

shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Director.

[76 FR 69430, Nov. 8, 2011]

PART 22—CLEARED SWAPS (Eff. 4-9-2012)

Sec.

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AUTHORITY: 7 U.S.C. 1a, 6d, 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 77 FR 6371, Feb. 7, 2012, unless otherwise noted.

EFFECTIVE DATE NOTE: At 77 FR 6371, Feb. 7, 2012, part 22 was added, effective Apr. 9, 2012.

§ 22.1 Definitions.

For the purposes of this part:

Cleared Swap. This term refers to a transaction constituting a “cleared swap” within the meaning of section 1a(7) of the Act.

(1) This term shall exclude any swap (along with money, securities, or other

property received to margin, guarantee, or secure such a swap) that, pursuant to a Commission rule, regulation, or order, is (along with such money, securities, or other property) commingled with a commodity future or option (along with money, securities, or other property received to margin, guarantee, or secure such a future or option) that is segregated pursuant to section 4d(a) of the Act.

(2) This term shall include any trade or contract (along with money, securities or other property received to margin, guarantee, or secure such a trade or contract), that

(i) Would be required to be segregated pursuant to section 4d(a) of the Act, or

(ii) Would be subject to §30.7 of this chapter, but which is, in either case, pursuant to a Commission rule, regulation, or order (or a derivatives clearing organization rule approved in accordance with §39.15(b)(2) of this chapter), commingled with a swap (along with money, securities, or other property received to margin, guarantee, or secure such a swap) in an account segregated pursuant to section 4d(f) of the Act.

Cleared Swaps Customer. This term refers to any person entering into a Cleared Swap, but shall exclude:

(1) Any owner or holder of a Cleared Swaps Proprietary Account with respect to the Cleared Swaps in such account; and

(2) A clearing member of a derivatives clearing organization with respect to Cleared Swaps cleared on that derivatives clearing organization. A person shall be a Cleared Swaps Customer only with respect to its Cleared Swaps.

Cleared Swaps Customer Account. This term refers to any account for the Cleared Swaps of Cleared Swaps Customers and associated Cleared Swaps Customer Collateral that:

(1) A futures commission merchant maintains on behalf of Cleared Swaps Customers (including, in the case of a Collecting Futures Commission Merchant, the Cleared Swaps Customers of a Depositing Futures Commission Merchant) or

(2) A derivatives clearing organization maintains for futures commission

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merchants on behalf of Cleared Swaps Customers thereof.

Cleared Swaps Customer Collateral. (1) This term means all money, securities, or other property received by a futures commission merchant or by a derivatives clearing organization from, for, or on behalf of a Cleared Swaps Customer, which money, securities, or other property:

(i) Is intended to or does margin, guarantee, or secure a Cleared Swap; or
(ii) Constitutes, if a Cleared Swap is in the form or nature of an option, the settlement value of such option.

(2) This term shall also include accruals, *i.e.*, all money, securities, or other property that a futures commission merchant or derivatives clearing organization receives, directly or indirectly, which is incident to or results from a Cleared Swap that a futures commission merchant intermediates for a Cleared Swaps Customer.

Cleared Swaps Proprietary Account. (1) This term means an account for Cleared Swaps and associated collateral that is carried on the books and records of a futures commission merchant for persons with certain relationships with that futures commission merchant, specifically:

(i) Where such account is carried for a person falling within one of the categories specified in paragraph (2) of this definition, or

(ii) Where ten percent or more of such account is owned by a person falling within one of the categories specified in paragraph (2) of this definition, or

(iii) Where an aggregate of ten percent or more of such account is owned by more than one person falling within one or more of the categories specified in paragraph (2) of this definition.

(2) The relationships to the futures commission merchant referred to in paragraph (1) of this definition are as follows:

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

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

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

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

(B) The handling, on behalf of such partnership, of:

(1) The Cleared Swaps of Cleared Swaps Customers or

(2) The Cleared Swaps Customer Collateral;

(C) The keeping, on behalf of such partnership, of records pertaining to

(1) the Cleared Swaps of Cleared Swaps Customers or

(2) the Cleared Swaps Customer Collateral; or

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

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

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

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

(B) The handling, on behalf of such individual, partnership, corporation, or association, of the Cleared Swaps of Cleared Swaps Customers or the Cleared Swaps Customer Collateral;

(C) The keeping of records, on behalf of such individual, partnership, corporation, or association, pertaining to the Cleared Swaps of Cleared Swaps Customers or the Cleared Swaps Customer Collateral; or

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

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

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

(viii) A business affiliate that, directly or indirectly, is controlled by or is under common control with, such individual, partnership, corporation or association. *Provided, however,* that an account owned by any shareholder or member of a cooperative association of producers, within the meaning of section 6a of the Act, which association is

registered as a futures commission merchant and carries such account on its records, shall be deemed to be a Cleared Swaps Customer Account and not a Cleared Swaps Proprietary Account of such association, unless the shareholder or member is an officer, director, or manager of the association.

