN YOUR LEVERAGE AGREEMENT. IN ANY EVENT, IF THE EQUITY IN YOUR CONTRACT AT ANY TIME FALLS BELOW 50% OF THE MINIMUM MARGIN, YOUR CONTRACT MAY BE LIQUIDATED WITHOUT PRIOR NOTICE. YOU MUST, HOWEVER, BE NOTIFIED OF LIQUIDATION WITHIN NO MORE THAN 24 HOURS THEREAFTER AND PERMITTED TO REESTABLISH YOUR CONTRACT FOR A PERIOD OF 5 BUSINESS DAYS. LEVERAGE CONTRACTS PURCHASED FROM A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING BID PRICE AND LEVERAGE CONTRACTS SOLD TO A LEVERAGE TRANSACTION MERCHANT ARE RE-ESTABLISHED AT THE THEN PREVAILING ASK PRICE WITHOUT COMMISSIONS, FEES OR OTHER MARKUPS OR CHARGES UNDER RULES SET BY THE COMMODITY FUTURES TRADING COMMISSION, AS MORE COMPLETELY DESCRIBED IN THIS DISCLOSURE DOCUMENT. IN CASE OF LIQUIDATION, ALL OF YOUR FUNDS MAY BE USED TO SETTLE THE DEFICIT IN THE ACCOUNT, AND YOU MAY BE LIABLE FOR ADDITIONAL FUNDS TO SETTLE IN FULL.

IF YOU ARE A FIRST-TIME LEVERAGE CUSTOMER, YOU MAY RESCIND YOUR