

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

Subject to § 22.3(d), 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 Cleared Swaps 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, Futures Customer (as § 1.3 of this chapter defines that term), or Foreign Futures or Foreign Options Customer (as § 30.1 of this chapter defines that term). 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 a default of a clearing member or Depositing Futures Commission Merchant.

[77 FR 66335, Nov. 2, 2012]

§ 22.16 Disclosures to Cleared Swaps 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 Swaps for such Cleared Swaps Customer.

[77 FR 6371, Feb. 7, 2012]

§ 22.17 Policies and procedures governing disbursements of Cleared Swaps Customer Collateral from Cleared Swaps Customer Accounts.

(a) The provision in section 4d(f)(2) of the Act that prohibits the commingling of Cleared Swaps Customer Collateral with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the funds segregated as required by the Act and the regulations in this part and set apart for the benefit of Cleared Swaps Customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this chapter, as it may deem necessary to ensure any and all Cleared Swaps Customer Accounts are not undersegregated at any time.

(b) A futures commission merchant may not withdraw funds, except withdrawals that are made to or for the benefit of Cleared Swaps Customers, from a Cleared Swaps Customer Account unless the futures commission merchant has prepared the daily segregation calculation required by § 22.2

as of the close of business on the previous business day. A futures commission merchant that has completed its daily segregation calculation may make withdrawals, in addition to withdrawals that are made to or for the benefit of Cleared Swaps Customers, to the extent of its actual residual financial interest in funds held in segregated accounts, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s) shall not result in the funds of one Cleared Swaps Customer being used to purchase, margin or carry the trades, contracts or swaps positions, or extend the credit of any other Cleared Swaps Customer or other person.

(c) A futures commission merchant may not withdraw funds, in a single transaction or a series of transactions, that are not made to or for the benefit of Cleared Swaps Customers from Cleared Swaps Customer Accounts if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily segregation calculation required by § 22.2 and computed as of the close of business on the previous business day, unless:

(1) The futures commission merchant's chief executive officer, chief finance officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7-R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals;

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the chief executive officer, chief finance officer or other senior official pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the chief executive officer, chief finance officer or other senior official that pre-approved the withdrawal, and give notice that the

futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in such accounts holding Cleared Swaps Customer Accounts funds;

(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 the name of each recipient;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the swaps customer funds after the withdrawal;

(v) Contain a representation by the chief executive officer, chief finance officer or other senior official that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The chief executive officer, chief finance officer or other senior official must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the Cleared Swaps Customer Accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of Commission which has supervisory authority over the futures commission merchant

whereby the Commission acknowledges receipt of the notice; and

(3) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (c)(2) of this section, and before the next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding Cleared Swaps Customer Account funds, except to or for the benefit of Cleared Swaps Customers, without complying with paragraph (c)(1) of this section and filing a written notice with the Commission under paragraph (c)(2)(vi) of this section and its designated self-regulatory organization signed by the chief executive officer, chief finance officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the chief executive officer, chief finance officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the segregated accounts holding Cleared Swaps Customer Account funds after the withdrawal; and

(v) Include a representation that to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the segregation requirements after the withdrawal.

(d) If a futures commission merchant withdraws funds that are not for the benefit of Cleared Swaps Customers from Cleared Swaps Customer Accounts, and the withdrawal causes the futures commission merchant to not hold sufficient funds in Cleared Swaps Customer Accounts to meet its targeted residual interest, as required to be computed under §1.11 of this chapter, the futures commission merchant must deposit its own funds into the Cleared Swaps Customer Accounts to restore the targeted amount of residual interest on the next business day, or, if appropriate, revise the futures commis-

sion merchant's targeted amount of residual interest pursuant to the policies and procedures required by §1.11 of this chapter. Notwithstanding the foregoing, if the futures commission merchant's residual interest in Cleared Swaps Customer Accounts is less than the amount required to be maintained by §22.2 at any particular point in time, the futures commission merchant must immediately restore the residual interest to exceed the sum of such amounts. Any proprietary funds deposited in Cleared Swaps Customer Accounts must be unencumbered and otherwise compliant with §1.25 of this chapter, as applicable.

(e) Notwithstanding any other provision of this part, a futures commission merchant may not withdraw funds that are not for the benefit of Cleared Swaps Customers from a Cleared Swaps Customer Account unless the futures commission merchant follows its policies and procedures required by §1.11 of this chapter.

[78 FR 68647, Nov. 14, 2013]

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