Clearing Member. This term means any person that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others. The derivatives clearing organization need not be organized as a membership organization.

Collecting Futures Commission Merchant. A futures commission merchant that carries Cleared Swaps on behalf of another futures commission merchant and the Cleared Swaps Customers of the latter futures commission merchant, and as part of carrying such Cleared Swaps, collects Cleared Swaps Customer Collateral.

Commingle. To commingle two or more items means to hold such items in the same account, or to combine such items in a transfer between accounts.

Customer. This term means any customer of a futures commission merchant, other than a Cleared Swaps Customer, including, without limitation:

(1) Any “customer” or “commodity customer” within the meaning of § 1.3 of this chapter; and

(2) Any “foreign futures or foreign options customer” within the meaning of § 30.1(c) of this chapter.

Depositing Futures Commission Merchant. A futures commission merchant that carries Cleared Swaps on behalf of its Cleared Swaps Customers through another futures commission merchant and, as part of carrying such Cleared Swaps, deposits Cleared Swaps Customer Collateral with such futures commission merchant.

Permitted Depository. This term shall have the meaning set forth in § 22.4 of this part.

Segregate. To segregate two or more items is to keep them in separate accounts, and to avoid combining them in the same transfer between two accounts.

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swaps Customer Collateral.

(a) *General.* A futures commission merchant shall treat and deal with the Cleared Swaps of Cleared Swaps Customers and associated Cleared Swaps Customer Collateral as belonging to Cleared Swaps Customers.

(b) *Location of Cleared Swaps Customer Collateral.* (1) A futures commission merchant must segregate all Cleared Swaps Customer Collateral that it receives, and must either hold such Cleared Swaps Customer Collateral itself as set forth in paragraph (b)(2) of this section, or deposit such collateral into one or more Cleared Swaps Customer Accounts held at a Permitted Depository, as set forth in paragraph (b)(3) of this section.

(2) If a futures commission merchant holds Cleared Swaps Customer Collateral itself, then the futures commission merchant must:

(i) Physically separate such collateral from its own property;

(ii) Clearly identify each physical location in which it holds such collateral as a “Location of Cleared Swaps Customer Collateral” (the “FCM Physical Location”);

(iii) Ensure that the FCM Physical Location provides appropriate protection for such collateral; and

(iv) Record in its books and records the amount of such Cleared Swaps Customer Collateral separately from its own funds.

(3) If a futures commission merchant holds Cleared Swaps Customer Collateral in a Permitted Depository, then:

(i) The Permitted Depository must qualify pursuant to the requirements set forth in § 22.4 of this part, and

(ii) The futures commission merchant must maintain a Cleared Swaps Customer Account with each such Permitted Depository.

(c) *Commingle.* (1) A futures commission merchant may commingle the Cleared Swaps Customer Collateral that it receives from, for, or on behalf of multiple Cleared Swaps Customers.

(2) A futures commission merchant shall not commingle Cleared Swaps Customer Collateral with either of the following:

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(i) Funds belonging to the futures commission merchant, except as expressly permitted in paragraph (e)(3) of this section; or

(ii) Other categories of funds belonging to Customers of the futures commission merchant, including customer funds (as § 1.3 of this chapter defines such term) and the foreign futures or foreign options secured amount (as § 1.3 of this chapter defines such term), except as expressly permitted by Commission rule, regulation, or order, or by a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter.

(d) *Limitations on use.* (1) No futures commission merchant shall use, or permit the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract of, or to secure or extend the credit of, any person other than such Cleared Swaps Customer. Cleared Swaps Customer Collateral shall not be used to margin, guarantee, or secure trades or contracts of the entity constituting a Cleared Swaps Customer other than in Cleared Swaps, except to the extent permitted by a Commission rule, regulation or order.

(2) A futures commission merchant may not impose or permit the imposition of a lien on Cleared Swaps Customer Collateral, including any residual financial interest of the futures commission merchant in such collateral, as described in paragraph (e)(4) of this section.

(3) A futures commission merchant may not include, as Cleared Swaps Customer Collateral,

(i) Money invested in the securities, memberships, or obligations of any derivatives clearing organization, designated contract market, swap execution facility, or swap data repository, or

(ii) Money, securities, or other property that any derivatives clearing organization holds and may use for a purpose other than those set forth in § 22.3 of this part.

(e) *Exceptions.* Notwithstanding the foregoing:

(1) *Permitted investments.* A futures commission merchant may invest money, securities, or other property

constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter, which section shall apply to such money, securities, or other property as if they comprised customer funds or customer money subject to segregation pursuant to section 4d(a) of the Act and the regulations thereunder.

(2) *Permitted withdrawals.* Such share of Cleared Swaps Customer Collateral as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a Cleared Swaps Customer's Cleared Swaps with a derivatives clearing organization, or with a Collecting Futures Commission Merchant, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such Cleared Swaps.

(3) *Deposits of own money, securities, or other property.* (i) In order to ensure that it is always in compliance with paragraph (f) of this section, a futures commission merchant may place in an FCM Physical Location or deposit in a Cleared Swaps Customer Account its own money, securities, or other property (*provided, that* such securities or other property are unencumbered and are of the types specified in § 1.25 of this chapter).

