



Protection of Customer Funds

Frequently Asked Questions

 October 2025

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FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and promote high standards of professional conduct.

Our work includes engaging with global regulators, driving industry-led best practices, promoting efficiency and innovation, and protecting the integrity of derivatives markets.



INTRODUCTION

Members of the FIA Law and Compliance Division prepared and updated this document to explain treatment and protection of customer funds for cleared derivatives transactions subject to the regulatory framework established by the US Commodity Exchange Act (Act) and rules of the US Commodity Futures Trading Commission (Commission) promulgated thereunder. It contains questions and answers addressing the basics of:

- (i) segregation, collateral management, and investments;
- (ii) minimum financial and other requirements for futures commission merchants (FCMs) and joint FCM/broker-dealers;
- (iii) treatment of customer funds in the rare event of an FCM's insolvency; and
- (iv) derivatives clearing organization (DCO) guarantee funds.

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GLOSSARY

As used herein and not otherwise defined, the following terms have the meaning set forth below:

30.7 Account means the accounts collectively maintained by an FCM for or on behalf of 30.7 Customers where 30.7 Customer Funds are held or any such account individually, as the context requires.

30.7 Customer means any person that trades foreign futures or foreign options through an FCM, other than an owner or holder of a Proprietary Account of such FCM.

30.7 Customer Funds means any money, securities or other property received by an FCM from, for or on behalf of 30.7 Customers to margin, guarantee or secure foreign futures or foreign option positions, or money, securities, or other property accruing to 30.7 Customers as a result of foreign futures and foreign option positions, along with any Residual Interest of the FCM in the 30.7 Account. 30.7 Customer Funds are also sometimes referred to as the Foreign Futures and Foreign Options Secured Amount.

Account class means accounts of one or more of the following types carried by an FCM within its books and records for customers, each of which is a separate account class: accounts for futures and options on futures traded on domestic exchanges (futures account class), accounts for futures and options on futures traded on non-US exchanges (foreign futures account class), accounts for cleared swaps (cleared swaps account class) and delivery accounts (delivery account class).

Bankruptcy Code means Title 11 of the United States Code, 11 USC. § 101 et seq., as amended.

Cleared Swap means any swap that is, directly or indirectly, submitted to and cleared by a DCO registered with the Commission.

Cleared Swaps Customer means any person that trades Cleared Swaps through an FCM, other than an owner or holder of a Proprietary Account of such FCM.

Cleared Swaps Customer Account means , collectively, the accounts collectively maintained by an FCM for or on behalf of Cleared Swaps Customers where Cleared Swaps Customer Collateral is held or any such account individually, as the context requires.

Cleared Swaps Customer Collateral means all money, securities or other property received by an FCM or by a DCO from, for or on behalf of a Cleared Swaps Customer to margin, guarantee or secure a Cleared Swap, and money, securities or other property accruing to Cleared Swaps Customers as a result of Cleared Swaps, along with any Residual Interest of the FCM in the Cleared Swaps Customer Account.

Customer Funds means, collectively, Customer Segregated Funds, Cleared Swaps Customer Collateral and 30.7 Customer Funds.

Customer Account means, collectively, a Customer Segregated Account, a Cleared Swaps Customer Account and a 30.7 Account.

Customer Segregated Account means, collectively, the accounts collectively maintained by an FCM for or on behalf of Segregated Customers where Customer Segregated Funds are held or any such account individually, as the context requires.

Customer Segregated Funds means all money, securities or other property received by an FCM or by a DCO from, for or on behalf of a Segregated Customer to margin, guarantee or secure positions entered into on a designated contract market, and money, securities or other property accruing to Segregated Customers as a result of such positions, along with any Residual Interest of the FCM in the Customer Segregated Account.

Designated Self-Regulatory Organization (DSRO) means a self-regulatory organization that has been delegated the responsibility for monitoring and examining an FCM for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the FCM is a member, and for receiving the financial reports required by such minimum financial and related reporting requirements from such FCM.

Non-Public Customer means any person that is an owner or holder of a Proprietary Account carried by an FCM.

Proprietary Account means, generally, an account carried on the books and records of an FCM for the FCM or an affiliate that, directly or indirectly, is controlled by or is under common control with such FCM. For the avoidance of doubt, a Customer Account of an affiliate of the FCM which is carried by the FCM (either on an omnibus or fully disclosed basis) is a Customer Account and not a Proprietary Account.

Public Customer means a customer of an FCM that is a Segregated Customer, 30.7 Customer or Cleared Swaps Customer, and it also includes or a person that holds a delivery account with an FCM, other than a delivery account that is a Proprietary Account of such FCM.



Residual Interest means the amount of an FCM's own funds that the FCM holds in a Customer Account.

Segregated Customer means any person that trades futures or options on futures entered into on or subject to the rules of a designated contract market through an FCM, other than an owner or holder of a Proprietary Account of such FCM.

Targeted Residual Interest means an amount of the FCM's own funds that the FCM holds in a Customer Account that an FCM determines will reasonably ensure that the FCM will remain in compliance with the requirements of the Act and the Commission's rules at all times relating to the protection of Customer Funds.

I. BASICS OF SEGREGATION

1. What accounts do FCMs maintain for customers that trade futures, options on futures contracts and Cleared Swaps? What is the difference among the accounts?

Within an FCM's internal books and records, an FCM maintains an account for each customer by account class type. For a customer's account in the futures account class, foreign futures account class or cleared swaps account class, the FCM will record the customer's positions, funds deposited by the customer to margin, guarantee or secure its positions in its futures account, foreign futures account, or cleared swaps account, and any gains or losses realized or accruing on the positions. The funds of Public Customers recorded by FCMs in such internal customer futures accounts, foreign futures accounts or cleared swaps customer accounts are Customer Funds entitled to segregation protections.

FCMs may maintain up to three different types of Customer Accounts for Public Customers where FCMs hold funds recorded in such customers' accounts, depending on the products a customer trades:

- (i) a **Customer Segregated Account** for customers that trade futures and options on futures listed on US futures exchanges,
- (ii) a **30.7 Account** for customers that trade futures and options on futures listed on foreign boards of trade, and
- (iii) a **Cleared Swaps Customer Account** for customers trading swaps that are cleared on a DCO registered with the Commission.

The requirement to maintain these separate accounts reflects the different risks posed by the different products. Cash, securities, and other collateral (collectively, **funds**) required to be held in one type of account, e.g., the Customer Segregated Account, may not be commingled with funds required to be held in another type of account, e.g., the 30.7 Account, except as the Commission may permit by order.¹

Customer Segregated Account. Funds that Segregated Customers deposit with an FCM, or that are otherwise required to be held for the benefit of Segregated Customers, to margin futures and options on futures contracts traded on futures exchanges located in the US, i.e., designated contract markets, are held in a Customer Segregated Account in accordance with section 4d(a)(2) of the Act and Commission Rule 1.20. Customer Segregated Funds held in the Customer Segregated Account may not be used to meet the obligations of the FCM or any other person, including another customer.

Customer Segregated Funds may be commingled in a single account, i.e., on an omnibus basis, and held with: (i) a bank or trust company located in the US, (ii) a bank or trust company located outside of the US that has in excess of \$1 billion of regulatory capital, (iii) an FCM or (iv) a DCO. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's Segregated Customers. Unless a customer provides instructions to the contrary, an FCM may hold Customer Segregated Funds only: (i) in the US, (ii) in a money center country² or (iii) in the country of origin of the currency.

An FCM must hold sufficient US dollars in the US to meet all US dollar obligations and sufficient funds in each other currency to meet obligations in such currency. Notwithstanding the foregoing, assets denominated in a currency may be held to meet obligations denominated in another currency (other than the US dollar) as follows: (i) US dollars may be held in the US or

1 For example, in August 2012, the Commission issued an order authorizing ICE Clear Europe Limited, which is registered with the Commission as a DCO, and its FCM clearing members to hold in Cleared Swaps Customer Accounts those Customer Funds used to margin both (i) Cleared Swaps and (ii) foreign futures and foreign options traded on ICE Futures Europe, and to provide for portfolio margining of such Cleared Swaps and foreign futures and foreign options. In separate orders issued in October 2012 and May 2014, the Commission authorized ICE Clear Europe and its FCM clearing members to hold in Customer Segregated Accounts the Customer Funds used to margin both (i) futures and options on futures traded on ICE Futures US and (ii) foreign futures and foreign options traded on ICE Futures Europe, and to provide for portfolio margining of such transactions.

2 Money center countries means Canada, France, Italy, Germany, Japan and the United Kingdom.

in money center countries to meet obligations denominated in any other currency and (ii) funds in money center currencies³ may be held in the US or in money center countries to meet obligations denominated in currencies other than the US dollar.

30.7 Account. Funds that 30.7 Customers deposit with an FCM, or that are otherwise required to be held for the benefit of 30.7 Customers, to margin futures and options on futures contracts traded on foreign boards of trade, i.e., 30.7 Customer Funds, and sometimes referred to as the Foreign Futures and Foreign Options Secured Amount, are held in a 30.7 Account in accordance with Commission Rule 30.7.

Funds required to be held in the 30.7 Account for or on behalf of 30.7 Customers may be commingled in an omnibus account and held with: (i) a bank or trust company located in the US, (ii) a bank or trust company located outside the US that has in excess of \$1 billion in regulatory capital, (iii) an FCM, (iv) a DCO; (v) the clearing organization of any foreign board of trade, (vi) a foreign broker or (vii) such clearing organization's or foreign broker's designated depositories. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's 30.7 Customers. As explained below, Commission Rule 30.7 restricts the amount of such funds that may be held outside of the US.

