

§§ 31.1–31.2 [Reserved]

§ 31.3 Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or (2) the maintenance or carrying of any such contract.

The provisions of this section shall not apply to any transaction expressly prohibited by section 19(a) of the Act.

(Secs. 2(a), 8a, and 19 of the Commodity Exchange Act and secs. 2 and 23 of Pub. L. 95–405 (92 Stat. 865, 870–871); 7 U.S.C. 2 and 12a) [43 FR 58554, Dec. 15, 1978. Redesignated at 49 FR 5526, Feb. 13, 1984]

§ 31.4 Definitions.

For the purposes of this part:

(a)–(b) [Reserved]

(c) *Promotional material* includes:

(1) Any text of a standard oral presentation, or any communication for publication in any newspaper, magazine or similar medium or for broadcast over television, radio, or other electronic medium which is disseminated or directed to a leverage cus-

tomor or prospective leverage customer;

(2) Any standardized form of report, letter, circular, memorandum, or publication which is disseminated or directed to a leverage customer or prospective leverage customer; or

(3) Any other written literature or advice disseminated or directed to a leverage customer or prospective leverage customer for the purpose of soliciting the entry into a leverage contract;

(d) *Leverage customer* means any person who, directly or indirectly, enters into, purchases, sells, or otherwise acquires for value any interest in a leverage contract with, from or to a leverage transaction merchant: *Provided, however,* That an owner or holder of a proprietary leverage account as defined in paragraph (e) of this section shall not be deemed to be a customer within the meaning of §§ 31.11(a)–(j) and (l), 31.12 and 31.26, and such an owner or holder of such a proprietary leverage account shall otherwise be deemed to be a leverage customer within the meaning of all other sections of these rules.

(e) *Proprietary leverage account* means a leverage account carried on the books and records of an individual, a partnership, corporation or other type association (1) for one of the following persons, or (2) of which ten percent or more is owned by one of the following persons, or an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such individual himself, or such partnership, corporation or association itself;

(ii) In the case of a partnership, a general partner in such partnership;

(iii) In the case of a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such partnership,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such partnership, or

Commodity Futures Trading Commission

§ 31.4

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) In the case of a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such individual, partnership, corporation or association whose duties include:

(A) The management of the business of such individual, partnership, corporation or association or any part thereof,

(B) The handling of the trades of leverage customers or of the leverage customer funds of such individual, partnership, corporation or association,

(C) The keeping of records pertaining to the trades of leverage customers or to the leverage customer funds of such individual, partnership, corporation or association, or

(D) The signing or co-signing of checks or drafts on behalf of such individual, partnership, corporation or association;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that, directly or indirectly, controls such individual, partnership, corporation or association;

(viii) A business affiliate that, directly or indirectly, is controlled by or is under common control with, such individual, partnership, corporation or association.

(f) *Commercial leverage account* means an account of a commercial enterprise, such as a producer, processor, dealer or end user of a leverage commodity which is the subject of a leverage contract, or the products or by-products thereof;

(g) *Leverage commodity* means a commodity (gold bullion, silver bullion, bulk gold coins, bulk silver coins, or platinum) which is the subject of a leverage contract offered for purchase or sale, or purchased or sold, by a particular leverage transaction merchant, the value of which is reflected in a widely accepted and broadly disseminated commercial or retail cash price series for cash market transactions, which price series reasonably reflects

the price for the leverage commodity which the customer can expect to pay or receive in normal commercial or retail market channels, including, if applicable, specified premiums or discounts; each leverage commodity is defined by reference to the following distinguishing characteristics:

(1) The nominal size, composition and tolerable ranges of the delivery pack or the actual size, composition and tolerable range of the component of the delivery pack;

(2) Minimum guaranteed quality, deliverable countries of origin, deliverable markings or imprints, and deliverable refiners or mints;

(3) The method of pricing; and

(4) The delivery specifications or alternatives including type and location of delivery facilities, packaging, transportation, registration and associated costs.

(h) *Ask price of a leverage contract* means the price at which a leverage transaction merchant sells or is willing to sell a long leverage contract to a leverage customer or the price at which a leverage transaction merchant resells or is willing to resell a short leverage contract to a leverage customer;

(i) *Bid price of a leverage contract* means the price at which a leverage transaction merchant purchases or is willing to purchase a short leverage contract from a leverage customer, or the price at which a leverage transaction merchant repurchases or is willing to repurchase a long leverage contract from a leverage customer;

(j) *Bid-ask spread of a leverage contract* means the difference between a leverage transaction merchant's ask price and bid price;

(k) *Initial charges for a leverage contract* includes all fees and commissions payable to a leverage transaction merchant which are incurred when a leverage contract is initially entered into by a leverage customer;

(l) *Carrying charges for a leverage contract* includes all service and interest charges paid periodically by a leverage customer to a leverage transaction merchant, or accrued by a leverage transaction merchant, while a long leverage contract remains open, or all

service and interest charges paid periodically by a leverage transaction merchant to a leverage customer, or accrued by a leverage customer, while a short leverage contract remains open;

(m) *Termination charges for a leverage contract* includes all fees and commission payable to a leverage transaction merchant which are associated with the liquidation, repurchase, resale or settlement by delivery on a leverage contract;