(ii) Money, securities, or other property deposited by a futures commission merchant pursuant to 22.13(b) and available to a derivatives clearing organization or Collecting Futures Commission Merchant to meet the obligations of the futures commission merchant's Cleared Swaps Customers collectively, shall be maintained in an account separate from the Cleared Swaps Customer Account.

(4) *Residual financial interest.* (i) If, in accordance with paragraph (e)(3)(i) of this section, a futures commission merchant places in an FCM Physical Location or deposits in a Cleared Swaps Customer Account its own money, securities, or other property, then such money, securities, or other property (including accruals thereon) shall constitute Cleared Swaps Customer Collateral.

(ii) The futures commission merchant shall have a residual financial

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interest in any portion of such money, securities, or other property in excess of that necessary for compliance with paragraph (f)(4) of this section.

(iii) The futures commission merchant may withdraw money, securities, or other property from the FCM Physical Location or Cleared Swaps Customer Account, to the extent of its residual financial interest therein. At the time of such withdrawal, the futures commission merchant shall ensure that the withdrawal does not cause its residual financial interest to become less than zero.

(f) *Requirements as to amount.* (1) For purposes of this § 22.2(f), the term “account” shall reference the entries on the books and records of a futures commission merchant pertaining to the Cleared Swaps Customer Collateral of a particular Cleared Swaps Customer.

(2) The futures commission merchant must reflect in the account that it maintains for each Cleared Swaps Customer the market value of any Cleared Swaps Customer Collateral that it receives from such customer, as adjusted by:

(i) Any uses permitted under § 22.2(d) of this part;

(ii) Any accruals on permitted investments of such collateral under § 22.2(e) of this part that, pursuant to the futures commission merchant’s customer agreement with that customer, are creditable to such customer;

(iii) Any charges lawfully accruing to the Cleared Swaps Customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(iv) Any appropriately authorized distribution or transfer of such collateral.

(3) If the market value of Cleared Swaps Customer Collateral in the account of a Cleared Swaps Customer is positive after adjustments, then that account has a credit balance. If the market value of Cleared Swaps Customer Collateral in the account of a Cleared Swaps Customer is negative after adjustments, then that account has a debit balance.

(4) The futures commission merchant must maintain in segregation, in its FCM Physical Locations and/or its Cleared Swaps Customer Accounts at Permitted Depositories, an amount

equal to the sum of any credit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts, excluding from such sum any debit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts.

(5) Notwithstanding the foregoing, the futures commission merchant must include, in calculating the sum referenced in paragraph (f)(4) of this section, any debit balance that a Cleared Swaps Customer may have in its account, to the extent that such balance is secured by “readily marketable securities” that the Cleared Swaps Customer deposited with the futures commission merchant.

(i) For purposes of this section, “readily marketable” shall be defined as having a “ready market” as such latter term is defined in Rule 15c3-1(c)(11) of the Securities and Exchange Commission (§241.15c3-1(c)(11) of this title).

(ii) In order for a debit balance to be deemed secured by “readily marketable securities,” the futures commission merchant must maintain a security interest in such securities, and must hold a written authorization to liquidate the securities at the discretion of the futures commission merchant.

(iii) To determine the amount secured by “readily marketable securities,” the futures commission merchant shall:

(A) Determine the market value of such securities; and

(B) Reduce such market value by applicable percentage deductions (*i.e.*, “securities haircuts”) as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (§240.15c3-1(c)(2)(vi) of this title). The portion of the debit balance, not exceeding 100 per cent, that is secured by the reduced market value of such readily marketable securities shall be included in calculating the sum referred to in paragraph (f)(4) of this section.

(g) *Segregated account; Daily computation and record.* (1) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

(i) The aggregate market value of the Cleared Swaps Customer Collateral in all FCM Physical Locations and all Cleared Swaps Customer Accounts held at Permitted Depositories (the “Collateral Value”);

(ii) The sum referenced in paragraph (f)(4) of this section (the “Collateral Requirement”); and

(iii) The amount of the residual financial interest that the futures commission merchant holds in such Cleared Swaps Customer Collateral, which shall equal the difference between the Collateral Value and the Collateral Requirement.

(2) The futures commission merchant must complete the daily computations required by this section prior to noon on the next business day and must keep such computations, together with all supporting data, in accordance with the requirements of §1.31 of this chapter.

§ 22.3 Derivatives clearing organizations: Treatment of Cleared Swaps Customer Collateral.

(a) *General.* A derivatives clearing organization shall treat and deal with the Cleared Swaps Customer Collateral deposited by a futures commission merchant as belonging to the Cleared Swaps Customers of such futures commission merchant and not other persons, including, without limitation, the futures commission merchant.

