

Commodity Futures Trading Commission

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broker subject to the provisions of paragraph (a) of this section.

(The information collection requirements contained in §1.37 were approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0024; and in paragraph (b) under control number 3038-0009)

[46 FR 54523, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 48 FR 35289, Aug. 3, 1983; 58 FR 28501, May 14, 1993; 66 FR 20744, Apr. 25, 2001; 66 FR 42269, Aug. 10, 2001]

§ 1.38 Execution of transactions.

(a) *Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option: *Provided, however,* That this requirement shall not apply to transactions which are executed non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the non-competitive execution of such transactions.

(b) *Noncompetitive trades; exchange of futures, etc.; requirements.* Every person handling, executing, clearing, or carrying trades, transactions or positions which are not competitively executed, including transfer trades or office trades, or trades involving the exchange of futures for cash commodities or the exchange of futures in connection with cash commodity transactions, shall identify and mark by appropriate symbol or designation all such transactions or contracts and all orders, records, and memoranda pertaining thereto.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0022)

[46 FR 54523, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981]

§ 1.39 Simultaneous buying and selling orders of different principals; execution of, for and between principals.

(a) *Conditions and requirements.* A member of a contract market who shall have in hand at the same time both buying and selling orders of different principals for the same commodity for future delivery in the same delivery month or the same option (both puts or both calls, with the same underlying contract for future delivery or the same underlying physical, expiration date and strike price) may execute such orders for and directly between such principals at the market price, if in conformity with written rules of such contract market which have been approved by the Commission, and:

(1)(i) When trading is conducted in a trading pit or ring, such orders are first offered openly and competitively by open outcry in such trading pit or ring (A) by both bidding and offering at the same price, and neither such bid nor offer is accepted, or (B) by bidding and offering to a point where such offer is higher than such bid by not more than the minimum permissible price fluctuation applicable to such futures contract or commodity option on such contract market, and neither such bid nor offer is accepted; or

(ii) When in nonpit trading in contracts of sale for future delivery, bids and offers are posted on a board, such member (A) pursuant to such buying order posts a bid on the board and, incident to the execution of such selling order, accepts such bid and all other bids posted at prices equal to or higher than the bid posted by him, or (B) pursuant to such selling order posts an offer on the board and, incident to the execution of such buying order, accepts such offer and all other offers posted at prices equal to or lower than the offer posted by him;

(2) Such member executes such orders in the presence of an official representative of such contract market designated to observe such transactions and, by appropriate descriptive words or symbol, clearly identifies all such transactions on his trading card or other similar record, made at the time of execution, and notes thereon the exact time of execution and

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promptly presents said record to such official representative for verification and initialing;

(3) Such contract market keeps a record in permanent form of each such transaction showing the transaction date, by whom executed, the exact time of execution, quantity, and, as applicable, underlying commodity, contract for future delivery or physical, price or premium, whether a put or a call, and strike price; and

(4) Neither the futures commission merchant receiving nor the member executing such orders has any interest therein, directly or indirectly, except as a fiduciary.

(b) *Large Order Execution Procedures.* A member of a contract market may execute simultaneous buying and selling orders of different principals directly between the principals in compliance with large order execution procedures established by written rules of the contract market that have been approved by the Commission: *Provided*, That, to the extent such large order execution procedures do not meet the conditions and requirements of paragraph (a) of this section, the contract market has petitioned the Commission for, and the Commission has granted, an exemption from the conditions and requirements of paragraph (a) of this section. Any such petition must be accompanied by proposed contract market rules to implement the large order execution procedures. The petition shall include:

(1) An explanation of why the proposed large order execution rules do not comply with paragraph (a) of this section; and

(2) A description of a special surveillance program that would be followed by the contract market in monitoring the large order execution procedures.

The Commission may, in its discretion and upon such terms and conditions as it deems appropriate, grant such petition for exemption if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition shall be considered concurrently with the proposed large order execution rules.

(c) *Not deemed filling orders by offset nor cross trades.* The execution of orders

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in compliance with the conditions herein set forth will not be deemed to constitute the filling of orders by offset within the meaning of paragraph (iv) of section 4b(a) of the Act, nor to constitute cross trades within the meaning of paragraph (A) of section 4c(a) of the Act.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0022)

[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57008, Dec. 22, 1982; 56 FR 12344, Mar. 25, 1991; 59 FR 5525, Feb. 7, 1994]

MISCELLANEOUS

§ 1.40 Crop, market information letters, reports; copies required.

Each futures commission merchant and each member of a contract market shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telegram, or report published or given general circulation by such futures commission merchant or member which concerns crop or market information or conditions that affect or tend to affect the price of any commodity, and the true source of or authority for the information contained therein.

(Approved by the Office of Management and Budget under control number 3038-0015)

[41 FR 3194, Jan. 21, 1976, as amended at 46 FR 63035, Dec. 30, 1981]

§§ 1.41-1.43 [Reserved]

§ 1.44 Records and reports of warehouses, depositories, and other similar entities; visitation of premises.

Each contract market shall require the operators of warehouses, depositories and other similar entities whose receipts are deliverable in satisfaction of commodity futures contracts or options on physicals made on or subject to the rules of such contract market:

(a) To keep records showing the stocks of each commodity traded for future delivery or upon which option contracts are traded on such contract market in store in such warehouses, depositories and other similar entities by kinds, by classes, and by grades, if stored under conditions requiring such