

§ 1.21

17 CFR Ch. I (4-1-14 Edition)

provide for the secure transmission and delivery of the requested information to the appropriate recipient(s). We will not hold you responsible for acting pursuant to any information request from the director of the Division of Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, upon which you have relied after having taken measures in accordance with your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

In the event that we or any of our futures commission merchant clearing members become(s) subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of offset or lien on assets that are not Funds maintained in the Account(s), or to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you or reversed, for any reason, and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that, in the ordinary course of your business as a depositor, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any

governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any action or omission to act pursuant to any such order, judgment, decree or levy, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns and, for the avoidance of doubt, regardless of a change in the name of either party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter agreement, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations thereunder, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC). We hereby authorize and direct you to provide such copy without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:
Print Name:
Title:

ACKNOWLEDGED AND AGREED:
[Name of Bank or Trust Company]

By:
Print Name:
Title:

Contact Information: [Insert phone number and email address]

DATE:

[78 FR 68627, Nov. 14, 2013]

§ 1.21 Care of money and equities accruing to futures customers.

All money received directly or indirectly by, and all money and equities

Commodity Futures Trading Commission

§ 1.22

accruing to, a futures commission merchant from any derivatives clearing organization or from any clearing member or from any member of a contract market incident to or resulting from any trade, contract or commodity option made by or through such futures commission merchant on behalf of any futures customer shall be considered as accruing to such futures customer within the meaning of the Act and these regulations. Such money and equities shall be treated and dealt with as belonging to such futures customer in accordance with the provisions of the Act and these regulations. Money and equities accruing in connection with futures customers' open trades, contracts, or commodity options need not be separately credited to individual accounts but may be treated and dealt with as belonging undivided to all futures customers having open trades, contracts, or commodity option positions which if closed would result in a credit to such futures customers.

[77 FR 66321, Nov. 2, 2012]

§ 1.22 Use of futures customer funds restricted.

(a) No futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer.

(b) Futures customer funds shall not be used to carry trades or positions of the same futures customer other than in contracts for the purchase or sale of any commodity for future delivery or for options thereon traded through the facilities of a designated contract market.

(c)(1) The undermargined amount for a futures customer's account is the amount, if any, by which:

(i) The total amount of collateral required for that futures customer's positions in that account, at the time or times referred to in paragraph (c)(2) of this section, exceeds

(ii) The value of the futures customer funds for that account, as calculated in § 1.20(i)(2).

(2) Each futures commission merchant must compute, based on the in-

formation available to the futures commission merchant as of the close of each business day,

(i) The undermargined amounts, based on the clearing initial margin that will be required to be maintained by that futures commission merchant for its futures customers, at each derivatives clearing organization of which the futures commission merchant is a member, at the point of the daily settlement (as described in § 39.14 of this chapter) that will complete during the following business day for each such derivatives clearing organization less

(ii) Any debit balances referred to in § 1.20(i)(4) included in such undermargined amounts.

(3)(i) Prior to the Residual Interest Deadline, such futures commission merchant must maintain residual interest in segregated funds that is at least equal to the computation set forth in paragraph (c)(2) of this section. Where a futures commission merchant is subject to multiple Residual Interest Deadlines, prior to each Residual Interest Deadline, such futures commission merchant must maintain residual interest in segregated funds that is at least equal to the portion of the computation set forth in paragraph (c)(2) of this section attributable to the clearing initial margin required by the derivatives clearing organization making such settlement.

(ii) A futures commission merchant may reduce the amount of residual interest required in paragraph (c)(3)(i) of this section to account for payments received from or on behalf of undermargined futures customers (less the sum of any disbursements made to or on behalf of such customers) between the close of the previous business day and the Residual Interest Deadline.

(4) For purposes of paragraph (c)(2) of this section, a futures commission merchant should include, as clearing initial margin, customer initial margin that the futures commission merchant will be required to maintain, for that futures commission merchant's futures customers, at another futures commission merchant.

(5) *Residual Interest Deadline defined.*

(i) Except as provided in paragraph (c)(5)(ii) of this section, the Residual