(b) *Location of Cleared Swaps Customer Collateral.* (1) The derivatives clearing organization must segregate all Cleared Swaps Customer Collateral that it receives from futures commission merchants, and must either hold such Cleared Swaps Customer Collateral itself as set forth in paragraph (b)(2) of this section, or deposit such collateral into one or more Cleared Swaps Customer Accounts held at a Permitted Depository, as set forth in paragraph (b)(3) of this section.

(2) If a derivatives clearing organization holds Cleared Swaps Customer Collateral itself, then the derivatives clearing organization must:

(i) Physically separate such collateral from its own property, the property of any futures commission merchant, and the property of any other person that is not a Cleared Swaps Customer

of a futures commission merchant;

(ii) Clearly identify each physical location in which it holds such collateral as “Location of Cleared Swaps Customer Collateral” (the “DCO Physical Location”);

(iii) Ensure that the DCO Physical Location provides appropriate protection for such collateral; and

(iv) Record in its books and records the amount of such Cleared Swaps Customer Collateral separately from its own funds, the funds of any futures commission merchant, and the funds of any other person that is not a Cleared Swaps Customer of a futures commission merchant.

(3) If a derivatives clearing organization holds Cleared Swaps Customer Collateral in a Permitted Depository, then:

(i) The Permitted Depository must qualify pursuant to the requirements set forth in §22.4 of this part; and

(ii) The derivatives clearing organization must maintain a Cleared Swaps Customer Account with each such Permitted Depository.

(c) *Commingling.* (1) A derivatives clearing organization may commingle the Cleared Swaps Customer Collateral that it receives from multiple futures commission merchants on behalf of their Cleared Swaps Customers.

(2) A derivatives clearing organization shall not commingle the Cleared Swaps Customer Collateral that it receives from a futures commission merchant on behalf of Cleared Swaps Customers with any of the following:

(i) The money, securities, or other property belonging to the derivatives clearing organization;

(ii) The money, securities, or other property belonging to any futures commission merchant; or

(iii) Other categories of funds that it receives from a futures commission merchant on behalf of Customers, including customer funds (as §1.3 of this chapter defines such term) and the foreign futures or foreign options secured amount (as §1.3 of this chapter defines such term), except as expressly permitted by Commission rule, regulation or order, (or a derivatives clearing organization rule approved in accordance with §39.15(b)(2) of this chapter).

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(d) *Exceptions; Permitted investments.* Notwithstanding the foregoing and § 22.15 of this part, a derivatives clearing organization may invest the money, securities, or other property constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter, which section shall apply to such money, securities, or other property as if they comprised customer funds or customer money subject to segregation pursuant to section 4d(a) of the Act and the regulations thereunder.

§ 22.4 Futures Commission Merchants and derivatives clearing organizations: Permitted Depositories.

In order for a depository to be a Permitted Depository:

(a) The depository must (subject to § 22.9) be one of the following types of entities:

(1) A bank located in the United States;

(2) A trust company located in the United States;

(3) A Collecting Futures Commission Merchant registered with the Commission (but only with respect to a Depositing Futures Commission Merchant providing Cleared Swaps Customer Collateral); or

(4) A derivatives clearing organization registered with the Commission; and

(b) The futures commission merchant or the derivatives clearing organization must hold a written acknowledgment letter from the depository as required by § 22.5 of this part.

§ 22.5 Futures commission merchants and derivatives clearing organizations: Written acknowledgement.

(a) Before depositing Cleared Swaps Customer Collateral, the futures commission merchant or derivatives clearing organization shall obtain and retain in its files a separate written acknowledgment letter from each depository in accordance with §§ 1.20 and 1.26 of this chapter, with all references to “customer funds” modified to apply to Cleared Swaps Customer Collateral, and with all references to section 4d(a) or 4d(b) of the Act and the regulations thereunder modified to apply to section

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4d(f) of the Act and the regulations thereunder.

(b) The futures commission merchant or derivatives clearing organization shall adhere to all requirements specified in §§ 1.20 and 1.26 of this chapter regarding retaining, permitting access to, filing, or amending the written acknowledgment letter, in all cases as if the Cleared Swaps Customer Collateral comprised customer funds subject to segregation pursuant to section 4d(a) or 4d(b) of the Act and the regulations thereunder.

(c) Notwithstanding paragraph (a) of this section, an acknowledgement letter need not be obtained from a derivatives clearing organization that has made effective, pursuant to section 5c(c) of the Act and the regulations thereunder, rules that provide for the segregation of Cleared Swaps Customer Collateral, in accordance with all relevant provisions of the Act and the regulations thereunder.

§ 22.6 Futures Commission Merchants and derivatives clearing organizations: Naming of Cleared Swaps Customer Accounts.

The name of each Cleared Swaps Customer Account that a futures commission merchant or a derivatives clearing organization maintains with a Permitted Depository shall:

(a) Clearly identify the account as a “Cleared Swaps Customer Account” and

(b) Clearly indicate that the collateral therein is “Cleared Swaps Customer Collateral” subject to segregation in accordance with the Act and this part.

§ 22.7 Permitted depositories: Treatment of Cleared Swaps Customer Collateral.