(n) *Liquidation of a leverage contract* means the unilateral termination of a leverage contract by a leverage transaction merchant due to a leverage customer's failure to meet one or more margin calls or to make other required deposits on a timely basis or as otherwise permitted under § 31.18;

(o) *Repurchase or resale of a leverage contract* means the voluntary termination of a leverage contract by mutual agreement between the leverage customer and the leverage transaction merchant, which agreement is effected by entering into a transaction which is the opposite of the initial transaction. A repurchase by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a purchase of a long leverage contract from the leverage transaction merchant, and a resale by a leverage transaction merchant takes place if the initial transaction by the leverage customer was a sale of a short leverage contract to the leverage transaction merchant;

(p) *Delivery on a leverage contract* means the making (in the case of an initial sale by a leverage customer) or taking (in the case of an initial purchase by a leverage customer) of delivery by a leverage customer of the commodity subject to a leverage contract;

(q) *Initial leverage margin* means the amount of funds, excluding initial charges, which a leverage customer is required to deposit with a leverage transaction merchant when entering into a leverage contract;

(r) *Minimum leverage margin* means the amount of funds which a leverage transaction merchant requires a leverage customer to maintain on deposit for each open leverage contract in the leverage customer's account.

(s) *Maintenance leverage margin* means the level to which the funds in a leverage customer's account must be restored after a margin call to the leverage customer has been effected by the leverage transaction merchant.

(t) *Leverage account equity* means:

(1) For all long leverage contracts in a leverage customer's account, the amount equal to the aggregate value of such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current bid prices for such contracts, less the amount owed to the leverage transaction merchant by the leverage customer pursuant to such contracts; and

(2) For all short leverage contracts in a leverage customer's account, the aggregate amount owed to the leverage customer by the leverage transaction merchant pursuant to all such contracts less the amount equal to the value of all such leverage contracts in the leverage customer's account, based on the leverage transaction merchant's current ask prices for such contracts;

(u)–(v) [Reserved]

(w) *Leverage contract* means a contract, standardized as to terms and conditions, for the long-term (ten years or longer) purchase ("long leverage contract") or sale ("short leverage contract") by a leverage customer of a leverage commodity which provides for:

(1) Participation by the leverage transaction merchant as a principal in each leverage transaction;

(2) Initial and maintenance margin payments by the leverage customer;

(3) Periodic payment by the leverage customer or accrual by the leverage transaction merchant of a variable carrying charge or fee on the unpaid balance of a long leverage contract, and periodic payment or crediting by the leverage transaction merchant to the leverage customer of a variable carrying charge or fee on the initial value of the contract plus any margin deposits made by the leverage customer in connection with a short leverage contract;

(4) Delivery of a commodity in an amount and form which can be readily purchased and sold in normal commercial or retail channels;

(5) Delivery of the leverage commodity after satisfaction of the balance due on the contract; and

(6) Determination of the contract purchase and repurchase, or sale and resale prices by the leverage transaction merchant; and

(x) *Leverage transaction* means the purchase or sale of any leverage contract, the repurchase or resale of any leverage contract, the delivery of the leverage commodity, or the liquidation or rescission of any such leverage contract by or to the leverage transaction merchant.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982))

[49 FR 5527, Feb. 13, 1984, as amended at 49 FR 25428, June 21, 1984; 50 FR 26, Jan. 2, 1985; 50 FR 36414, Sept. 6, 1985; 54 FR 41078, Oct. 5, 1989]

§ 31.5 Unlawful conduct.

(a) On and after April 13, 1984, it shall be unlawful for any person:

(1) To offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with § 31.6;

(2) Except as provided in paragraph (a)(3) of this section, to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless that person is registered with the Commission in accordance with § 31.7 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked; or

(3) Except as provided in paragraph (a)(2) of this section, if such person is a natural person, to offer to enter into, enter into or confirm the execution of a leverage contract to or with a lever-

age customer, or to solicit or accept a leverage customer's order (other than in a clerical capacity) for a leverage contract, or to supervise any person or persons so engaged, unless that person is registered with the Commission in accordance with § 31.8 of this chapter and that registration has not expired, been suspended (and the period of suspension has not expired) or been revoked.

(b) On and after April 13, 1984, it shall be unlawful for any leverage transaction merchant to permit any natural person to become or remain associated with it as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity which involves the offering to enter into, the entry into, or the confirmation of the execution of a leverage contract with a leverage customer, or the solicitation or acceptance of a leverage customer's order (other than in a clerical capacity) for a leverage contract, or the supervision of any person or persons so engaged, if the leverage transaction merchant knew or should have known that the person was not registered with the Commission in accordance with § 31.8 of this chapter or that the person's registration had expired, been suspended (and the period of suspension had not expired) or been revoked.

(c) On and after November 10, 1986, it shall be unlawful for any person to offer to enter into, enter into or confirm the execution of a leverage contract to or with a leverage customer, or to solicit or accept a leverage customer's order for a leverage contract, or to accept any leverage customer funds from a leverage customer to enter into or maintain a leverage contract, unless the leverage commodity which is the subject of the leverage contract has been registered with the Commission in accordance with § 31.6 of this part and involves silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum. This paragraph shall not affect any rights or obligations arising out of any leverage contract involving any other leverage commodity that was entered into, or the execution of which was confirmed, before November 10, 1986.