

§ 32.6

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(5) The following boldfaced statements on the first page of the summary disclosure statement:

**BECAUSE OF THE VOLATILE NATURE OF THE COMMODITIES MARKETS, THE PURCHASE OF COMMODITY OPTIONS IS NOT SUITABLE FOR MANY MEMBERS OF THE PUBLIC. A PERSON SHOULD NOT PURCHASE A COMMODITY OPTION UNLESS HE IS PREPARED TO SUSTAIN A TOTAL LOSS OF THE PURCHASE PRICE OF THE COMMODITY OPTION. SUCH TRANSACTIONS SHOULD BE ENTERED INTO ONLY BY PERSONS WHO ARE AWARE OF THE POTENTIAL FOR LOSS AND WHO UNDERSTAND THE NATURE AND EXTENT OF THEIR RIGHTS AND OBLIGATIONS.**

**THESE COMMODITY OPTIONS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COMMODITY FUTURES TRADING COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A VIOLATION OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS THEREUNDER.**

(6) Statements to the effect that:

(i) Specific market movements of the commodities or contracts of sale for future delivery underlying the options being offered cannot be accurately predicted, and

(ii) Generally, an option customer will be unable to sell any option purchased in any market to recover any of the purchase price, but rather may only liquidate by exercising an option before the expiration date of the option.

(b) A person shall not be required to deliver the summary disclosure statement to an option customer as required by paragraph (a) of this section if a summary disclosure statement has previously been furnished by such person to the option customer: *Provided, however*, That notwithstanding the foregoing, a disclosure statement shall be delivered in any event (1) upon the request of the option customer, or (2) if the previously delivered disclosure statement has become outdated or has become inaccurate in any material respect.

(c) Prior to the entry into a commodity option transaction, each option customer or prospective option customer shall, to the extent the following amounts are known, be informed by

the person soliciting or accepting the order therefor of the actual amount of the premium, markups on the premium, costs, fees and other charges comprising the purchase price, as well as the striking price and all costs to be incurred by the option customer if the commodity option is exercised.

(d) Not more than 24 hours after the execution of a commodity option transaction, each person which accepts any money, securities or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction shall furnish, by mail or other generally accepted means of communication, such option customer with a written confirmation statement containing at least the following information:

(1) The actual amount of the purchase price including a separate listing of the premium, mark-ups on the premium, costs, fees, and other charges;

(2) The striking price;

(3) The total quantity and quality of the commodity which may be purchased or sold, or which underlies the contract of sale for future delivery which may be purchased or sold, upon exercise of the commodity option;

(4) The exercise date of the commodity option purchased, and in the case of an option on a contract of sale for future delivery, the final trading date on such contract; and

(5) The date the commodity option was executed.

(Approved by the Office of Management and Budget under control number 3038-0003)

[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

**§ 32.6 Segregation.**

(a) Any person which accepts money, securities, or property from an option customer as payment of the purchase price in connection with a commodity option transaction shall treat and deal with such money, securities, and property as belonging to such option customer until expiration of the term of the option or, if the option customer exercises the option, until all rights of the option customer under the commodity option have been fulfilled. Such money, securities, and property (1) shall be separately accounted for and

segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities, or property of any other person, including the money, securities, or property received by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in §1.3(k) of this chapter) or with the money accruing to such commodity customers as the result of such trades or contracts: *Provided, however,* That the money, securities, or property treated as belonging to an option customer may for convenience be commingled with the money, securities, or property treated as belonging to any other option customer and deposited in the same account or accounts with any bank or trust company in the United States. Such money, securities, and property, when so deposited with any bank or trust company, shall be deposited under an account name which will clearly show that it contains money, securities, or property, segregated as required by this part. Each person depositing such money, securities, or property shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from such bank or trust company that it was informed that the money, securities, and property therein are being treated as belonging to option customers and are being held in accordance with the provisions of this part. Such bank or trust company shall allow inspection of such accounts at any reasonable time by representatives of the Commission: *Provided, further,* That, up to a maximum of 10 percent of the money, securities or property accepted from an option customer as payment of the purchase price in connection with a commodity option transaction need not be treated and dealt with as belonging to the option customer and segregated as aforesaid.

