

Commodity Futures Trading Commission

§ 166.3

awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and (d) whether the award otherwise enhances the Commission's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers. Address these factors in the whistleblower's response as well.

Section H: Declaration

This section must be signed by the claimant.

PART 166—CUSTOMER PROTECTION RULES

Sec.

- 166.1 Definitions.
- 166.2 Authorization to trade.
- 166.3 Supervision.
- 166.4 Branch offices.
- 166.5 Dispute settlement procedures.

AUTHORITY: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a, 21, and 23, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

§ 166.1 Definitions.

(a) The term *Commission registrant* as used in this part means any person who is registered or required to be registered with the Commission pursuant to the Act or any rule, regulation, or order thereunder.

(b) [Reserved]

(c) The term *customer* as used in this part means any person trading, intending to trade, or receiving or seeking advice concerning any commodity interest, including any existing or prospective client or subscriber of a commodity trading advisor or existing or prospective participant in a commodity pool, but the term does not include a person who is acting in the capacity of a Commission registrant with respect to the trade.

(d) The term *commodity account* as used in this part means the account of a customer in which any commodity interest is, or is intended to be, traded.

[43 FR 31886, July 24, 1978, as amended at 46 FR 54535, Nov. 3, 1981; 52 FR 29003, Aug. 5, 1987; 72 FR 63979, Nov. 14, 2007]

§ 166.2 Authorization to trade.

No futures commission merchant, retail foreign exchange dealer, intro-

ducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account:

(a) With respect to any commodity interest as defined in §1.3(yy)(1) through (3) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies—

(1) The precise commodity interest to be purchased or sold; and

(2) The exact amount of the commodity interest to be purchased or sold); or

(b) With respect to any commodity interest as defined in §1.3(yy)(1) or (2) of this chapter, authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; Provided, however, That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

[75 FR 55451, Sept. 10, 2010]

§ 166.3 Supervision.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

[48 FR 35304, Aug. 3, 1983]

§ 166.4

17 CFR Ch. I (4-1-12 Edition)

§ 166.4 Branch offices.

Each branch office of each Commission registrant must use the name of the firm of which it is a branch for all purposes, and must hold itself out to the public under such name. The act, omission or failure of any person acting for the branch office, within the scope of his employment or office, shall be deemed the act, omission or failure of the Commission registrant as well as of such person.

[48 FR 35304, Aug. 3, 1983]

§ 166.5 Dispute settlement procedures.

(a) *Definitions.* (1) The term *claim or grievance* as used in this section shall mean any dispute that:

(A) Arises out of any transaction executed on or subject to the rules of a designated contract market,

(B) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(C) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(ii) Arises out of any retail forex transaction (as defined in § 5.1(m) of this chapter).

(2) The term customer as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter), a retail forex customer (as defined in § 5.1(k) of this chapter) and any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market; *Provided, however,* a person who is an “eligible contract participant” as defined in section 1a(12) of the Act shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, retail foreign exchange dealer, introducing broker, floor broker, commodity pool operator,

commodity trading advisor, or associated person.

(b) *Voluntariness.* The use by customers of dispute settlement procedures shall be voluntary as provided in paragraphs (c) and (g) of this section.

(c) *Customers.* No Commission registrant shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the Commission registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. A futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) A plan defined as a government plan or church plan in section 3(32) or section 3(33) of title I of the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to comparable foreign regulation; and

(ii) A person who is a “qualified eligible participant” or a “qualified eligible client” as defined in § 4.7 of this chapter.

(3) The agreement may not require any customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter. Accordingly, such customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the Commission registrant notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the Commission registrant notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparations proceedings, the claim or

grievance will be subject to the pre-existing arbitration agreement and must also be advised that aspects of the claim or grievance that are not subject to the reparations procedure (*i.e.*, do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the pre-existing arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the Commission registrant that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(5) *Election of forum.* (i) Within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time a Commission registrant notifies the customer of its intent to submit a claim to arbitration, the Commission registrant must provide the customer with a list of organizations whose procedures meet Acceptable Practices established by the Commission for dispute resolution, together with a copy of the rules of each forum listed. The list must include:

(A) The designated contract market, if applicable and if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the designated contract market, if applicable, or employee thereof, and that are not otherwise associated with the designated contract market (mixed panel), if applicable: Provided, however, that the list of qualified organizations pro-

vided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

(ii) The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(6) *Fees.* The agreement must acknowledge that the Commission registrant will pay any incremental fees that may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(7) *Cautionary Language.* The agreement must include the following language printed in large boldface type:

THREE FORUMS EXIST FOR THE RESOLUTION OF COMMODITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING COMMISSION (CFTC) AND ARBITRATION CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION.