A Permitted Depository shall treat all funds in a Cleared Swaps Customer Account as Cleared Swaps Customer Collateral. A Permitted Depository shall not hold, dispose of, or use any such Cleared Swaps Customer Collateral as belonging to any person other than:

(a) The Cleared Swaps Customers of the futures commission merchant maintaining such Cleared Swaps Customer Account or;

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(b) The Cleared Swaps Customers of the futures commission merchants for which the derivatives clearing organization maintains such Cleared Swaps Customer Account.

§ 22.8 Situs of Cleared Swaps Customer Accounts.

The situs of each of the following shall be located in the United States:

(a) Each FCM Physical Location or DCO Physical Location;

(b) Each “account,” within the meaning of § 22.2(f)(1), that a futures commission merchant maintains for each Cleared Swaps Customer; and

(c) Each Cleared Swaps Customer Account on the books and records of a derivatives clearing organization with respect to the Cleared Swaps Customers of a futures commission merchant.

§ 22.9 Denomination of Cleared Swaps Customer Collateral and location of depositories.

(a) Subject to paragraph (b) of this section, futures commission merchants and derivatives clearing organizations may hold Cleared Swaps Customer Collateral in the denominations, at the locations and depositories, and subject to the same segregation requirements specified in § 1.49 of this chapter, which section shall apply to such Cleared Swaps Customer Collateral as if it comprised customer funds subject to segregation pursuant to section 4d(a) of the Act.

(b) Notwithstanding the requirements set forth in § 1.49 of this chapter, a futures commission merchant’s obligations to a Cleared Swaps Customer may be denominated in a currency in which funds have accrued to the customer as a result of a Cleared Swap carried through such futures commission merchant, to the extent of such accruals.

(c) Each depository referenced in paragraph (a) of this section shall be considered a Permitted Depository for purposes of this part. *Provided, however,* that a futures commission merchant shall only be considered a Permitted Depository to the extent that it is acting as a Collecting Futures Commission Merchant (as § 22.1 of this part defines such term).

§ 22.10 Application of other regulatory provisions.

Sections 1.27, 1.28, 1.29, and 1.30 of this chapter shall apply to the Cleared Swaps Customer Collateral held by futures commission merchants and derivatives clearing organizations to the same extent as if such sections referred to:

(a) “Cleared Swaps Customer Collateral” in place of “customer funds;”

(b) “Cleared Swaps Customers” instead of “commodity or option customers” or “customers or option customers;”

(c) “Cleared Swaps Contracts” instead of “trades, contracts, or commodity options;” and

(d) “Section 4d(f) of the Act” instead of “section 4d(a)(2) of the Act.”

§ 22.11 Information to be provided regarding customers and their Cleared Swaps.

(a) Each Depositing Futures Commission Merchant shall:

(1) The first time that the Depositing Futures Commission Merchant intermediates a Cleared Swap for a Cleared Swaps Customer with a Collecting Futures Commission Merchant, provide information sufficient to identify such customer to the relevant Collecting Futures Commission Merchant; and

(2) At least once each business day thereafter, provide information to the relevant Collecting Futures Commission Merchant sufficient to identify, for each Cleared Swaps Customer, the portfolio of rights and obligations arising from the Cleared Swaps that the Depositing Futures Commission Merchant intermediates for such customer.

(b) If an entity serves as both a Depositing Futures Commission Merchant and a Collecting Futures Commission Merchant, then:

(1) The information that such entity must provide to its Collecting Futures Commission Merchant pursuant to paragraph (a)(1) of this section shall also include information sufficient to identify each Cleared Swaps Customer of the Depositing Futures Commission Merchant for which such entity serves as a Collecting Futures Commission Merchant; and

(2) The information that such entity must provide to its Collecting Futures

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Commission Merchant pursuant to paragraph (a)(2) of this section shall also include information sufficient to identify, for each Cleared Swaps Customer referenced in paragraph (b)(1) of this section, the portfolio of rights and obligations arising from the Cleared Swaps that such entity intermediates as a Collecting Futures Commission Merchant, on behalf of its Depositing Futures Commission Merchant, for such customer.

(c) Each futures commission merchant that intermediates a Cleared Swap for a Cleared Swaps Customer, on or subject to the rules of a derivatives clearing organization, directly as a Clearing Member shall:

(1) The first time that such futures commission merchant intermediates a Cleared Swap for a Cleared Swaps Customer, provide information to the relevant derivatives clearing organization sufficient to identify such customer; and

(2) At least once each business day thereafter, provide information to the relevant derivatives clearing organization sufficient to identify, for each Cleared Swaps Customer, the portfolio of rights and obligations arising from the Cleared Swaps that such futures commission merchant intermediates for such customer.