Cleared Swaps Customer Account.⁴ Funds that Cleared Swaps Customers deposit with an FCM, or that are otherwise required to be held for the benefit of Cleared Swaps Customers, to margin swaps cleared through a registered DCO, i.e., Cleared Swaps Customer Collateral, are held in a Cleared Swaps Customer Account in accordance with the provisions of section 4d(f) of the Act and Part 22 of the Commission's rules.

Funds required to be held in a Cleared Swaps Customer Account may be commingled in an omnibus account and held with: (i) a bank or trust company located in the US, (ii) a bank or trust company located outside of the US that has in excess of \$1 billion of regulatory capital, (iii) an FCM or (iv) a DCO. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's Cleared Swaps Customers.

³ Money center currencies mean the currency of any money center country and the Euro.

⁴ Cleared Swaps Customer Accounts are sometimes referred to as **LSOC Accounts**. LSOC is an acronym for "legally separated, operationally commingled."

In addition to futures accounts, foreign futures accounts and accounts for cleared swaps that FCMs may maintain for customers in their books and records, an FCM may maintain a delivery account for a customer, through which deliveries under a customer's cleared positions resulting in delivery obligations may be performed. Commission Rule 1.42 requires an FCM to maintain internal accounts of record for customers for purposes of recording funds and physical delivery property associated with deliveries that occur outside a segregated account. (When the delivery involves a commodity that is a security, the delivery may instead occur in a securities account.) An FCM is not required to hold funds or physical delivery property recorded in a delivery account under any special custody arrangement.

2. What is the FCM's Residual Interest? What is the purpose of the FCM depositing its own money in Customer Accounts and how does the FCM determine how much that deposit should be?

An FCM deposits a portion of its own funds in Customer Accounts as a buffer to assure that the FCM is always in compliance with the relevant provisions of the Act and Commission rules governing the segregation of Customer Funds. Such excess funds represent the FCM's Residual Interest in the Customer Account. All FCM excess funds are held for the exclusive benefit of the FCM's customers while held in a Customer Account.

Each FCM is required to have written policies and procedures regarding the establishment and maintenance of the FCM's Targeted Residual Interest in each Customer Account. In establishing its Targeted Residual Interest, the FCM's board of directors or senior management must take into consideration a number factors, including: (i) the nature of the FCM's customers, their general creditworthiness and their trading activity, (ii) the type of markets and products traded by the FCM's customers and the FCM itself, (iii) the

general volatility and liquidity of those markets and products, (iv) the FCM's own liquidity and capital needs and (v) historical trends in Customer Funds balances and customer debits.⁵

Commission rules require an FCM to notify the Commission immediately whenever the amount of Residual Interest in any Customer Account falls below the FCM's Targeted Residual Interest for such Customer Account. The FCM is required to file a copy of each notice concurrently with its DSRO.

3. **Are there any restrictions on an FCM's ability to withdraw its Residual Interest from a Customer Account?**

Commission rules provide that, on any day, an FCM may not withdraw funds comprising its Residual Interest from any Customer Account, in a single transaction or a series of transactions, that are not made to or for the benefit of customers, if such withdrawal would exceed 25 percent of the FCM's Residual Interest in such account, as reported on the daily segregation report as of the previous business day, unless: (i) the FCM's chief executive officer, chief finance officer or other senior official that is listed as principal of the FCM and is knowledgeable about the FCM's financial requirements and financial position (**Financial Principal**) pre-approves in writing the withdrawal, or series of withdrawals and (ii) the FCM files written notice of the withdrawal, or series of withdrawals, with the Commission and with its DSRO immediately thereafter.

The written notice must: (i) be signed by the chief executive officer, chief finance officer or Financial Principal, (ii) include a description of the reasons for the withdrawal or series of withdrawals, (iii) list the amount of funds provided to each recipient and each recipient's name, (iv) include the current estimate of the amount of the FCM's Residual Interest in the Customer Account after the withdrawal and (v) contain a representation by the chief executive officer, chief finance officer or Financial Principal that, after due

5 Commission rules require that the analysis and calculation of the FCM's Targeted Residual Interest be described in writing with the specificity necessary to allow the Commission and the FCM's DSRO to duplicate the analysis and calculation and test the assumptions made by the FCM. The adequacy of the Targeted Residual Interest and the process for establishing the Targeted Residual Interest must be reassessed periodically by the FCM's senior management and revised as necessary.

As described in greater detail in the response to Question 11, the Commission posts on its website a monthly report providing certain non-confidential financial information concerning each registered FCM, including each FCM's Targeted Residual Interest in each type of Customer Account that the FCM maintains.

diligence, to such person's knowledge and reasonable belief, the FCM remains in compliance with the applicable segregation requirements after the withdrawal.

4. Is a customer at risk if another customer defaults on its obligations to the FCM?

Commission rules prohibit an FCM from using the Customer Funds of one customer to meet the obligations of another customer; an FCM must use its own funds to meet a defaulting customer's obligations to a DCO or clearing FCM. To this end, each FCM is required to have written policies and procedures regarding the establishment and maintenance of the FCM's Targeted Residual Interest, which acts as a buffer to ensure the FCM is always in compliance with the relevant provisions of the Act and Commission rules governing the segregation of Customer Funds.⁶

Nonetheless, if one or more customers of an FCM defaults on their obligations to the FCM and the loss is so great that, notwithstanding the application of the FCM's available own funds, there is a shortfall in the amount of Customer Funds required to be held in one or more Customer Accounts, the FCM will likely default and be placed into bankruptcy. In these circumstances, the Bankruptcy Code and Commission rules provide for *pro rata* distribution of customer property to the FCM's Public Customers in the account class with the shortfall, as explained in Section V – FCM Insolvency. Public Customers whose funds are held in another account class that has not incurred a loss will not be required to share in such shortfall. A shortfall in a customer account class may also make the transfer of the accounts of non-defaulting Public Customers to another FCM more difficult.⁷

⁶ As discussed below, in order to monitor an FCM's compliance with the Customer Funds requirements, Commission rules require each FCM to calculate as of the close of business each business day, and submit to the Commission and the FCM's DSRO no later than 12:00 p.m. the following business day, a report that sets out: (i) the amount of Customer Funds required to be held in the Customer Account, (ii) the amount of Customer Funds actually held in the Customer Account and (iii) the FCM's Residual Interest in the Customer Account. Separate calculations are required for the Customer Segregated Accounts, the 30.7 Accounts and the Cleared Swaps Customer Accounts. Commission rules further require an FCM to notify the Commission and the FCM's DSRO immediately whenever: (i) the amount of Residual Interest in any Customer Account falls below the FCM's Targeted Residual Interest for such account or (ii) the FCM knows or should know that the total amount of funds on deposit in Customer Accounts is less than the amount required to be held in such accounts.

⁷ As discussed in detail immediately below in response to Question 5, the treatment of the Cleared Swaps Customer Account differs from the treatment of the Customer Segregated Account in the event of the default of the FCM carrying the Customer Account.

For this reason, an FCM's excess adjusted net capital, which is available to satisfy a defaulting customer's obligations to a DCO or clearing FCM, is one of the factors that a customer should consider carefully in selecting an FCM to carry the customer's account.

5. **How does the treatment of the Cleared Swaps Customer Account differ from the Customer Segregated Account in the event of an FCM's bankruptcy?**

The Part 22 Rules governing the treatment of Cleared Swaps Customer Collateral incorporate by reference many of the rules governing the treatment of Customer Segregated Funds. Nonetheless, the regulatory requirements for Cleared Swaps Customer Collateral differ in several important respects from the requirements applicable to Customer Segregated Funds. In particular, the Part 22 Rules are designed to provide Cleared Swaps Customers enhanced protection from fellow customer risk in the event of an FCM's bankruptcy. The enhanced protections required for the cleared swaps account class include:

- **A Stricter Residual Interest Requirement.** An FCM that holds Cleared Swaps for Cleared Swaps Customers is required to perform an LSOC compliance calculation prior to settling a margin call for its Cleared Swaps Customer Account with a DCO (or with another FCM clearing the Cleared Swaps on the FCM's behalf). The LSOC compliance calculation requires the FCM, first, to determine the gross total of all margin deficiencies of its Cleared Swaps Customers in their accounts for their Cleared Swaps carried by the FCM. Then, if the FCM does not hold sufficient Residual Interest in its total Cleared Swap Customer Account to cover that gross margin deficiency, the FCM must deposit additional Residual Interest in that Customer Account, sufficient to cover the shortfall prior to settling the margin call with the DCO (or carrying FCM). The LSOC compliance calculation is not required prior to settlement of margin calls for a Customer Segregated Account or a 30.7 Account with a DCO (or with another FCM clearing futures or foreign futures positions on the FCM's behalf), but it is required to be performed on or before 6:00 p.m. on the business day following the trade date. As a result, FCMs are permitted to carry margin deficiencies for one business day within the futures accounts or foreign futures accounts they carry for customers before being required to cover those deficiencies with Residual Interest (rather than at the time of settlement with the DCO or carrying broker).

- **Customer-Specific Account Information.** As with Customer Segregated Funds and 30.7 Customer Funds, the Part 22 Rules permit an FCM to maintain Cleared Swaps Customer Collateral on an omnibus basis with another FCM or at the relevant DCO, as applicable. However, the FCM must provide any FCM through which it clears Cleared Swaps Customer transactions with sufficient information to identify each Cleared Swaps Customer within the omnibus account, the portfolio of positions held by each Cleared Swaps Customer and the margin required to support such positions. The clearing FCM must provide the same information to the DCO that clears the positions. The DCO is required to treat the value of the Cleared Swaps Customer Collateral required to margin each Cleared Swaps Customer's positions as belonging to such Cleared Swaps Customer.

