

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 a commodity interest as defined in any paragraph of the commodity interest definition in § 1.3(yy) 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 a commodity interest as defined in paragraph (1) or (2) of the commodity interest definition in § 1.3(yy) 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, as amended at 77 FR 66349, Nov. 2, 2012]

§ 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

§ 166.4

its business as a Commission registrant.

[48 FR 35304, Aug. 3, 1983]

§ 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 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(18) 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,

17 CFR Ch. I (4-1-13 Edition)

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