The CFTC recognizes that the opportunity to settle disputes by arbitration may in some cases provide many benefits to customers, including the ability to obtain an expeditious and final resolution of disputes without incurring substantial costs. The CFTC requires, however, that each customer individually examine the relative merits of arbitration and that your consent to this arbitration agreement be voluntary.

By signing this agreement, you: (1) May be waiving your right to sue in a court of law; and (2) are agreeing to be bound by arbitration of any claims or counterclaims which you or [name] may submit to arbitration under this agreement. You are not, however, waiving your right to elect instead to petition the CFTC to institute reparations proceedings under Section 14 of the Commodity Exchange Act with respect to any dispute that may be arbitrated pursuant to this agreement. In the event a dispute arises, you will be notified if [name] intends to submit the dispute to arbitration. If you believe a violation of the Commodity Exchange Act is involved and if you prefer to request a section 14 "Reparations" proceeding before the CFTC, you will have 45 days from the date of such notice in which to make that election.

You need not sign this agreement to open or maintain an account with [name]. See 17 CFR 166.5.

(d) *Enforceability.* A dispute settlement procedure may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (c) or (g) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(e) *Time limits for submission of claims.* The dispute settlement procedure established by a designated contract market shall not include any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims.

(f) *Counterclaims.* A procedure established by a designated contract market under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The designated contract market may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties, or third persons over whom the designated contract market does not have jurisdiction. Other counterclaims arising out of a transaction subject to the Act and rules promulgated thereunder for which the customer utilizes the services of the registrant may be permissible where the customer and the registrant have agreed in advance to require that all such submissions be included in the proceeding, and if the aggregate monetary value of the counterclaims is capable of calculation.

(g) *Eligible contract participants.* A person who is an "eligible contract participant" as defined in section 1a(12) of the Act may negotiate any term of an agreement or understanding with a Commission registrant in which the eligible contract participant agrees, prior to the time a claim or grievance

arises, to submit such claim or grievance to any settlement procedure provided for in the agreement.

[66 FR 42287, Aug. 10, 2001, as amended at 75 FR 55451, Sept. 10, 2010]

PART 170—REGISTERED FUTURES ASSOCIATIONS

Subpart A—Standards Governing Commission Review of Applications for Registration as a Futures Association Under Section 17 of the Act

Sec.

- 170.1 Demonstration of purposes (section 17(b)(1) of the Act).
- 170.2 Membership restrictions (section 17(b)(2) of the Act).
- 170.3 Fair and equitable representation of members (section 17(b)(5) of the Act).
- 170.4 Allocation of dues (section 17(b)(6) of the Act).
- 170.5 Prevention of fraudulent and manipulative practices (section 17(b)(7) of the Act).
- 170.6 Disciplinary proceedings (sections 17(b)(8) and (b)(9) of the Act).
- 170.7 Membership denial (section 17(b)(9) of the Act).
- 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).
- 170.9 General standard.
- 170.10 Proficiency examinations (sections 4p and 17(p) of the Act).

Subpart B—Registration Statement of Futures Associations to be Submitted to the Commission

- 170.11 Form of registration statement; review of registration statement.
- 170.12 Delegation of authority to Director of the Division of Clearing and Intermediary Oversight.

Subpart C—Membership in a Registered Futures Association

- 170.15 Futures commission merchants.
- 170.16 Swap dealers and major swap participants.

AUTHORITY: 7 U.S.C. 6p, 12a, and 21, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

SOURCE: 44 FR 20651, Apr. 6, 1979, unless otherwise noted.