- **Limited Recourse to Non-Defaulting Customer Assets.** In the event the default of one or more Cleared Swaps Customers leads to the failure of an FCM, the Part 22 Rules require the FCM to advise the FCM through which the FCM clears Cleared Swaps Customer transactions (if different) or the DCO of the identity of the defaulting Cleared Swaps Customer(s). The clearing FCM (if different) or the DCO is prohibited from applying funds in an omnibus Cleared Swaps Customer Account attributable to non-defaulting Cleared Swaps Customers to meet the shortfall owing to the clearing FCM (if different) or the DCO.⁸ In contrast to this provision of the Part 22 Rules, the Commission's rules governing Customer Segregated Accounts do not prohibit a clearing FCM (if different) or a DCO, following application of all assets of the defaulting FCM available to the clearing FCM (if different) or DCO, from using the funds of non-defaulting Segregated Customers held by the DCO to meet the shortfall owing to the DCO.

Importantly, the Part 22 Rules do not fully protect Cleared Swaps Customers from all losses in the event of a shortfall in the Cleared Swaps Customer Account following the bankruptcy of an FCM. For example, the rules would not protect such Cleared Swaps Customers: (i) if the bankrupt FCM's books

8 The Part 22 Rules also provide that an FCM may transmit to a DCO any collateral posted by a Cleared Swaps Customer in excess of the amount required by the DCO if: (i) the rules of the DCO expressly permit the FCM to transmit collateral in excess of the amount required by the DCO and (ii) the DCO provides a mechanism by which the FCM is able to, and maintains rules pursuant to which the FCM is required to, identify each business day, for each Cleared Swaps Customer, the amount of collateral posted in excess of the amount required by the DCO. A DCO would be prohibited from applying such excess funds attributable to non-defaulting Cleared Swaps Customers to meet the shortfall owing to the DCO.

and records are inaccurate, (ii) in the event of a shortfall in the Cleared Swaps Customer Account arising from FCM fraud or mismanagement or (iii) in the event a bankruptcy trustee incurs losses in liquidating collateral held in the Cleared Swaps Customer Account in which the FCM had invested, in accordance with Commission Rule 1.25.

6. **Why is an FCM prohibited from commingling Customer Funds held in the Customer Segregated Accounts, the 30.7 Accounts and Cleared Swaps Customer Accounts?**

30.7 Accounts. Because customers trading on foreign markets assume additional risks, the Commission generally does not permit funds held to margin foreign futures and foreign options transactions to be held in the same account as Customer Segregated Funds or Cleared Swaps Customer Collateral. Laws or regulations will vary depending on the foreign jurisdiction in which the transaction occurs, and funds held in a 30.7 Account outside of the US may not receive the same level of protection as Customer Segregated Funds. If the foreign broker carrying 30.7 Customer positions fails, the broker will be liquidated in accordance with the laws of the jurisdiction in which it is organized, which laws may differ significantly from the US Bankruptcy Code. Return of 30.7 Customer Funds to the US will be delayed and likely will be subject to the costs of administration of the failed foreign broker in accordance with the law of the applicable jurisdiction, as well as possible other intervening foreign brokers, if multiple foreign brokers were used to process the US customers' transactions on foreign markets.

If the foreign broker does not fail but the 30.7 Customers' US FCM fails, the foreign broker may want to assure that appropriate authorization has been obtained before returning the 30.7 Customer Funds to the FCM's trustee, which may delay their return. If both the foreign broker and the US FCM were to fail, potential differences between the trustee for the US FCM and the administrator for the foreign broker, each with independent fiduciary obligations under applicable law, may result in significant delays and additional administrative expenses. Use of other intervening foreign brokers by the US FCM to process the trades of 30.7 Customers on foreign markets may cause additional delays and administrative expenses.

To reduce the potential risk to 30.7 Customer Funds held outside of the US, Commission Rule 30.7 generally provides that an FCM may not deposit or hold 30.7 Customer Funds in permitted accounts outside of the US except as necessary to meet margin requirements, including prefunding margin requirements, established by rule, regulation or order of the relevant foreign

boards of trade or foreign clearing organizations, or to meet margin calls issued by foreign brokers carrying the 30.7 Customers' positions. The rule further provides, however, that in order to avoid the daily transfer of funds from accounts in the US, an FCM may maintain an additional amount of up to 20 percent of the total amount of funds necessary to meet margin and prefunding margin requirements in accounts located outside of the US to avoid daily transfers of funds.

An FCM may exclude from the calculation of 30.7 Customer Funds permitted to be held outside of the US those 30.7 Customer Funds held in a properly-titled account established by the FCM in a bank or trust company located outside of the US, provided the bank or trust company: (i) maintains regulatory capital of at least \$1 billion and (ii) provides the FCM a written acknowledgment letter that the depository was informed that such funds held in the 30.7 Account belong to customers and are being held in accordance with the Act and the Commission's rules.⁹

Cleared Swaps Customer Accounts. Similarly, because the rules regarding Cleared Swaps Customer Collateral provide Cleared Swaps Customers enhanced protection from fellow customer risk in the event of an FCM's bankruptcy, Commission rules generally do not permit Cleared Swaps Customer Collateral from being held in the same account with Customer Segregated Funds or 30.7 Customer Funds.¹⁰

7. How does an FCM segregate Customer Funds? Who oversees this process?

Customer Funds are required to be held in Customer Accounts at a bank or trust company, a DCO or another FCM (each, a **depository**).¹¹ In accordance with Commission rules, each account holding Customer Funds must be properly titled to identify it as holding Customer Funds and segregated as required by the relevant provisions of the Act and the Commission's rules.¹²

⁹ See Commission Letter No. 14-138 (November 13, 2014).

¹⁰ Although FCMs are generally prohibited from commingling Customer Funds held in the Customer Segregated Accounts, the 30.7 Accounts and Cleared Swaps Customer Accounts, it should be noted that an FCM's agreement with its customers typically includes a provision that, at a minimum, authorizes the FCM to transfer from one account of the customer, e.g., the Customer Segregated Account, to any other account of the customer, e.g., the 30.7 Account, such excess funds as may be required to avoid a margin call in such other account. In addition, an FCM may commingle positions and collateral from separate Customer Accounts in accordance with the terms of a DCO's portfolio margining rules that have been approved by the Commission.

¹¹ Certain assets that may be permitted to be maintained in Customer Accounts, e.g., warehouse receipts, may be held by the FCM.

¹² Consequently, as explained earlier, an FCM must maintain separate Customer Segregated Accounts, 30.7 Accounts and Cleared Swaps Customer Accounts at a depository.

Except as noted below, Customer Funds may not be commingled with the funds of any other person, including (and in particular) the carrying FCM. Each depository is required to provide the depositing FCM with a written acknowledgment that the depository was informed that such funds held in the Customer Account belong to customers and are being held in accordance with the Act and the Commission's rules.¹³ Among other representations, the depository must acknowledge that it cannot use any portion of Customer Funds to satisfy any obligations that the FCM may owe the depository.¹⁴

In order to monitor an FCM's compliance with the Customer Funds requirements, Commission rules require each FCM to calculate, as of the close of business each business day, and submit to the Commission and the FCM's DSRO no later than 12:00 p.m. the following business day, a report that sets out: (i) the amount of Customer Funds required to be held in the Customer Account, (ii) the amount of Customer Funds actually held in the Customer Account and (iii) the FCM's Residual Interest in the Customer Account. Separate calculations are required for the Customer Segregated Accounts, the 30.7 Accounts and the Cleared Swaps Customer Accounts.

Commission rules require an FCM to notify the Commission immediately whenever: (i) the amount of Residual Interest in any Customer Account falls below the FCM's Targeted Residual Interest for such account or (ii) the FCM knows or should know that the total amount of funds on deposit in Customer Accounts is less than the amount required to be held in such accounts. The FCM is required to file a copy of each notice concurrently with its DSRO.

13 An FCM is not required to obtain a written acknowledgment from a DCO that has adopted rules providing for the segregation of Customer Funds in accordance with the provisions of the Act and the Commission rules and orders promulgated thereunder.

14 Except as explained in footnote 13, a depository that holds Customer Funds must execute an acknowledgment letter in the form prescribed by the Commission in the customer protection rules. A copy of the letter must be filed with the Commission and the FCM's DSRO. Among other provisions, the depository must agree that it will reply promptly and directly to any request for confirmation of account balances or any other information regarding or related to the Customer Account from authorized members of the Commission staff or an appropriate representative of the FCM's DSRO.

In addition, each FCM must submit a Segregated Investment Detail Report (SIDR) to the Commission and the FCM's DSRO on the fifteenth and last business day of each month listing the names of all banks, trust companies, FCMs, DCOs or any other depository or custodian holding Customer Funds. This report must include: (i) the name and location of each entity holding Customer Funds, (ii) the total amount of Customer Funds held by each entity and (iii) the total amount of Customer Funds, cash and investments that each entity holds.¹⁵ The FCM must also indicate whether any such depository is affiliated with the FCM.¹⁶

Separately, DSRO rules require each FCM to instruct each depository that holds Customer Funds, whether located in the US or outside the US, to confirm to the DSRO all account balances daily. DSRO programs compare the daily balances reported by the depositories with the balances reported by the FCMs in their daily segregation reports. Any material discrepancies would generate an immediate alert.

Finally, an FCM's DSRO conducts periodic examinations of the FCM and, in connection with such examinations, confirms that Customer Funds are being held in properly designated accounts. The Commission may also conduct an examination of the FCM for this purpose.

