

the return date on any loan by the debtor to the customer for which such property constitutes security; or

(ii) If it is not so margining an open contract, at the option of the customer, either pursuant to the terms of paragraph (d)(1)(i) of this section, or pursuant to the following terms: such customer first deposits cash with the trustee in an amount equal to the amount by which the greater of the value of the specifically identifiable property to be transferred or returned on the date of such transfer or return or the balance due on the return date on any loan by the debtor to the customer for which such property constitutes security, together with any other disbursements made, or to be made, to such customer, plus a reasonable reserve in the trustee's sole discretion, exceeds the estimated aggregate of the funded balances for each class of account of such customer less the value on the date of its transfer or return of any property transferred or returned prior to the primary liquidation date with respect to the customer's net equity claim for such account; *Provided*, That adequate security for the nonrecovery of any overpayments by the trustee is provided to the debtor's estate by the customer.

(2) *Transfers of specifically identifiable commodity contracts under section 766 of the Bankruptcy Code.* Any specifically identifiable commodity contract which is not required to be liquidated under §190.02(f)(1) or §190.03(b), and which is not otherwise liquidated, may be transferred on behalf of a customer: *Provided*, That such customer must first deposit cash with the trustee in an amount equal to the amount by which the equity to be transferred to margin such contract together with any other transfers or returns of specifically identifiable property or disbursements made, or to be made, to such customer, plus a reasonable reserve in the trustee's sole discretion, exceeds the estimated aggregate of the funded balances for each class of account of such customer less the value on the date of its transfer or return of any property transferred or returned prior to the primary liquidation date with the respect to the customer's net equity claim for such account: and, *Provided further*,

That adequate security for the nonrecovery of any overpayments by the trustee is provided to the debtor's estate by the customer.

(3) *Distribution in kind of specifically identifiable securities.* If any securities of a customer would have been specifically identifiable under §190.01(kk)(6) if that customer had had no open commodity contracts, the customer may request that the trustee purchase or otherwise obtain the largest whole number of like-kind securities, with a fair market value (inclusive of transaction costs) which does not exceed that portion of such customer's allowed net equity claim that constitutes a claim for securities, if like-kind securities can be purchased in a fair and orderly manner.

(4) *Proof of customer claim.* No distribution shall be made pursuant to paragraphs (d)(1) and (d)(3) of this section prior to receipt of a completed proof of customer claim as described in §190.02(d).

(5) *No differential distributions.* No further disbursements may be made to customers for whom transfers have been made pursuant to §190.06 and paragraph (d)(2) of this section, until a percentage of each net equity claim equivalent to the percentage distributed to such customers is distributed to all public customers. Partial distributions, other than the transfers referred to in §190.06 and paragraph (d)(2) of this section, made prior to the final net equity determination date must be made pursuant to a preliminary plan of distribution approved by the court, upon notice to the parties and to all customers, which plan requires adequate security to the debtor's estate for the nonrecovery of any overpayments by the trustee and distributes an equal percentage of net equity to all public customers.

(6) *Margin payments.* The trustee may make margin payments on behalf of any account which do not exceed the funded balance of that account.

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§ 190.09 Member property.

(a) *Member property.* "Member property" means, in connection with a

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clearing organization bankruptcy, the property which may be used to pay that portion of the net equity claim of a member which is based on its house account.

(b) *Scope of member property.* Member property shall include all money, securities and property received, acquired, or held by a clearing organization to margin, guarantee or secure the proprietary account, as defined in §1.3(y) of this chapter, of a clearing member: *Provided, however,* That any guaranty deposit or similar payment or deposit made by such member and any capital stock, or membership of such member in the clearing organization shall also be included in member property after payment in full of that portion of the net equity claim of the member based on its customer account and of any obligations due the clearing organization which may be paid therefrom in accordance with the by-laws or rules of the clearing organization, including obligations due from the clearing organization to customers or other members.

§ 190.10 General.

(a) *Notices.* Unless instructed otherwise, all mandatory or discretionary notices to be given to the Commission under this part shall be directed to the Washington, DC headquarters of the Commission (Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581) and addressed to the Secretariat, for the attention of the Director of the Division of Clearing and Intermediary Oversight. All such notices shall be in writing and shall be given by telegram or other similarly rapid means of communication. For purposes of this part, notice to the Commission shall be deemed to be given only upon actual receipt.

(b) *Request for exemption from time limit.* (1) A trustee or any other person charged with the management of a commodity broker which has filed a petition in bankruptcy, or against which such a petition has been filed, may for good cause shown request from the Commission an exemption from, or extension of, any time limit prescribed by this part 190: *Provided,* That no such exemption or extension will be granted for any time period established by the

Bankruptcy Code, as amended, 11 U.S.C. 101 *et seq.*

(2) Such a request shall be made *ex parte* and by any means of communication, written or oral: *Provided,* That an oral request shall be confirmed in writing within one business day and such confirmation shall contain all the information required by paragraph (b)(3) of this section. Any such request shall be directed to the person as provided in paragraph (a) of this section, and at the address provided therein.

(3) Such a request shall state the particular provision of the part 190 rules with respect to which the exemption or extension is sought, the reason for the requested exemption or extension, the amount of time sought if the request is for an extension, and the reason why such exemption or extension would not be contrary to the purposes of the Bankruptcy Code and the Commission's part 190 regulations promulgated thereunder.

(4) The Director of the Division of Clearing and Intermediary Oversight, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, in his sole discretion, whether to grant, deny or otherwise respond to a request, and shall communicate that determination by the most appropriate means to the person making the request and to the bankruptcy court with jurisdiction over the case.

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in §1.65 of this chapter, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in §1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under §1.55(c) of this chapter and set forth in