(d) If the futures commission merchant referenced in paragraph (c) of this section is a Collecting Futures Commission Merchant, then:

(1) The information that it must provide to the derivatives clearing organization pursuant to paragraph (c)(1) of this section shall also include information sufficient to identify each Cleared Swaps Customer of any entity that acts as a Depositing Futures Commission Merchant in relation to the Collecting Futures Commission Merchant (including, without limitation, each Cleared Swaps Customer of any Depositing Futures Commission Merchant for which such entity also serves as a Collecting Futures Commission Merchant); and

(2) The information that it must provide to the derivatives clearing organization pursuant to paragraph (c)(2) of this section shall also include information sufficient to identify, for each Cleared Swaps Customer referenced in

paragraph (d)(1) of this section, the portfolio of rights and obligations arising from the Cleared Swaps that the Collecting Futures Commission Merchant intermediates, on behalf of the Depositing Futures Commission Merchant, for such customer.

(e) Each derivatives clearing organization shall:

(1) Take appropriate steps to confirm that the information it receives pursuant to paragraphs (c)(1) or (c)(2) of this section is accurate and complete, and

(2) Ensure that the futures commission merchant is providing the derivatives clearing organization the information required by paragraphs (c)(1) or (c)(2) of this section on a timely basis.

§ 22.12 Information to be maintained regarding Cleared Swaps Customer Collateral.

(a) Each Collecting Futures Commission Merchant receiving Cleared Swaps Customer Funds from an entity serving as a Depositing Futures Commission Merchant shall, no less frequently than once each business day, calculate and record:

(1) the amount of collateral required at such Collecting Futures Commission Merchant for each Cleared Swaps Customer of the entity acting as Depositing Futures Commission Merchant (including, without limitation, each Cleared Swaps Customer of any Depositing Futures Commission Merchant for which such entity also serves as a Collecting Futures Commission Merchant); and

(2) the sum of the individual collateral amounts referenced in paragraph (a)(1) of this section.

(b) Each Collecting Futures Commission Merchant shall calculate the collateral amounts referenced in paragraph (a) of this section with respect to the portfolio of rights and obligations arising from the Cleared Swaps that the Collecting Futures Commission Merchant intermediates, on behalf of the Depositing Futures Commission Merchant, for each Cleared Swaps Customer referenced in paragraph (a)(1) of this section.

(c) Each derivatives clearing organization receiving Cleared Swaps Customer Funds from a futures commission merchant shall, no less frequently

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than once each business day, calculate and record:

(1) the amount of collateral required at such derivatives clearing organization for each Cleared Swaps Customer of the futures commission merchant; and

(2) the sum of the individual collateral amounts referenced in paragraph (c)(1) of this section.

(d) If the futures commission merchant referenced in paragraph (c) of this section is a Collecting Futures Commission Merchant, then the derivatives clearing organization shall also perform and record the results of the calculation required in paragraph (c) of this section for each Cleared Swaps Customer of an entity acting as a Depositing Futures Commission Merchant in relation to the Collecting Futures Commission Merchant (including, without limitation, any Cleared Swaps Customer for which such entity is also acting as a Collecting Futures Commission Merchant).

(e) Each futures commission merchant shall calculate the collateral amounts referenced in paragraph (c) of this section with respect to the portfolio of rights and obligations arising from the Cleared Swaps that the futures commission merchant intermediates (including, without limitation, as a Collecting Futures Commission Merchant on behalf of a Depositing Futures Commission Merchant), for each Cleared Swaps Customer referenced in paragraphs (c)(1) and (d) of this section.

(f) The collateral requirement referenced in paragraph (a) of this section with respect to a Collecting Futures Commission Merchant shall be no less than that imposed by the relevant derivatives clearing organization with respect to the same portfolio of rights and obligations for each relevant Cleared Swaps Customer.

§ 22.13 Additions to Cleared Swaps Customer Collateral.

(a)(1) At the election of the derivatives clearing organization or Collecting Futures Commission Merchant, the collateral requirement referred to in §§ 22.12(a), (c), and (d) of this part applicable to a particular Cleared Swaps Customer or group of Cleared Swaps Customers may be increased based on

an evaluation of the credit risk posed by such customer or group, in which case the derivatives clearing organization or Collecting Futures Commission Merchant shall collect and record such higher amount as provided in § 22.12 of this part.

(2) Nothing in paragraph (a)(1) of this section is intended to interfere with the right of a futures commission merchant to increase the collateral requirements at such futures commission merchant with respect to any of its Cleared Swaps Customers or Customers.

(b) Any collateral deposited by a futures commission merchant (including a Depositing Futures Commission Merchant) pursuant to § 22.2(e)(3)(ii) of this part, which collateral is identified as such futures commission merchant's own property may be used by the derivatives clearing organization or Collecting Futures Commission Merchant, as applicable, to margin, guarantee or secure the Cleared Swaps of any or all of such Cleared Swaps Customers.

(c) A futures commission merchant may transmit to a derivatives clearing organization any collateral posted by a Cleared Swaps Customer in excess of the amount required by the derivatives clearing organization if:

(1) the rules of the derivatives clearing organization expressly permit the futures commission merchant to transmit collateral in excess of the amount required by the derivatives clearing organization; and

(2) the derivatives clearing organization provides a mechanism by which the futures commission merchant is able to, and maintains rules pursuant to which the futures commission merchant 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 derivatives clearing organization.