8. Would a separate Customer Account maintained solely for the benefit of one customer allow such customer, in the event an FCM were to become insolvent, to avoid sharing *pro rata* in any shortfalls as required under the Bankruptcy Code?

No. In adopting rules for the protection of Cleared Swaps Customer Collateral, the Commission determined that any increased protection that might be provided by requiring an FCM to maintain separate accounts for each customer would be minimal. In particular, the Bankruptcy Code provides that non-defaulting Public Customers of an FCM will share in any shortfall in customer segregated funds *pro rata*. Under the existing segregation models,

¹⁵ Separate reports are required for the Customer Segregated Accounts, the 30.7 Accounts and the Cleared Swaps Customer Accounts.

¹⁶ As discussed below, each FCM is required to provide certain non-confidential financial information on its website. In addition, certain financial information, including a substantial portion of the information described herein, is available on either the Commission's website or NFA's website.

therefore, separate accounts would not allow a customer to avoid sharing *pro rata* in any shortfalls, as required under the Bankruptcy Code.¹⁷

Although the Commission has stated that an FCM may agree to maintain a third-party custodial account on behalf of a Cleared Swaps Customer, third-party custodial accounts could require an FCM to use its own capital to post initial margin with a DCO on behalf of a customer.¹⁸ Consequently, such accounts may adversely affect an FCM's liquidity and would impose additional costs on customers. Importantly, as noted above, the Commission has emphasized that third-party custodial accounts do not provide any greater protection to customers in the event that an FCM fails when there is a shortfall in one or more Customer Accounts.

9. Are funds that comprise customer excess margin or the FCM's Residual Interest protected if the FCM becomes insolvent?

The Bankruptcy Code broadly defines customer property to mean cash, a security or other property, or the proceeds of such cash, security or property received, acquired or held by or for the account of the FCM from or for the account of a customer. Customer property is not limited only to the funds required by the relevant exchange or DCO to margin open contracts. Consequently, in the event of an FCM's insolvency, customer excess margin deposited with the FCM and the FCM's Residual Interest held in a Customer Segregated Account, a 30.7 Account or a Cleared Swaps Customer Account, as applicable, would be entitled to the same protections as margin that is required by a DCO.

The Commission's Part 22 Rules relating to the protection of Cleared Swaps Customer Collateral permit a DCO to establish a procedure pursuant

¹⁷ As discussed above, the Bankruptcy Code and Commission rules provide that funds allocated to each account class – the Customer Segregated Account, the 30.7 Account and the Cleared Swaps Customer Account – or readily traceable to an account class must be allocated to that customer account class. Therefore, a loss arising from one account class, e.g., the Customer Segregated Account, should not endanger Customer Funds held in the other account classes, e.g., the 30.7 Account.

¹⁸ It should be noted that, in May 2005, Commission staff prohibited the use of third-party custodial accounts on behalf of Segregated Customers and 30.7 Customers, except in limited circumstances. The staff expressed concern that such accounts “may create unnecessary confusion on the part of the customer and create the potential risk that third party custodial accounts might receive priority or preference over other customers in an FCM's bankruptcy proceeding, or at least cause additional administrative expenses to be incurred, in a manner inconsistent with the Commission regulations and regulatory objectives.” 70 Fed. Reg. 24768, 24770 (May 11, 2005).

to which a Cleared Swaps Customer's excess Cleared Swaps Customer Collateral, i.e., Cleared Swaps Customer Collateral not required by the DCO to margin open positions, may be held by the DCO. The DCO must provide a mechanism by which the FCM is able to, and maintain rules pursuant to which the FCM is required to, identify each business day the amount of collateral posted in excess of the amount required by the DCO for each Cleared Swaps Customer. This process assures that, in the event of an FCM default, the DCO will not use the excess value attributed to one customer to meet the losses of another customer.

It should be noted that excess funds, wherever held, are subject to the pro rata distribution provisions of the Bankruptcy Code in the event of a shortfall in a defaulting FCM's Cleared Swaps Customer Account.

10. Is there insurance for any shortfall in Customer Funds?

There is no industry-wide insurance fund to compensate customers in the event of a shortfall in Customer Funds upon the insolvency of an FCM. However, the CME Group has established a \$100 million fund to further protect US family farmers and ranchers who hedge their business in CME Group futures markets. The Family Farmer and Rancher Protection Fund will provide up to \$25,000 to individual farmers and ranchers and \$100,000 to co-ops that hedge their risk in CME Group futures markets to help offset losses arising from the failure of a CME Group clearing member or other market participant.

11. What type of financial information concerning an FCM is publicly available?

Each FCM must make the following financial information available on its website:

- (i) the daily Statement of Segregation Requirements and Funds in Segregation for the most current 12-month period,
- (ii) the daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers for the most current 12-month period,
- (iii) the daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts for the most current 12-month period,
- (iv) a summary schedule of the FCM's adjusted net capital, net capital and excess net capital, reflecting balances as of the month-end for the 12 most recent months,

- (v) the Statement of Financial Condition, the Statement of Segregation Requirements and Funds in Segregation, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers, the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts, and all related footnotes to the above schedules that are part of FCM's most current certified annual report, and
- (vi) the Statement of Segregation Requirements and Funds in Segregation, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers and the Statement of Cleared Swaps Customer Accounts that are part of the FCM's unaudited Form 1-FR-FCM or FOCUS Report for the most current 12-month period.

The Commission posts on its website a monthly report providing certain non-confidential financial information concerning each registered FCM. The report includes the following information:

- (i) the FCM's adjusted net capital,
- (ii) the FCM's required net capital,
- (iii) the FCM's excess net capital,
- (iv) the total amount of funds held in the Customer Segregated Account,
- (v) the amount of Customer Segregated Funds required to be segregated in accordance with section 4d(a) of the Act,
- (vi) the amount of excess held by the FCM in the Customer Segregated Account,
- (vii) the FCM's targeted Residual Interest for the Customer Segregated Account,
- (viii) the total amount of funds held in the 30.7 Account,
- (ix) the amount of 30.7 Customer Funds required to be held in the 30.7 Account,
- (x) the amount of excess funds held by the FCM in the 30.7 Account,
- (xi) the FCM's targeted Residual Interest for the 30.7 Account,
- (xii) the total amount of funds held in the Cleared Swaps Customer Account,

- (xiii) the amount of Cleared Swaps Customer Collateral required to be segregated in accordance with section 4d(f) of the Act,
- (xiv) the amount of excess held by the FCM in the Cleared Swaps Customer Account,
- (xv) the FCM's targeted Residual Interest for the Cleared Swaps Customer Account, and
- (xvi) the total amount of the FCM's retail foreign exchange obligation.

The report is created from financial reports that each FCM must file with the Commission within 17 business days following each month end and is generally posted on the Commission's website within six weeks following each month end. The reports may be found on the Commission's website at <http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm>.

The National Futures Association (**NFA**) publishes similar financial information on its website with respect to each FCM. The FCM Capital Report provides each FCM's most recent month-end adjusted net capital, required net capital and excess net capital. In addition, NFA publishes an FCM Customer Segregated Funds Report twice-monthly. This report shows for each FCM:

- (i) (a) total funds (cash and securities) held in Customer Segregated Accounts, (b) total funds required to be held in Customer Segregated Accounts and (c) excess segregated funds, i.e., the FCM's Residual Interest,
- (ii) percentage of Customer Segregated Funds held in cash in Customer Segregated Accounts at: (a) banks and (b) clearing organizations and other FCMs,
- (iii) percentage of customer-owned securities held in Customer Segregated Accounts,
- (iv) percentage of Customer Segregated Funds held in each of the permitted investments under Commission Rule 1.25, including percentage of Customer Segregated Funds subject to reverse repurchase agreements¹⁹; and
- (v) whether during that month the FCM held any Customer Segregated Funds at a depository that is an affiliate of the FCM.

¹⁹ The permitted investments under Commission Rule 1.25 are described in the response to Question 17.

An FCM Customer Secured Amount Funds Report and an FCM Customer Cleared Swaps Collateral Report provide the same information with respect to the 30.7 Account and the Cleared Swaps Customer Account, respectively.

The above financial information reports can be found by conducting a search for a specific FCM in NFA's Background Affiliation Status Information Center System (**BASIC**) system (<http://www.nfa.futures.org/basicnet/>) and viewing the relevant financial data on the FCM's BASIC Details page. Historical information is also available for each report.

II. COLLATERAL MANAGEMENT AND INVESTMENTS

12. **Can a customer select the depository at which its funds are held? Can a customer find out which depositories an FCM uses to hold Customer Funds?**

An FCM may agree to hold a portion of its Customer Funds at a depository selected by the customer, provided the FCM determines that the depository is otherwise an acceptable depository.²⁰ However, the customer must recognize that Commission rules provide that such funds must be held in the name of the FCM for the benefit of its customers generally and not for the benefit of the requesting customer. Further, for operational efficiency, an FCM may limit the number of banks at which it maintains Customer Accounts. In the event of the FCM's bankruptcy and a shortfall in Customer Funds available for distribution, the requesting customer would receive no greater protection than all other customers of the FCM in the same account class.

²⁰ Each FCM must have written policies and procedures setting out a process by which the FCM will evaluate the depositories at which the FCM holds Customer Funds. At a minimum the FCM must have documented criteria addressing the depository's capitalization, creditworthiness, operational reliability and access to liquidity, including where the depository is affiliated with the FCM.

Customer statements generally do not indicate where a customer's funds are held. However, upon request of a customer, an FCM should identify for the customer the depositories at which the FCM holds Customer Funds.²¹

13. Can a customer maintain its own custody account at the bank as long as it is in the name of the FCM?

Such an account would be similar in effect to a third-party custodial account. Although third-party custodial accounts are permitted for Cleared Swaps Customer Accounts, they are not permitted for Customer Segregated and 30.7 Accounts.

