

§ 300.300

§§ 300.100 through 300.105; accounts introduced by different brokers or dealers shall be protected separately.

CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

AUTHORITY: Sec. 3, 6(d), Pub. L. 91-598, 84 Stat. 1636 (15 U.S.C. 78ccc, 78fff(d)), as amended by secs. 3, 5, 9, Pub. L. 95-283, 92 Stat. 249.

SOURCE: Sections 300.300 through 300.307 appear at 44 FR 21211, Apr. 9, 1979, unless otherwise noted.

§ 300.300 Definitions.

For the purpose of these rules, adopted pursuant to section 8(e) of the Securities Investor Protection Act of 1970, as amended (hereinafter referred to as "the Act"):

(a) The term *failed to receive* shall mean a contractual commitment of the debtor made in the ordinary course of business to pay to another broker or dealer the contract price in cash upon receipt from such broker or dealer of securities purchased: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date as defined in section 16(7) of the Act (hereinafter referred to as the "filing date").

(b) The term *failed to deliver* shall mean a contractual commitment of the debtor, made in the ordinary course of business, to deliver securities to another broker or dealer against receipt from such broker or dealer of the contract price in cash: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date.

(c) The term *open contractual commitment* shall mean a failed to receive or a failed to deliver which had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date: *Provided*, however, That the term "open contractual commitment" shall not include any contractual commitment for which the security which is the subject of the trade had not been issued by the issuer as of the trade date.

(d) The term *customer* shall mean a person (other than a broker or dealer)

17 CFR Ch. II (4-1-03 Edition)

in whose behalf a broker or dealer has executed a transaction out of which arose an open contractual commitment with the debtor, but shall not include any person to the extent that such person at the filing date (1) had a claim for property which by contract, agreement of understanding, or by operation of law, was a part of the capital of the broker or dealer who executed such transaction or was subordinated to the claims of creditors of such broker or dealer, or (2) had a relationship with the debtor which is specified in section 9(a)(4) of the Act.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

§ 300.301 Contracts to be closed out or completed.

An open contractual commitment shall be closed out or completed if:

(a) The open contractual commitment:

(1) Arises from a transaction in which a customer (as defined in § 300.300) of the other broker or dealer had an interest. For the purposes of this rule a customer is deemed to have an interest in a transaction if (i) the other broker was acting as agent for the customer or (ii) the other dealer was not a market maker in the security involved, to the extent such other dealer held a firm order from the customer and in connection therewith: In the case of a buy order, prior to executing such customer's order purchased as principal the same number of shares or purchased shares to accumulate the number of shares necessary to complete the order; or in the case of a sell order, prior to executing such customer's order sold the same number of shares or a portion thereof; and

(2)(i) Had a settlement date on or within 30 calendar days prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date; and

(ii) Had a trade date on or within three business days prior to such settlement date; and

(b) The other broker or dealer can establish to the satisfaction of the trustee through appropriate documentation that:

(1) In the case of a broker or dealer who maintains his records on a specific identification basis:

(i) The open contractual commitment arose out of a transaction in which his customer had such an interest, and

(ii) In the case of a failed to deliver of the debtor, as of the filing date such broker's or dealer's customer's interest had not been sold to such broker or dealer; or

(2) In the case of a broker or dealer who maintains his records other than on a specific identification basis, he has determined that a customer had such an interest in a manner consistent with that used by such broker or dealer prior to the filing date to allocate fails to receive and fails to deliver in computing the special reserve bank account requirement pursuant to the provisions of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3); or

(3) In the case of a broker or dealer not described in paragraph (b)(1) or (2) of this section, he has made the determination in a manner which the trustee finds to be fair and equitable.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

§300.302 Mechanics of closeout or completion.

(a) The closeout or completion of an open contractual commitment meeting the requirements of §300.301 shall be effected only:

(1) By the buy-in or sell-out of the commitment by the other broker or dealer in accordance with the usual trade practices initiated by the other broker or dealer within or promptly upon the expiration of a period of 30 calendar days after settlement date; or

(2) At the option of the trustee by the delivery of securities against receipt of the contract price or payment of the contract price against the receipt of the securities at any time within 30 calendar days after settlement date unless the commitment previously has been bought-in or sold-out in accord-

ance with paragraph (a)(1) of this section; or

(3) In the event of the refusal of the other broker or dealer to accept completion of an open contractual commitment in accordance with paragraph (a)(2) of this section, or the failure of the other broker or dealer to promptly buy-in or sell-out a commitment in accordance with paragraph (a)(1) of this section, or in the event of the failure of the other broker or dealer to provide the trustee with appropriate documentation as required by §300.303, by delivery of securities against receipt of the contract price or payment of the contract price against receipt of securities, or the buy-in or sell-out of the commitment or cancellation of the commitment or otherwise, as may be appropriate, as the trustee in his discretion will most benefit the estate of the debtor.

(b) In the event of a close-out of an open contractual commitment pursuant to paragraph (a)(1) of this section, the money differences resulting from such close-out shall be payable by the other broker or dealer to the trustee or by the trustee to the other broker or dealer, whichever would be entitled to receive such difference under the usual trade practices: *Provided, however,* (1) That prior to the payment of any such money difference by the trustee to such other broker or dealer with respect to transactions executed by such other broker or dealer for any separate customer account, all open contractual commitments with respect to such account which meet the requirements of §300.301 must have been completed by delivery of securities against receipt of the contract price or by payment of the contract price against receipt of the securities in conformity with paragraph (a)(2) of this section, or by buy-in or sell-out in conformity with paragraph (a)(1) of this section, and (2) that the net amount so payable by the trustee to the other broker or dealer shall not exceed \$40,000 with respect to any separate customer account.

§300.303 Report to trustee.

Promptly upon the expiration of 30 calendar days after the filing date, or if by the expiration of such 30-day period notice pursuant to section 8(a) of the