(b) No money, securities or property deposited in accordance with paragraph (a) of this section shall be held, disposed of, used or treated as belonging to the depositing person or any person other than the option customers of such person: *Provided, however,* That such money may be invested in obliga-

tions of the United States, and in obligations fully guaranteed as to principal and interest by the United States. Such investments shall be made through an account or accounts used for the deposit of money, securities or property received from option customers and proceeds from any sale of such obligations shall be redeposited in such account or accounts. Each person which invests money belonging to option customers in obligations as described in paragraph (b) of this section, shall separately account for such obligations and segregate such obligations as belonging to such option customers. Such obligations may only be deposited with a bank or trust company in the United States and shall be deposited under an account name which will clearly show that it contains obligations treated as belonging to option customers, segregated as required by this part. Each person depositing such obligations shall obtain and retain in its files an acknowledgment from such bank or trust company that it was informed that the obligations are treated as belonging to option customers and are being held in accordance with the provisions of this part. Such acknowledgment shall be retained for the period provided in §1.31 of this chapter. Such bank or trust company shall allow inspection of the obligations at any reasonable time by representatives of the Commission.

(c) Each person which invests money treated as belonging to option customers as permitted hereunder shall keep a record showing the following: (1) The date on which such investments were made, (2) the name of the person through which such investments were made, (3) the amount of money so invested, (4) a description of the obligations in which such investments were made, (5) the identity of the depositories or other places where such obligations are segregated, (6) the date on which such investments were liquidated or otherwise disposed of and the amount of money received on such disposition, if any, and (7) the name of the person to or through which such investments were disposed of.

(d) Persons which invest money in obligations described in paragraph (b)

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of this section shall include such obligations in segregated accounts at values which at no time shall be greater than current market value, determined as of the close of the market on the last preceding market day.

(e) The deposit and/or investment of money as provided in paragraphs (a) or (b) of this section shall not operate to prevent the person so depositing and/or investing such money from receiving and retaining as its own any increment or interest resulting therefrom.

(f) The amount of money, securities and property which is and which must be in a segregated account in order to comply with the requirements of this part shall be computed by each person required to segregate such money, securities and property as of the close of each business day. A record of such computation shall be made and kept, together with all supporting data in accordance with the provisions of § 1.31 of this chapter. Such computation shall be made prior to the opening of business on the next business day.

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[41 FR 51814, Nov. 24, 1976, as amended at 46 FR 63036, Dec. 30, 1981]

#### § 32.7 Books and recordkeeping.

(a) Each person which accepts any money, securities or property (or extends credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to such transactions. Such records shall at least include all orders (filled, unfilled or cancelled), signature cards, books of records, journals, ledgers, cancelled checks, copies of all statements of purchase, exercise or lapse, and reports, letters, disclosure statements and confirmation statements required by § 32.5 of this part, solicitation or advertising material (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations), circulars, memoranda, publications, writings, and all other literature or written advice distributed to option customers or pro-

spective option customers. Upon the request of an authorized representative of the Commission, such person shall furnish the true name and address of each commodity option customer or prospective commodity option customer solicited.

(b) Each person referred to in paragraph (a) of this section shall also keep a record in permanent form which shall show the true name and address of each maker, underwriter, issuer or other person who assumes or purports to assume any financial responsibility for the fulfillment of any commodity option transaction solicited or accepted by such person, to the extent that such information is known or may be reasonably obtained by such person.

(c) Each person which accepts an order for a commodity option transaction from a person other than an option customer, shall keep full, complete and systematic records together with all pertinent data and memoranda of or relating to the transaction. Such records shall at least include the items set forth in paragraph (b) of this section and, to the extent necessary to reflect such person's participation in the transaction, shall include all items set forth in paragraph (a) of this section.

(d) Each person which accepts an order for a commodity option shall immediately upon receipt thereof prepare a written record of such order, including an account identification and order number, and shall record thereon by timestamp or other device, the date and time, to the nearest minute, that (1) the order is accepted, (2) the order is transmitted for execution, and (3) the order is executed.

(e) All records, memoranda and other documents required to be maintained by paragraphs (a) through (c) of this section, and to be prepared by paragraph (d) of this section shall be retained for the period specified in § 1.31 of this chapter, and each person required to maintain such records shall be required to produce the same for inspection and furnish true and correct copies thereof and information and reports as to the contents or meaning thereof when and as requested by any