14. If a customer does not trade foreign futures, can the customer require that the FCM hold all Customer Funds and collateral in the United States?

Assuming that the customer is located in the US and has deposited US dollars or securities denominated in US dollars to margin futures and options on futures contracts traded on US futures exchanges or Cleared Swaps, the FCM is required under Commission Rule 1.49 to hold such funds or securities in depositories located in the US and may not transfer funds outside of the US, except as a customer may otherwise instruct the FCM.

15. When an FCM opens a 30.7 Account with a foreign broker, what steps does the FCM take to protect those funds?

When an FCM opens a 30.7 Account with a foreign broker, the FCM obtains from the broker a written acknowledgment, as required by Commission Rule 30.7, pursuant to which the foreign broker confirms that it has been advised that the 30.7 Customer Funds are held for and on behalf of the FCM's 30.7 Customers and agrees that the funds will be held in accordance with the Act and applicable Commission rules. In particular, the foreign broker confirms

²¹ Each FCM must prepare and make available on the FCM's website a disclosure document that provides customers with such information regarding the FCM's business, operations, risk profile and affiliates that would be material to the customer's decision to entrust funds and otherwise do business with the FCM. Among other information required to be provided, the FCM must describe its policies and procedures concerning the choice of bank depositories, custodians and counterparties to permitted transactions under Commission Rule 1.25.

that such 30.7 Customer Funds will not be used to secure or guarantee the obligations of, or extend credit to, the FCM or any Proprietary Account of the FCM.²²

In addition, Commission Rule 30.7 provides that an FCM must deposit 30.7 Customer Funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds. An FCM may not by contract or otherwise waive any of the protections afforded customer funds under the laws of the foreign jurisdiction.

16. Are there any special factors or risks that a customer should take into consideration before choosing to trade futures and options on futures contracts listed for trading on foreign boards of trade?

As with trading on US futures exchanges, the risk of loss in trading foreign futures and foreign options can be substantial. Consequently, a customer should carefully consider whether such trading is appropriate in light of the customer's financial condition and investment goals. Customers trading on foreign markets also assume additional risks and, therefore, should understand those risks before trading.

Customer Funds protections may be different. 30.7 Customer Funds used to margin transactions on foreign markets are deposited with a foreign broker or other permitted depository located outside of the US. Although an

22 A foreign broker that holds Customer Funds must execute an acknowledgment letter in the form prescribed by the Commission in the customer protection rules. A copy of the letter must be filed with the Commission and the FCM's DSRO. Among other provisions, the foreign broker must agree that it will reply promptly and directly to any request for confirmation of account balances or any other information regarding or related to the 30.7 Account from authorized members of the Commission staff or an appropriate representative of the FCM's DSRO. If an FCM opens a 30.7 Account directly with a foreign depository, the FCM must obtain a similar acknowledgment letter from the foreign depository.

FCM is required to deposit Customer Funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds, it is important to understand that 30.7 Customer Funds held outside of the US to margin transactions on foreign boards of trade will not receive the same protections under the Act and the Bankruptcy Code as Customer Segregated Funds or Cleared Swaps Customer Collateral. If the foreign broker carrying the US customers' positions fails, the broker will be liquidated in accordance with the laws of the jurisdiction in which it is located. If the foreign broker does not fail but the customer's US FCM fails, the return of the funds held outside of the US may, nonetheless, be delayed.

Importantly, in the event of an FCM's bankruptcy, 30.7 Customers comprise a single account class under the Bankruptcy Code and the Commission's Bankruptcy Rules. Therefore, if a US FCM were to fail and there was a shortfall in 30.7 Customer Funds arising from losses in one foreign jurisdiction, those losses would be shared pro rata by all 30.7 Customers, including customers that did not engage in trading in that jurisdiction.

A 30.7 Customer that chooses to effect transactions on foreign boards of trade, therefore, is encouraged to consider carefully the client assets protection regimes in the jurisdictions in which the customer's 30.7 Customer Funds will be held.

NOTE: Transactions on certain foreign boards of trade are cleared through a clearing organization that is registered with the Commission as a DCO. In these circumstances, funds held for or on behalf of customers to margin contracts executed on the foreign board of trade may not always be held in the 30.7 Account maintained by the FCM and clearing organization. Rather, at the request of the DCO and pursuant to Commission order, the funds deposited by customers to margin such transactions executed on the foreign board of trade and cleared by a registered FCM may be permitted to be held in a Customer Segregated Account under section 4d(a)(2) of the Act. In the event of the default of a US FCM, such funds will receive the same protections under the Act and the Bankruptcy Code as funds held by a US FCM to margin transactions on US futures exchanges.

For example, pursuant to Commission order, certain futures contracts listed for trading on the ICE Futures Europe and cleared through ICE Clear Europe are treated as Customer Segregated Funds and held in a Customer Segregated Account.

Transactions on foreign boards of trade are not governed by US law. Transactions entered into on a foreign board of trade are governed by applicable foreign laws and regulations. Moreover, such laws or regulations will vary depending on the country in which the foreign futures or foreign options transaction occurs. Neither the Commission nor NFA regulates

activities of any foreign board of trade, including the execution, delivery and clearing of transactions. Similarly, they have no power to compel enforcement of the rules of a foreign board of trade or any applicable foreign laws.

Foreign brokers are not subject to US law. Generally, foreign brokers are not subject to the jurisdiction of the Commission or any other US regulatory body; nor is the Commission able to compel a foreign jurisdiction or foreign board of trade to enforce applicable foreign laws or regulations. It is especially important, therefore, that an FCM carefully choose the foreign broker that will carry and clear transactions executed on behalf of the FCM's customers. A customer may request an FCM to (i) identify the foreign brokers that will carry and clear its customers' transactions in the applicable foreign jurisdiction and (ii) explain the criteria the FCM follows in selecting such foreign brokers, including any affiliates of the FCM.

***NOTE:** Pursuant to an exemption issued under Commission Rule 30.10, certain foreign brokers are authorized to solicit or accept orders directly from 30.7 Customers for execution on foreign boards of trade without being registered with the Commission as an FCM. Such foreign brokers consent to the jurisdiction of the US with respect to any activities of such foreign brokers otherwise subject to regulation under Part 30. Foreign brokers that have received an exemption from registration under Rule 30.10 are identified as such on NFA's BASIC, which may be accessed at <http://www.nfa.futures.org/basicnet/>.*

Foreign brokers that have received an exemption from registration under Commission Rule 30.10 are not authorized to solicit orders for execution on a US futures exchange or transactions in Cleared Swaps from customers located in the US.

The use of affiliates to carry and clear foreign transactions provides benefits but also presents risks. Provided the affiliate meets the criteria the FCM has established for depositories holding Customer Funds,²³ an FCM may use one or more affiliates to carry and clear transactions on foreign boards of trade, including in major markets such as the United Kingdom, Hong Kong and Singapore. A customer is encouraged to consider the risks as well as the benefits of effecting transactions on foreign boards of trade through the FCM's affiliates.

Many FCMs believe customers receive significant benefits if trades are executed through affiliated foreign brokers. FCMs will necessarily have far more information about an affiliated foreign broker, e.g., its internal controls, investment policies, customer protection regime, finances and systems, and they are better able to exert influence over an affiliated foreign broker.

²³ See footnote 14.

Customers, for their part, often prefer to deal with one integrated company, whose unified balance sheet and financial statement permit the customers to assess more easily the potential risk of trading through that FCM.

In addition, an FCM generally is able to provide services to its customers more efficiently and more effectively if trades are executed and cleared through one or more affiliates. An FCM and its affiliates customarily use the same systems, which permit straight-through processing of trades, thereby enhancing certainty of execution (including give-up transactions), facilitating reconciliations and reducing errors (or the time necessary to resolve errors). Straight-through processing also facilitates an FCM's ability to (i) manage the risks of carrying its customers' positions and (ii) comply with position limit and large trader reporting requirements, both in the US and in foreign jurisdictions. Moreover, an FCM that executes transactions on foreign boards of trade through an affiliate may be able to offer certain value-added services, including a platform for direct access to certain markets and single currency margining.

Nonetheless, the use of affiliates also poses certain risks. Because the activities of a US FCM and its affiliates are integrated, the failure of one such entity may cause all of the affiliated companies to fail or be placed in administration within a relatively brief period of time. As is the case if an unaffiliated foreign broker were to fail, each of these companies would be liquidated in accordance with the bankruptcy laws of the local jurisdiction. 30.7 Customer Funds held with such entities would not receive the same protections afforded Customer Funds under the Act and the Bankruptcy Code. If, on the other hand, a defaulting US FCM had cleared its 30.7 Customers' foreign futures and foreign options transactions through unaffiliated foreign brokers, the foreign broker likely would not have failed as a result of the FCM's failure, and the defaulting FCM's trustee in bankruptcy could have directed the foreign broker to liquidate all customer positions and return the balance to the trustee for distribution to customers.

In either case, however, in the event of the failure of a foreign broker, return of 30.7 Customer Funds to the US will be delayed and likely will be subject to the costs of administration of the failed foreign broker in accordance with the law of the applicable jurisdiction, as well as possible other intervening foreign brokers, if multiple foreign brokers were used to process the US customers' transactions on foreign markets.

17. What types of investments may an FCM make with Customer Segregated Funds? With 30.7 Customer Funds? With Cleared Swaps Customer Collateral?

Section 4d of the Act authorizes FCMs to invest Customer Segregated Funds in obligations of the United States, in general obligations of any State or of any political subdivision thereof and in obligations fully guaranteed as to principal and interest by the United States.