§ 22.14 Futures commission merchant failure to meet a customer margin call in full.

(a) A Depositing Futures Commission Merchant which receives a call for either initial margin or variation margin

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with respect to a Cleared Swaps Customer Account from a Collecting Futures Commission Merchant, which call such Depositing Futures Commission Merchant does not meet in full, shall, with respect to each Cleared Swaps Customer of such Depositing Futures Commission Merchant whose Cleared Swaps contribute to such margin call,

(1) Transmit to the Collecting Futures Commission Merchant an amount equal to the lesser of

(i) The amount called for; or

(ii) The remaining Cleared Swaps Collateral on deposit at such Depositing Futures Commission Merchant for that Cleared Swaps Customer; and

(2) Advise the Collecting Futures Commission Merchant of the identity of each such Cleared Swaps Customer, and the amount transmitted on behalf of each such customer.

(b) If the entity acting as Depositing Futures Commission Merchant referenced in paragraph (a) of this section is also a Collecting Futures Commission Merchant, then:

(1) Such entity shall include in the transmission required in paragraph (a)(1) of this section any amount that it receives, pursuant to paragraph (a)(1) of this section, from a Depositing Futures Commission Merchant for which such entity acts as a Collecting Futures Commission Merchant; and

(2) Such entity shall present its Collecting Futures Commission Merchant with the information that it receives, pursuant to paragraph (a)(2) of this section, from a Depositing Futures Commission Merchant for which such entity acts as a Collecting Futures Commission Merchant.

(c) A futures commission merchant which receives a call for either initial or variation margin with respect to a Cleared Swaps Customer Account from a derivatives clearing organization, which call such futures commission merchant does not meet in full, shall, with respect to each Cleared Swaps Customer of such futures commission merchant whose Cleared Swaps contribute to such margin call:

(1) Transmit to the derivatives clearing organization an amount equal to the lesser of

(i) The amount called for; or

(ii) The remaining Cleared Swaps Collateral on deposit at such futures commission merchant for each such Cleared Swaps Customer; and

(2) Advise the derivatives clearing organization of the identity of each such Cleared Swaps Customer, and the amount transmitted on behalf of each such customer.

(d) If the futures commission merchant referenced in paragraph (c) is a Collecting Futures Commission Merchant, then:

(1) Such Collecting Futures Commission Merchant shall include in the transmission required in paragraph (c)(1) of this section any amount that it receives from a Depositing Futures Commission Merchant pursuant to paragraph (a)(1) of this section; and

(2) Such Collecting Futures Commission Merchant shall present the derivatives clearing organization with the information that it receives from a Depositing Futures Commission Merchant pursuant to paragraph (a)(2) of this section.

(e) If,

(1) On the business day prior to the business day on which the Depositing Futures Commission Merchant fails to meet a margin call with respect to a Cleared Swaps Customer Account, such Collecting Futures Commission Merchant referenced in paragraph (a) of this section held, with respect to such account, Cleared Swaps Collateral of a value no less than the amount specified in § 22.12(a)(2) of this part, after the application of haircuts specified by policies applied by such Collecting Futures Commission Merchant in its relationship with the Depositing Futures Commission Merchant, and

(2) As of the close of business on the business day on which the margin call is not met, the market value of the Cleared Swaps Collateral held by the derivatives clearing organization or Collecting Futures Commission Merchant is, due to changes in such market value, less than the amount specified in § 22.12(a)(2) of this part, then the amount of such collateral attributable to each Cleared Swaps Customer pursuant to § 22.12(a)(1) of this part shall be reduced by the percentage difference between the amount specified in § 22.12(a)(2) of this part and such market value.

(f) If:

(1) On the business day prior to the business day on which the futures commission merchant fails to meet a margin call with respect to a Cleared Swaps Customer Account, the derivatives clearing organization referenced in paragraph (c) of this section held, with respect to such account, Cleared Swaps Collateral of a value no less than the amount specified in § 22.12(c)(2) of this part, after the application of haircuts specified by the rules and procedures of such derivatives clearing organization, and

(2) As of the close of business on the business day on which the margin call is not met, the market value of the Cleared Swaps Collateral held by the derivatives clearing organization is, due to changes in such market value, less than the amount specified in § 22.12(c)(2) of this part, then the amount of collateral attributable to each Cleared Swaps Customer pursuant to § 22.12(c)(1) of this part shall be reduced by the percentage difference between the amount specified in § 22.12(c)(2) and such market value.

(g) A derivatives clearing organization or Collecting Futures Commission Merchant is entitled to reasonably rely upon any information provided by a defaulting futures commission merchant under § 22.14. If the defaulting futures commission merchant does not provide such information on the date of the futures commission merchant's default, a derivatives clearing organization or Collecting Futures Commission Merchant may rely on the information previously provided to it by the defaulting futures commission merchant.

§ 22.15 Treatment of Cleared Swaps Customer Collateral on an individual basis.

