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the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

[66 FR 41133, Aug. 7, 2001, as amended at 68 FR 5551, Feb. 4, 2003]

§ 1.33 Monthly and confirmation statements.

(a) *Monthly statements.* Each futures commission merchant must promptly furnish in writing to each commodity customer and to each option customer and to each foreign futures and foreign options customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each commodity customer and foreign futures customer—

(i) The open contracts with prices at which acquired;

(ii) The net unrealized profits or losses in all open contracts marked to the market; and

(iii) Any customer funds carried with the futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such customer accounts during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign futures transactions in accordance with § 30.7 of this chapter received from or disbursed to such customer and realized profits and losses; and

(2) For each option customer and foreign options customer—

(i) All commodity options and foreign options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying futures contract or underlying physical, strike price, transaction date, and expiration date;

(ii) The open commodity option and foreign option positions carried for such customer as of the end of the monthly reporting period, identified by underlying futures contract or under-

lying physical, strike price, transaction date, and expiration date;

(iii) All open commodity option and foreign option positions marked to the market and the amount each position is in the money, if any;

(iv) Any customer funds carried in such customer's account(s); and

(v) A detailed accounting of all financial charges and credits to such customer's account(s) during the monthly reporting period, including all customer funds and funds on deposit with respect to foreign options transactions received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) *Confirmation statement.* Each futures commission merchant must, not later than the next business day after any commodity futures or commodity option transaction, including any foreign futures or foreign options transactions, furnish:

(1) To each commodity customer, a written confirmation of each commodity futures transaction caused to be executed by it for the customer.

(2) To each option customer, a written confirmation of each commodity option transaction, containing at least the following information:

(i) The option customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the commodity option transaction;

(iii) The strike price;

(iv) The underlying futures contract or underlying physical;

(v) The final exercise date of the commodity option purchased or sold; and

(vi) The date the commodity option transaction was executed.

(3) To each option customer, upon the expiration or exercise of any commodity option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the

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details of the futures or physical position which resulted therefrom including, if applicable, the final trading date of the contract for future delivery underlying the option.

(4) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, a commodity futures or commodity option transaction that is caused to be executed for a commodity pool need be confirmed only to the operator of the commodity pool.

(c) *Exemptions.* The requirements of paragraphs (a)(1)(i), (a)(1)(ii), and (b)(1) of this section shall not apply to the following:

(1) Any account carried for a person who is a member of any contract market;

(2) Any omnibus account carried for another futures commission merchant; and

(3) Any account containing only bona fide hedge positions, except that confirmations must be furnished to accounts containing only bona fide hedge positions.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the commodity customer or option customer for whom such account is carried, each futures commission merchant shall:

(1) Promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section;

(2) [Reserved]

(3) Promptly furnish in writing to such other person a copy of the statement required by § 1.46: *Provided, however,* That the provisions of this paragraph (d) shall not apply to an account controlled by the spouse, parent or child of the customer for whom such account is carried.

(e) *Recordkeeping.* Each futures commission merchant shall retain, in accordance with § 1.31, a copy of each monthly statement and confirmation required by this section.

(f) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the futures commission merchant is providing the statement was introduced by an introducing broker and the

names of the futures commission merchant and introducing broker.

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to any customer by means of electronic media if the customer so consents, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a customer who does not qualify as an “institutional customer” as defined in § 1.3(g), a futures commission merchant must obtain the customer’s signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0024; the information collection requirements in paragraph (c) were approved under control number 3038-0005)

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§ 1.34 Monthly record, “point balance”.

(a) Each futures commission merchant shall prepare, and retain in accordance with the requirements of