Commission Rule 1.25 further provides that FCMs may make such permitted investments in a range of instruments, consistent with the objectives of preserving principal and maintaining liquidity, and they may retain gains earned while remaining responsible for investment losses. However, the FCM and customer may agree that the FCM will pay the customer interest on the funds deposited (in effect, permitting the FCM to share the yield earned from permitted investments with their customers).

Permitted investments include:

- (i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (**US government securities**),
- (ii) General obligations of any State or of any political subdivision thereof (**municipal securities**),
- (iii) Obligations of any United States government corporation or enterprise sponsored by the United States government (**US agency securities**),²⁴
- (iv) Interests in a money market fund that invests at least 99.5% of its assets in cash or US government securities and that does not impose liquidity fees (**government money market funds**),²⁵
- (v) Interests in certain exchange-traded funds which seek to replicate the performance of a published short-term US Treasury security index (**US Treasury exchange-traded funds**)²⁶ and

24 Obligations issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association are permitted only while these entities operate under the conservatorship or receivership of the Federal Housing Finance Authority with capital support from the United States.

25 No additional duration requirement applies to the eligibility of a government money market fund as a permitted investment.

26 The index must be composed of bonds, notes, and bills with a remaining maturity of 12 months or less, issued or unconditionally guaranteed by the US Department of the Treasury.

- (vi) General obligations of Canada, France, Germany, Japan and the United Kingdom (to the extent the FCM has balances in a Customer Account denominated in the currencies of those countries) (*foreign sovereign debt*).

Except for investments in government money market funds, US Treasury exchange-traded funds and permitted foreign sovereign debt, the duration of the securities in which an FCM invests Customer Funds cannot exceed, on average, two years. The dollar-weighted average of the remaining time-to-maturity of the portfolio of investments in permitted foreign sovereign debt, on a country-by-country basis, may not exceed 60 calendar days.

An FCM may also engage in repurchase and reverse repurchase transactions with non-affiliated registered broker-dealers, a US bank or a domestic branch of a foreign bank, provided such transactions involve only permitted investments. For repurchase and reverse repurchase transactions in permitted foreign sovereign debt, FCMs may also transact with foreign banks in a money center country or country of currency of the foreign sovereign debt or a foreign securities broker-dealer in a money center country that is regulated by a national financial regulator or a provincial financial regulator. All funds or securities received in repurchase and reverse repurchase transactions with Customer Funds must be held in the appropriate Customer Account, i.e., Customer Segregated Account, 30.7 Account or Cleared Swaps Customer Account. Further, in accordance with the provisions of Commission Rule 1.25, all such funds or collateral must be received in the appropriate Customer Account on a delivery versus payment (*DVP*) basis in immediately available funds.²⁷

18. Can a customer direct the investment of its funds or impose restrictions on their use?

A customer is not able to direct the investment of the Customer Funds it deposits with an FCM. Investments of Customer Funds are made on an omnibus basis, and FCMs cannot identify specific investments for the benefit of specific customers.

²⁷ As described in response to Question 11, NFA publishes a report twice-monthly which shows for each FCM, among other things, the percentage of Customer Funds that are held in cash and each of the permitted investments under Commission Rule 1.25. The report also indicates whether the FCM held any Customer Funds during that month at a depository that is an affiliate of the FCM.

19. Why does the FCM need the ability to pledge, hypothecate, and re-hypothecate customer securities? What limitations are there on the FCM's ability to do so?

An FCM must have the ability to pledge, hypothecate and re-hypothecate customer securities in order to post such securities with a DCO to margin the customer's futures or Cleared Swaps transactions. Moreover, to the extent a customer posts securities as margin that are not permitted to be deposited with a DCO to margin the customer's positions, an FCM must have the ability to pledge, hypothecate and re-hypothecate such securities in order to convert customer-owned securities to securities that are accepted by the DCO. This process is commonly referred to as collateral transformation. Such transactions must be completed on a DVP basis and will not be recognized as completed until the funds and/or securities are received by the custodian of the FCM's Customer Account. Therefore, the Customer Account will be fully collateralized at all times.

Finally, an FCM must have the authority to hypothecate and re-hypothecate securities in order to enter into repurchase and reverse repurchase transactions with permitted third parties, i.e., a bank or a broker-dealer, in accordance with the provisions of Commission Rule 1.25. In this latter regard, it is important to note that, as with collateral transformation transaction described above, all such repurchase and reverse repurchase transactions must be completed on a DVP basis; a transaction will not be recognized as completed until the funds and/or securities are received by the custodian of the FCM's Customer Account.

Because Customer Funds are held in an omnibus account, an FCM must have the authority to hypothecate and re-hypothecate the funds and securities of all customers whose funds are held in that account.

III. BASICS OF FCMS

20. What is the purpose of the FCM's capital requirement? Can it be used to cover a shortfall in Customer Funds?

The Commission's minimum financial requirements are designed to assure that FCMs are able to meet their financial obligations in a regulated marketplace, including their financial obligations to customers in the event of an inadequacy in Customer Funds arising from the default of one or more

customers, adverse market conditions or for any other reason. As discussed above, Commission rules provide that an FCM is required to use its own capital to make up any deficiency, if the customer fails to have sufficient funds on deposit with the FCM to meet the customer's obligations. In the event an FCM's capital is insufficient to make up for the shortfall caused by one or more defaulting customers or for any other reason, non-defaulting customers (or all customers) should share in any loss pro rata.

The FCM's capital is also designed to assure that the FCM has the resources to maintain the infrastructure, e.g., personnel, recordkeeping systems, risk management systems, and supervisory and compliance procedures, necessary to operate its business in accordance with applicable laws and rules for the protection of customers.

21. When are customers expected to meet margin calls? What are the consequences if a customer fails to meet a margin call within the time prescribed?

As discussed above, if a customer does not have sufficient funds on deposit in its account with the FCM to meet the DCO's margin requirements with respect to the customer's open positions, the FCM must use its own funds until the customer has met the FCM's margin call. In order to reduce the potential risk to the FCM and its other customers, therefore, institutional customers are generally expected to meet margin calls by wire transfer within one business day following the trade date.²⁸ An FCM may also require a customer to meet a margin call intraday.²⁹

An FCM generally is required to take a capital charge with respect to a customer's account for which a margin call has been outstanding more than one business day following the date on which the margin call was made.³⁰ In addition, if a margin call with respect to a customer's account has been

²⁸ Additional requirements apply to an FCM customer's "separate accounts." See Question 22.

²⁹ CME Group exchange rules provide that an FCM clearing member may require a customer to meet a margin call within one hour.

³⁰ The FCM is presumed to have issued the margin call the day after an account becomes undermargined. 78 Fed. Reg. 68506, 68529, fn. 145 (November 14, 2013). Further, the FCM is required to maintain Residual Interest at least equal to any margin deficits that have not been met by 6:00 pm (US Eastern) on the business day following trade date.

outstanding more than three business days following the date on which the margin call was made, an FCM may only accept orders from the customer that reduce the risk of existing positions in the customer's account.³¹

22. What is a “separate account” and how are separate accounts margined?

Under Commission Rule 1.44(d), an FCM may elect (upon a customer's instruction) to treat the separate accounts of a customer as accounts of separate entities for purposes of margining such accounts in accordance with applicable Commission Rules and exchange rules. Customers typically establish separate accounts where accounts are: (i) managed by different asset managers, (ii) managed as separate investment portfolios by the same asset manager, (iii) subject to liens in connection with operating loans that contractually obligate an FCM to treat the accounts separately, (iv) related or other jointly owned accounts of natural persons the owners of which wish to maintain as separate accounts or (v) otherwise as required for regulatory or appropriate business purposes.

When an FCM has designated the accounts of a customer as “separate,” it is permitted (subject to the conditions set forth under Commission Rule 1.44) to treat those separate accounts as if they were owned and controlled by different entities for margin purposes. For example, the FCM would be permitted in such circumstances to release excess margin from one separate account of a customer while another separate account of the customer had pending unsatisfied margin obligations to the FCM.

Among other conditions set forth in Commission Rule 1.44, an FCM must suspend separate account margining for the separate accounts of a customer upon the occurrence of an event “inconsistent with the ordinary course of business” (including failure to maintain required margin in any separate account, another event of default under the customer agreement or a determination by the FCM that the separate account customer is in financial distress). The occurrence of any such event with respect to a particular separate account customer requires the FCM to cease permitting disbursements on a separate account basis for that customer. This means

³¹ The Joint Audit Committee has expressed the view that an FCM should take appropriate action to restrict the trading activity of an account prior to the third business day if (i) the FCM learns that the customer has not initiated timely payment to the FCM to meet its margin calls or (ii) the FCM has a credit concern with regard to the account. Joint Audit Committee Regulatory Alert #14-07 (November 4, 2014).

that the FCM would be required to retain excess margin equity in one account of the customer whenever there is a margin deficiency in another account – without regard to whether the accounts are separately managed.

In addition, separate account customers must settle margin calls on a “one business day” basis (though settlement may be extended by up to one additional business day, subject to the FCM’s risk management determination, in instances where the margin failure is due to an administrative error or operational constraint).³² For US and Canadian dollar-denominated margin calls, this means that the FCM must issue the call on the business day following the trade, and the customer must settle that call by the US or Canadian dollars currency wire transfer deadline on the same business day. Margin calls in non-US dollar currencies may be accorded an additional one or two business days, depending on the currency, which may be extended to the next local business day following a bank holiday in the jurisdiction of the issue of the currency.