Subject to § 22.3(d) of this part, each derivatives clearing organization and each Collecting Futures Commission Merchant receiving Cleared Swaps Customer Collateral from a futures commission merchant shall treat the value of collateral required with respect to the portfolio of rights and obligations arising out of the Cleared Swaps intermediated for each Cleared Swaps Customer, and collected from the futures commission merchant, as belonging to

such customer, and such amount shall not be used to margin, guarantee, or secure the Cleared Swaps or other obligations of the futures commission merchant or of any other Cleared Swaps Customer or Customer. Nothing contained herein shall be construed to limit, in any way, the right of a derivatives clearing organization or Collecting Futures Commission Merchant to liquidate any or all positions in a Cleared Swaps Customer Account in the event of default of a clearing member or Depositing Futures Commission Merchant.

§ 22.16 Disclosures to customers.

(a) A futures commission merchant shall disclose, to each of its Cleared Swaps Customers, the governing provisions, as described in paragraph (c) of this section, relating to use of Cleared Swaps Customer Collateral, transfer, neutralization of the risks, or liquidation of Cleared Swaps in the event of a default by the futures commission merchant relating to the Cleared Swaps Customer Account, as well as any change in such governing provisions.

(b) If the futures commission merchant referenced in paragraph (a) of this section is a Depositing Futures Commission Merchant, then such futures commission merchant shall disclose, to each of its Cleared Swaps Customers, the governing provisions, as described in paragraph (c) of this section, relating to use of Cleared Swaps Customer Collateral, transfer, neutralization of the risks, or liquidation of Cleared Swaps in the event of a default by:

(1) Such futures commission merchant or

(2) Any relevant Collecting Futures Commission Merchant relating to the Cleared Swaps Customer Account, as well as any change in such governing provisions.

(c) The governing provisions referred to in paragraphs (a) and (b) of this section are the rules of each derivatives clearing organization, or the provisions of the customer agreement between the Collecting Futures Commission Merchant and the Depositing Futures Commission Merchant, on or through which the Depositing Futures Commission Merchant will intermediate Cleared

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Swaps for such Cleared Swaps Customer.

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

Subpart A [Reserved]

Sec.
23.1–23.20 [Reserved]

Subpart B—Registration

- 23.21 Registration of swap dealers and major swap participants.
- 23.22 Associated persons of swap dealers and major swap participants.
- 23.23–23.40 [Reserved]

Subpart H—Business Conduct Standards for Swap Dealers and Major Swap Participants Dealing With Counterparties, Including Special Entities

- 23.400 Scope.
- 23.401 Definitions.
- 23.402 General provisions.
- 23.403–23.409 [Reserved]
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- 23.411–23.429 [Reserved]
- 23.430 Verification of counterparty eligibility.
- 23.431 Disclosures of material information.
- 23.432 Clearing disclosures.
- 23.433 Communications—fair dealing.
- 23.434 Recommendations to counterparties—institutional suitability.
- 23.435–23.439 [Reserved]
- 23.440 Requirements for swap dealers acting as advisors to Special Entities.
- 23.441–23.449 [Reserved]
- 23.450 Requirements for swap dealers and major swap participants acting as counterparties to Special Entities.
- 23.451 Political contributions by certain swap dealers.

APPENDIX A—GUIDANCE ON THE APPLICATION OF §§ 23.434 AND 23.440 FOR SWAP DEALERS THAT MAKE RECOMMENDATIONS TO COUNTERPARTIES OR SPECIAL ENTITIES

AUTHORITY: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

EFFECTIVE DATE NOTE: At 77 FR 9822, Feb. 17, 2012, the authority citation for part 23 was revised, effective Apr. 17, 2012. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6p, 6s, 9, 9a, 12a, 13b, 13c, 16a, 18, 19, 21 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act,

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Pub. L. No. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

SOURCE: 77 FR 2628, Jan. 19, 2012, unless otherwise noted.

Subpart A [Reserved]

§§ 23.1–23.20 [Reserved]

Subpart B—Registration

§ 23.21 Registration of swap dealers and major swap participants.

(a) Each person who comes within the definition of the term “swap dealer” in section 1a(49) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

(b) Each person who comes within the definition of the term “major swap participant” in section 1a(33) of the Act, as such term may be further defined by the Commission, is subject to the registration provisions under the Act and to part 3 of this chapter.

(c) Each affiliate of an insured depository institution described in section 716(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 section 716(c), 124 Stat. 1376 (2010)) is required to be registered as a swap dealer if the affiliate is a swap dealer or as a major swap participant if the affiliate is a major swap participant.

§ 23.22 Associated persons of swap dealers and major swap participants.

(a) *Definition.* For the purpose of this section, the term “person” means an “associated person of a swap dealer or major swap participant” as defined in section 1a(4) of the Act and § 1.3(aa)(6).

(b) *Fitness.* No swap dealer or major swap participant may permit a person who is subject to a statutory disqualification under section 8a(2) or 8a(3) of the Act to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knows, or in the exercise of reasonable care should know, of the statutory disqualification; *Provided, however,* that the prohibition set forth in this paragraph (b) shall not apply to any person