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,* That the trustee may, in its discretion and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of price limits or other market conditions, or may take an offsetting position in a new month or at a strike price for which limits have not been reached.

(e) *Other matters*—(1) *Determination as to bona fide hedges*. In determining which commodity contracts are eligible to be held open for transfer pursuant to customer instruction, the trustee may rely on the designation in the accounting records of the commodity broker that the account for or on behalf of which the contract is held is a hedging account. Commodity contracts maintained in a hedging account may be treated by the trustee as specifically identifiable.

(2) *Disbursements*. The trustee shall make no disbursements to customers prior to final distribution except with approval of the court or in accordance with §190.08(d).

(3) *Investment*. The trustee shall promptly invest the equity resulting from the liquidation of commodity contracts, and the proceeds of the liquidation of specifically identifiable property, in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States, and may similarly invest any customer equity in accounts which remain open in accordance with §190.03: *Provided,* That such obligations are maintained in a depository located in the United States, its territories or possessions.

(4) *Margin calls—reasonable time*. Except as otherwise provided in this part, a reasonable time for meeting margin calls made by the trustee shall be deemed to be one hour, or such greater period not to exceed one business day, as the trustee may determine in its sole discretion.

(5) *Management of Long Option Contracts*. Subject to the applicable liquidation provisions the trustee must use its best efforts to assure that a long option contract with value does not expire worthless.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983]

§ 190.05 Making and taking delivery on commodity contracts.

(a) *General*. (1) In the event that the trustee is unable to liquidate an open commodity futures contract subject to physical delivery or an option on a physical commodity, which cannot be settled in cash, prior to the last day of trading in that contract as required by §§190.02(f)(1) and 190.03(b)(5), the trustee must use its best efforts to prevent property which is to be delivered for or on behalf of a customer to fulfill that contract, or property for which delivery is being taken with respect to a customer pursuant to that contract, from becoming part of the debtor's estate.

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in §190.01(kk) (3), (4), and (5), except that with respect to §190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

(3) The portion of the price or the proceeds of a commodity contract upon delivery which is not specifically identifiable property under § 190.01(kk) (4) and (5) must be distributed pro rata under section 766(h) of the Code.

(b) *Contract market rules for deliveries on behalf of a customer of a debtor.* Except in the case of a commodity futures or option contract which is settled in cash, each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with section 5a(a)(12) of the Act and § 1.41 of this chapter, which:

(1) Permit the making and taking of delivery to fulfill a commodity futures contract for a physical commodity or an option on a physical commodity, which has not become part of the debtor's estate on the date of the entry of the order for relief but with respect to which commodity contract:

(i) Trading has ceased on the date of the entry of the order for relief;

(ii) Notice of delivery has been tendered on or before the date of the entry of the order for relief; or,

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the payment for such physical commodity in any bankruptcy distribution: *Provided, however,* That a customer shall not be relieved of his obligation to make or take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and

(2) Recognize that the equity of a customer of the debtor in a commodity contract upon which delivery is made or taken must be included in the net equity claim of that customer and, as such, can only be distributed pro rata at the time of, and as part of, any distributions to customers made by the trustee.

(c) *Delivery made or taken within the debtor's estate.* (1) Any property in a delivery account which is part of the debtor's estate on the date of the order for relief may be returned under the terms set forth in § 190.08(d)(1)(ii).

(2) If the property to be delivered is part of the debtor's estate on the date of the order for relief and a customer of the debtor is required to make delivery, the trustee must make delivery in the same manner as if no bankruptcy had occurred and the party by whom delivery is taken must pay the full notice price or strike price for delivery.

(3) If delivery is to be made or taken on behalf of a house account the trustee must either make or take delivery, as the case may be, on behalf of the debtor's estate: *Provided,* That if the trustee, at any time, takes delivery of a physical commodity, the trustee must convert that physical commodity to cash as promptly as possible.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983; 59 FR 5704, Feb. 8, 1994]

§ 190.06 Transfers.

(a) *Transfer rules.* No self-regulatory organization or clearing organization may adopt, maintain in effect or enforce rules which:

(1) Are inconsistent with the provisions of this part;

(2) Interfere with the acceptance by its members of open commodity contracts and the equity margining or securing such contracts from futures commission merchants, or persons which are required to be registered as futures commission merchants, which are required to transfer accounts pursuant to § 1.17(a)(4) of this chapter; or

(3) Prevent the acceptance by its members of transfers of open commodity contracts and the equity margining or securing such contracts from futures commission merchants with respect to which a petition in bankruptcy has been filed, if such transfers have been approved by the Commission.