23. What does it mean for a customer to have a “heightened risk profile”?

Commission rules require that a DCO require its clearing members to collect from their customers initial margin at a level that is commensurate with the risk presented to the DCO by each customer account. DCOs must set both (i) a baseline level of initial margin which serves as the minimum amount its clearing members must collect from their customers and (ii) an increased level of initial margin for categories of customers determined by a clearing member to have a “heightened risk profile” (**HRP**). DCOs are accorded some flexibility in defining the criteria for assessing customer margin requirements based on the type of customer account, so long as the DCO applies prudential standards that result in their FCM clearing members collecting customer initial margin at levels commensurate with the risk presented by each type of customer account.

Clearing members, in turn, may distinguish an HRP from a non-HRP customer account based on whether the account is a speculative (HRP) or a hedging (non-HRP) account, provided that the clearing member maintains

³² Compare CME Rule 930.K and CME Financial and Regulatory Bulletin #24-02 (**FRB 24-02**), which prohibit contractual language providing for a cure or grace period after a missed margin call before a clearing member may act (including by liquidating positions) to restore a customer’s account to compliance with applicable margin requirements. FRB 24-02 excepts from this prohibition a customer’s failure to meet a margin call that is the result of an administrative or operational error, where the funds to satisfy the call are available and such payment is made within one business day following the customer’s failure.

policies and procedures demonstrating how that distinction relates to an appropriate method of assessing the credit and market risk of the customer accounts it carries.

IV. JOINT FCM/BROKER-DEALERS

- 24. If an FCM is also a broker-dealer (joint FCM/BD), is there a single capital pool or is there a separate capital requirement for each function?**

A joint FCM/BD is required to maintain capital equal to or greater than the higher of its capital requirement as an FCM and its capital requirement as a broker-dealer. A joint FCM/BD, therefore, maintains a single pool of capital.

- 25. If a customer has a securities account and a futures account at a joint FCM/BD, is a customer permitted to leave the funds in the securities account but allow the FCM to count the funds as covering a futures margin call so that the funds will be covered by SIPC?**

No. The Act and Commission rules require an FCM to hold funds deposited to margin futures and options on futures contracts traded on US designated contract markets in Customer Segregated Accounts. Similarly, FCMs must hold funds deposited to margin Cleared Swaps and futures and options on futures contracts traded on foreign boards of trade in a Cleared Swaps Customer Account or a 30.7 Account, respectively. In computing its Customer Funds requirements under the Act and relevant Commission rules, an FCM may only consider those Customer Funds actually held in the applicable Customer Accounts. In this regard, the Joint Audit Committee's Margins Handbook confirms that an FCM may not apply free funds in an account under identical ownership but of a different classification or account type (e.g., securities, Customer Segregated, 30.7) to an account's margin deficiency. In order to be used for margin purposes, the funds must actually transfer to the identically-owned undermargined account.

V. FCM INSOLVENCY

26. How do the customer funds protections protect a customer in the event its FCM becomes the subject of an insolvency proceeding?

The Act and Commission rules impose separate segregation requirements on FCMs with respect to funds they hold for and on behalf of Public Customers by the separate groupings for Customer Segregated Funds, 30.7 Customer Funds and Cleared Swaps Customer Funds. Those protections are intended to assure that customer funds are available, by account class, to distribute to an FCM's Public Customers in the unlikely event of the FCM's insolvency. They also facilitate efforts to transfer accounts carried by an insolvent FCM for its Public Customers and the positions and associated funds in those accounts to one or more other FCMs, in lieu of liquidating open positions in such accounts. By design, the distribution framework that applies in the liquidation of an FCM aligns with the distinctions embodied in the segregation requirements for different types of Customer Funds and between an FCM's Public Customers (which receive segregation protections) and Non-Public Customers (which do not).

27. What is the relevant statutory framework governing the insolvency of an FCM?

The Bankruptcy Code contains special provisions in subchapter IV of chapter 7 that govern a trustee's liquidation of an FCM as a "commodity broker."³³ These provisions are supplemented by Section 20 of the Act, which authorizes the Commission to adopt rules providing greater specificity for the trustee's administration of a subchapter IV proceeding. Section 20 authorizes the Commission to determine, among other things, how the trustee should liquidate the business of the FCM, and the scope of what is included in or excluded from "customer property." The Commission adopted its Part 190 Rules pursuant to this authority. The Part 190 Rules provide a comprehensive scheme that governs, among other things, the transfer (porting) of customer positions, treatment of customer claims, liquidation of assets and distribution of customer property in the unlikely event of an FCM bankruptcy.

33 If an insolvent FCM is organized outside the US, the main proceeding will most likely occur in the FCM's home jurisdiction under the relevant insolvency law of that jurisdiction.

Many FCMs are registered with the SEC as broker-dealers and are members of the Securities Investor Protection Corporation (**SIPC**). Thus, the Securities Investor Protection Act of 1970 (**SIPA**) is part of the relevant statutory framework that could apply in the event of an FCM insolvency. A failing joint FCM/BD will likely be subject to the filing of a protective decree by SIPC, which would commence a liquidation case under SIPA. SIPC would then appoint the trustee, who is responsible for liquidating both the FCM and broker-dealer business lines, subject to the Bankruptcy Court's oversight. Pursuant to section 7(b) of SIPA, the SIPC trustee has the "same duties as a trustee" under a subchapter IV proceeding, to "the extent consistent with the provisions of this chapter or as otherwise ordered by the court." Thus, the Commission's Part 190 Rules will generally apply to the SIPC trustee's liquidation of the FCM business of the debtor, including the provisions for distributing customer property.

It is possible the insolvency of an FCM could be handled as an orderly liquidation proceeding pursuant to Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (**Title II**), as an alternative to a subchapter IV proceeding or a SIPC proceeding.³⁴ Under the Title II provisions, the Secretary of the Treasury has the authority to appoint a receiver for a "financial company" if it makes certain determinations, among others, that resolving the firm's failure under other applicable law would "have serious adverse effects on financial stability" in the US. If the Secretary initiates a Title II proceeding, the Federal Deposit Insurance Corporation (**FDIC**) will be appointed the receiver and assume control over the financial company's liquidation. If the financial company is an FCM, the FDIC is required to apply

34 An FCM could face the prospect of being pulled into an insolvency proceeding due to the failure of an affiliate. The likelihood that an FCM could become the subject of a Title II proceeding, though, by virtue of the initiation of a Title II proceeding against an affiliate, is mitigated under the policy preference in the US for a "single point of entry" approach. Under that approach, a Title II proceeding would occur at the level of a holding company parent, where subsidiary financial companies would be allowed to continue operating and to succeed or fail in the normal course. See FDIC, Overview of Resolution Under Title II of the Dodd-Frank Act (April 2024) (**FDIC Report**).

Pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a systemically important bank holding company or nonbank financial company (as designated by the Financial Stability Oversight Council) must maintain a resolution plan, often referred to as a living will, Title I Plan, or 165(d) Plan, which lays out "the plan of such company for rapid and orderly resolution in the event of material financial distress or failure." 12 USC. § 5365(d) (1). As described in the FDIC Report, the plans of the eight systemically important US financial companies reflect strategies for divesting or winding down subsidiary companies, including via proceedings under the Bankruptcy Code. When an FCM is covered by such a plan, the plan could affect whether or the timing when the FCM could become the subject of a petition in bankruptcy.

the provisions of subchapter IV of chapter 7 of the Bankruptcy Code in respect of distributing customer property, as if the FCM were a debtor for purposes of subchapter IV. Thus, the provisions in the Commission's Part 190 Rules for distributing customer property should also apply if an FCM were to become subject to an orderly liquidation proceeding under Title II.

28. What are the governing concepts in Part 190 for distributing customer property?

The Part 190 Rules govern the liquidation of an FCM in a proceeding under subchapter IV of chapter 7 of the Bankruptcy Code and the distribution of "customer property" (described below) in such a proceeding or a proceeding under SIPA or Title II. The Part 190 Rules organize customers into separate customer classes as Public Customers and Non-Public Customers; organize customer property and customer classes by separate account classes, i.e., the futures account class, foreign futures account class, cleared swaps account class, and delivery account class; provide for pro rata distribution of customer property by account class; and give priority to Public Customers over Non-Public Customers in the distribution of customer property. The first three account class distinctions align with the distinctions the Commission makes among Customer Segregated Funds, 30.7 Customer Funds and Cleared Swaps Customer Funds and the separate segregation regimes that apply to each. Those three account classes also include any Proprietary Accounts an FCM may carry, organized based on the nature of the trading activities in those accounts.

The Part 190 Rules require the trustee to use "best efforts" to transfer customer positions and account equity of a debtor FCM's Public Customers to one or more other FCMs in lieu of liquidating such property. Any such transfer constitutes a distribution of customer property and is subject to the limitation of *pro rata* distribution. Thus, a shortfall of customer property in an account class, particularly a shortfall in segregated Customer Funds associated with the account class, could complicate efforts to transfer accounts of Public Customers in the account class, as the trustee seeks to control transfers to avoid inadvertently making a distribution to any Public Customers that exceed their *pro rata* share.

