

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.

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.

[77 FR 6371, Feb. 7, 2012, as amended at 77 FR 66334, Nov. 2, 2012]

§ 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 Collat-

eral 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:

(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 Futures Customers (as § 1.3 of this chapter defines that term), or Foreign Futures or Foreign Options Customers (as § 30.1 of this chapter defines that term) of the futures commission merchant, including Futures Customer Funds (as § 1.3 of this chapter defines such term) or 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

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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 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; *Provided, however,* that the futures commission merchant shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to Cleared Swaps Customers of the futures commission merchant.

(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 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

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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 net liquidating equity for each such Cleared Swaps Customer, calculated as follows: The market value of any Cleared Swaps Customer Collateral that it receives from such customer, as adjusted by:

(i) Any uses permitted under paragraph (d) of this section;

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

(iii) Any gains and losses with respect to Cleared Swaps;

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

(v) 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, at all times, 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. This balance may not be reduced by any debit balances that the Cleared Swaps Customers of the futures commission merchants 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). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3-1(c)(2)(vi) of the Securities and Exchange Commission (§240.15c3-1(c)(2)(vi) of this title) may apply the lower haircut percentages specified in Rule 240.15c3-1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The portion of the debit balance, not exceeding 100 percent, 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.

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(6)(i) The undermargined amount for a Cleared Swaps Customer Account is the amount, if any, by which:

(A) The total amount of collateral required for that Cleared Swaps Customer's Cleared Swaps, at the time or times referred to in paragraph (f)(6)(ii) of this section, exceeds—

(B) The value of the Cleared Swaps Customer Collateral for that account, as calculated in paragraph (f)(2) of this section.

(ii) Each futures commission merchant must compute, based on the information available to the futures commission merchant as of the close of each business day,

(A) The undermargined amounts, based on the clearing initial margin that will be required to be maintained by that futures commission merchant for its Cleared Swaps 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

(B) Any debit balances referred to in paragraph (f)(4) of this section included in such undermargined amounts.

(iii)(A) Prior to the time of settlement referenced in paragraph (f)(6)(ii)(A) of this section such futures commission merchant must maintain residual interest in segregated funds that is equal to or exceeds the portion of the computation set forth in paragraph (f)(6)(ii) of this section attributable to the clearing initial margin required by the derivatives clearing organization making such settlement.

(B) A futures commission merchant may reduce the amount of residual interest required in paragraph (f)(6)(iii)(A) of this section to account for payments received from or on behalf of undermargined Cleared Swaps 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 time of settlement.

(iv) For purposes of paragraph (f)(6)(ii) of this section, a Depositing Futures Commission Merchant should include, as clearing initial margin, cus-

tomers initial margin that the Depositing Futures Commission Merchant will be required to maintain, for that Depositing Futures Commission Merchant's Cleared Swaps Customers, at a Collecting Futures Commission Merchant, and, for purposes of paragraph (f)(6)(iii) of this section, must do so prior to the time it must settle with that Collecting Futures Commission Merchant.

(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) Each futures commission merchant is required to document its segregation computation required by paragraph (g)(1) of this section by preparing a Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA contained in the Form 1-FR-FCM as of the close of business each business day.

(3) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2) of this section by noon the following business day.

(4) Each futures commission merchant shall file the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2)

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of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(5) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, or any other depository or custodian holding Cleared Swaps Customer Collateral as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(i) The name and location of each entity holding Cleared Swaps Customer Collateral;

(ii) The total amount of Cleared Swaps Customer Collateral held by each entity listed in paragraph (g)(5) of this section; and

(iii) The total amount of cash and investments that each entity listed in paragraph (g)(5) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(A) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(B) General obligations of any State or of any political subdivision of a State (municipal securities);

(C) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(D) Certificates of deposit issued by a bank;

(E) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(F) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(G) Interests in money market mutual funds.

(6) Each futures commission merchant must report the total amount of customer owned securities held by the futures commission merchant as Cleared Swaps Customer Collateral and must list the names and locations of the depositories holding customer owned securities.

(7) Each futures commission merchant must report the total amount of Cleared Swaps Customer Collateral that has been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(8) Each futures commission merchant must report which, if any, of the depositories holding Cleared Swaps Customer Collateral under paragraph (g)(5) of this section are affiliated with the futures commission merchant.

(9) Each futures commission merchant shall file the detailed list of depositories required by paragraph (g)(5) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(10) Each futures commission merchant shall retain its daily segregation computation and the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the CEA required by paragraph (g)(2) of this section and the detailed listing of depositories required by paragraph (g)(5) of this section, together with all supporting documentation, in accordance with §1.31 of this chapter.

[77 FR 6371, Feb. 7, 2012, as amended at 77 FR 66334, Nov. 2, 2012; 78 FR 68645, Nov. 14, 2013]

§ 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.