As set forth in Commission Rule 190.09, customer property includes, among other items, funds and open positions in accounts of Public Customers and Non-Public Customers, delivery property and, notably, funds segregated for customers, i.e., Customer Funds, on the filing date. Current assets that are part of the debtor FCM's estate are also deemed customer property to the

extent the debtor FCM failed to meet its Residual Interest obligations or its obligations to cover debit balances or undermargined amounts (which could possibly result in under-segregation). The rule further provides that other cash, securities or property of the debtor FCM's estate will be classified as customer property when the customer property under other enumerated items is insufficient to satisfy Public Customers' claims in full, to the extent of that shortfall.³⁵

Customer property is allocated among account classes and between the Public Customer and Non-Public Customer classes. Security futures positions carried in a futures account (as opposed to in a securities account) are part of the futures account class.³⁶ If the debtor FCM participated in a portfolio margining program or cross-margining program, open positions and associated collateral are treated as part of the account class in which

³⁵ In 2000, the Bankruptcy Court in *In re Griffin Trading Co.*, 245 B.R. 291 (N.D. Ill. 2000), vacated, 270 B.R. 882 (2001), ruled the Commission exceeded its statutory authority by adopting this provision, and that the provision was invalid. The decision was vacated on appeal, though, and thus should have no precedential value. Nonetheless, there may be some question whether this provision would be honored by a Bankruptcy Court. When the Commission amended the Part 190 Rules in 2020, it added the provision described above that classifies an FCM's current assets as customer property to the extent needed to cover the FCM's unmet Residual Interest obligations or obligations to cover debit balances or undermargined amounts. This provision directly links to the definition of customer property in Section 761(10)(A)(ix) of the Bankruptcy Code, as "other property of the debtor that any applicable law, rule or regulation requires to be set aside or held for the benefit of a customer." The customer property definition in Rule 190.09 also contains a provision generally covering any other amounts a debtor FCM was required to set aside for the benefit of its customers under any applicable law, rule, regulation or order.

³⁶ Under the special provisions governing security futures, an FCM offering security futures must also be registered or notice-registered with the SEC as a broker-dealer. It is possible that a joint FCM/BD could clear a customer's security futures positions in a securities account, but when such products have been available for trading, joint FCM/BDs have typically cleared them in a futures account, and the positions would thus be included in the futures account class for security futures traded on a designated contract market.

they are held.³⁷ As noted, claims of Public Customers have priority over the claims of Non-Public Customers, which means that no customer property will be allocated to the Non-Public Customer class to satisfy Non-Public Customer claims until all allowable claims of Public Customers have been satisfied in full.

If there is a shortfall of customer property in an account class to distribute to Public Customers in that account class – i.e., to distribute to Segregated Customers in the futures account class, 30.7 Customers in the foreign futures account class or Cleared Swaps Customers in the cleared swaps account class³⁸ – the customer property that is available will be distributed *pro rata* to the Public Customers in the affected account class on their allowed net equity

37 Portfolio margining programs are available if permitted by a DCO for the types of contracts it clears, subject to approval of the Commission. Under a portfolio margining program, an FCM may carry accounts that combine different types of contracts and associated collateral within a single account structure, where the account holder may benefit from reduced margin obligations under a margin methodology that takes account of off-setting risk profiles of the different types of positions in the combined portfolio. For example, where permitted, an FCM could carry an account for a Public Customer or Non-Public Customer that contains cleared interest rate swaps and interest rate futures or options on futures traded on a DCM.

Cross-margining programs, where available, are offered jointly by a DCO and an SEC-regulated clearing agency and generally allow a joint FCM/BD to combine open positions in contracts cleared by the DCO and open securities positions cleared by the clearing agency within a single Commission-regulated or SEC-regulated account structure, again, with the view that account holders may benefit from reduced margin obligations based on off-setting risk profiles of positions in the combined portfolio. Cross-margining programs must be approved by both the Commission and SEC. The Commission approval order for a cross-margining program where the Customer Segregated Account is used to carry a customer's futures and securities positions may impose a special distribution framework set out in Appendix B, Framework 1 to the Part 190 Rules and require a participating customer to sign an agreement referring to that distribution framework. Under that framework, if it applies, the customer's claim will be subject to partial subordination to claims of other Segregated Customers with respect to non-cross margined futures positions, under certain scenarios where there is a "shortfall" of segregated funds, where the cross-margin customers could receive proportionally less than the other customers. The SEC, in its approval order, typically requires the customer to subordinate any claims it would have against a joint FCM/BD when the securities positions are carried in a Commission-regulated account structure, such as a futures customer account.

38 This could happen, for example, if the FCM held insufficient Customer Segregated Funds to meet its obligations to its Segregated Customers and the amount of the deficiency is not otherwise covered by other sources constituting customer property allocated to the futures account class.

claims.³⁹ In other words, the amount of the loss is shared *pro rata* by them. Public Customers whose funds are held in another account class that has not incurred a loss will not be required to share in the shortfall of the other account class with the loss. If any excess customer property remains in an account class after payment in full of all allowed claims of Public Customers in that account class, that excess property may be reallocated to offset the loss in the other account class.

The concepts of *pro rata* distribution and priority of Public Customers over Non-Public Customers also apply to the delivery account class. The delivery account class generally covers any delivery accounts a debtor FCM carries. As explained above, segregation requirements do not apply to how an FCM holds property it records in delivery accounts. The Part 190 Rules contain special provisions for splitting the delivery account class into a cash delivery account class and a physical delivery account class. This separation recognizes that it may be more challenging for the trustee to trace cash (which by its nature is fungible) than to trace physical delivery property (such as electronic title documents) that should be allocated as customer property to the delivery account class. Customer property traceable to the cash delivery account class or physical delivery account class is distributed *pro rata* to customers in that account class, again with priority given to satisfying claims of Public Customers over those of Non-Public Customers.

The Part 190 Rules also contain special provisions on how the trustee should handle open positions in contracts that settle via delivery that are approaching delivery, including to delineate what constitutes cash delivery property and physical delivery property when delivery is accomplished via a delivery account. The rules reflect the Commission's policy preference that the trustee should liquidate such positions if not transferred before they move into a delivery position. The rules also allow for deliveries to occur, where practicable, outside administration of the debtor FCM's estate, as may be permitted by the rules of the relevant DCO, foreign clearing organization or market, or otherwise with the trustee's facilitation.

39 Framework 2 in Appendix B to the Part 190 Rules sets out a special allocation convention that the trustee must apply when Customer Segregated Funds or Cleared Swaps Collateral are held by the FCM in a depository outside the US or in a foreign currency and a sovereign action of a foreign government or court has occurred that contributes to shortfalls in the amounts of customer property in the futures account class or cleared swaps account class to distribute to Public Customers. In such an event, the allocation convention will result in a reallocation of distributions to account for the impact of the action. The trustee would perform the allocation procedures separately for each Public Customer in the futures account class or cleared swaps account class.

Part 190 contains special provisions on the treatment of customer-posted letters of credit. The trustee may require a customer that posted a letter of credit to the debtor FCM to deliver substitute customer property to the trustee, even if the letter of credit expired after the FCM entered bankruptcy. Further, the trustee may draw on an unexpired letter of credit if the customer fails to post substitute customer property within a reasonable time specified by the trustee. An undrawn letter of credit (even if expired, and less the amount of any substitute customer property posted by the customer) is deemed distributed to the customer for purposes of distribution calculations. Proceeds of a letter of credit drawn by the trustee (as well as any substitute customer property posted by the customer) are considered customer property in the account class under which the letter of credit falls.

29. What are the governing principles for transferring customer positions and property?

The Bankruptcy Code's special commodity broker liquidation provisions and the Part 190 Rules reflect the policy goal that positions and property of an insolvent FCM's Public Customers should be transferred instead of liquidated. In this regard, the Bankruptcy Code prohibits a trustee from avoiding (clawing back) transfers of open positions in futures, foreign futures and cleared swaps, and any property margining the positions, to other FCMs so long as the transfers are made before or within seven days after the FCM's bankruptcy petition and are approved by Commission order or rule.⁴⁰ The Commission gives effect to this protection by including a rule in Part 190 that delineates various transfers the trustee cannot avoid.⁴¹ This "no claw back" protection facilitates the transfer of customer positions and related customer property by providing greater certainty that FCMs accepting the transfers will not be sued to avoid or recover the transfer after the fact.

Also reflecting the policy to transfer customer positions, Part 190 directs the trustee to use his or her best efforts to transfer all open "commodity contracts," - i.e., open positions in futures, foreign futures, and cleared swaps, - and property held for the benefit of Public Customers by the end of

⁴⁰ See Section 764(b) of the Bankruptcy Code. The provision in effect overrides general powers the trustee otherwise has under other Bankruptcy Code provisions to avoid preference or fraudulent transfers.

⁴¹ See Commission Rule 190.07(e).

the seventh calendar day after the filing of the FCM's bankruptcy petition.⁴² Positions that are not transferred must be liquidated by the trustee.⁴³

Part 190 also contains provisions designed to facilitate finding FCMs that will agree to accept the transfer of Public Customer accounts of a debtor FCM and to facilitate completing the transfers. The rules allow a receiving FCM to accept transferred accounts prior to conducting its own customer due diligence, allowing the FCM to complete its own due diligence afterwards and assign the customer agreements of the debtor FCM to the receiving FCM by operation of law.⁴⁴

VI. DCO GUARANTEE FUND

30. Will a DCO's guarantee fund compensate a customer in the event the customer's FCM becomes insolvent and there is a shortfall in the Customer Account maintained by the insolvent FCM?

A DCO's guarantee fund does not compensate customers of a defaulting FCM for shortfalls that result in the *pro rata* sharing of losses among non-defaulting customers. The primary purpose of the guarantee fund is to meet the DCO's obligations to other clearing members arising from the default of the clearing member FCM.

42 See Commission Rule 190.04(a)(1). The trustee is also directed to use reasonable efforts to prevent physical delivery property held for the purpose of making delivery on a commodity contract from being transferred separate and apart from the related contract positions under which the property is deliverable, or to a different FCM transferee.

43 Commission Rule 190.04(d).

44 See Rules 190.07(b)(3) and Rule 190.07(b)(4), respectively.

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