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(a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The General Counsel, or his designee, may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the General Counsel, or his designee, under this section.

[55 FR 41068, Oct. 9, 1990, as amended at 64 FR 46271, Aug. 25, 1999; 78 FR 1145, Jan. 8, 2013]

PART 180—PROHIBITION AGAINST MANIPULATION

Sec.

180.1 Prohibition on the employment, or attempted employment, of manipulative and deceptive devices.
180.2 Prohibition on price manipulation.

AUTHORITY: 7 U.S.C. 6c(a), 9, 12(a)(5) and 15, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010); 5 U.S.C. 552 and 552(b), unless otherwise noted.

SOURCE: 76 FR 41410, July 14, 2011, unless otherwise noted.

§ 180.1 Prohibition on the employment, or attempted employment, of manipulative and deceptive devices.

(a) It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;

(2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading;

(3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; or,

(4) Deliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate. Notwithstanding the foregoing, no violation of this subsection shall exist where the person mistakenly transmits, in good faith, false or misleading or inaccurate information to a price reporting service.

(b) Nothing in this section shall be construed to require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Nothing in this section shall affect, or be construed to affect, the applicability of Commodity Exchange Act section 9(a)(2).

§ 180.2 Prohibition on price manipulation.

It shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

PART 190—BANKRUPTCY

Sec.

190.01 Definitions.
190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.
190.03 Operation of the debtor's estate subsequent to the primary liquidation date.
190.04 Operation of the debtor's estate—general.
190.05 Making and taking delivery on commodity contracts.
190.06 Transfers.
190.07 Calculation of allowed net equity.

190.08 Allocation of property and allowance of claims.
190.09 Member property.
190.10 General.
APPENDIX A TO PART 190—BANKRUPTCY FORMS
APPENDIX B TO PART 190—SPECIAL BANKRUPTCY DISTRIBUTIONS

AUTHORITY: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

SOURCE: 48 FR 8739, Mar. 1, 1983, unless otherwise noted.

§ 190.01 Definitions.

For purposes of this part:

(a)(1) *Account class* means each of the following types of customer accounts which must be recognized as a separate class of account by the trustee: futures accounts, foreign futures accounts, leverage accounts, delivery accounts as defined in § 190.05(a)(2) of this part, and cleared swaps accounts.

(2)(i) To the extent that the equity balance, as defined in § 190.07 of this part, of a customer in a commodity option, as defined in § 1.3 of this chapter, may be commingled with the equity balance of such customer in any domestic commodity futures contract pursuant to regulations under the Act, the aggregate shall be treated for purposes of this part as being held in a futures account.

(ii) To the extent that such equity balance of a customer in a commodity option may be commingled with the equity balance of such customer in any cleared swaps account pursuant to regulations under this act, the aggregate shall be treated for purposes of this part as being held in a cleared swaps account.

(iii) If positions or transactions in commodity contracts that would otherwise belong to one account class (and the money, securities, or other property margining, guaranteeing, or securing such positions or transactions), are, 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), held separately from other positions and transactions in that account class, and are commingled with positions or transactions in commodity contracts of another account class (and the money, securities, or other property margining, guaranteeing, or securing such positions or transactions), then the former positions (and the relevant money, securities, or other property) shall be treated, for purposes of this part, as being held in an account of the latter account class.

(b) *Allowed net equity* means the amount calculated as allowed net equity in accordance with § 190.07(a).

(c) *Bankruptcy Code* means, except as the context of the regulations in this part otherwise requires, those provisions of the Bankruptcy Reform Act of 1978, as amended from time to time, relating to ordinary bankruptcies (chapters 1 through 5) and to liquidations (chapter 7 with the exception of subchapter III), together with the Federal rules of bankruptcy procedure relating thereto.

(d) *Business day* means weekdays, not including Federal holidays.

(e) *Calendar day*. A calendar day includes the time from midnight to midnight.

(f) *Clearing organization* shall have the same meaning as that set forth in section 761(2) of the Bankruptcy Code.

(g) *Commodity broker* means any person who is registered or required to register as a futures commission merchant under the Commodity Exchange Act including a person registered or required to be registered as such under Parts 32 and 33 of this chapter, and a ''commodity options dealer,'' ''foreign futures commission merchant,'' ''clearing organization,'' and ''leverage transaction merchant'' with respect to which there is a ''customer'' as those terms are defined in this section, but excluding a person registered as a futures commission merchant under section 4f(a)(2) of the Commodity Exchange Act.

(h) *Commodity contract* shall have the same meaning, subject to paragraph (nn) of this section, as that set forth in section 761(4) of the Bankruptcy Code.

(i) *Commodity options dealer* shall have the same meaning as that set forth in section 761(6) of the Bankruptcy Code.

(j) *Court* means the bankruptcy court having jurisdiction over the debtor's estate.

(k) *Cover* shall have the same meaning as that set forth in § 1.17(j) of this chapter.

(l) *Customer* shall have the same meaning as that set forth in section 761(9) of the Bankruptcy Code. To the extent not otherwise included, customer shall include the owner of a portfolio margining account carried as a futures account or cleared swaps customer account.

(m) *Customer claim of record* means a customer claim which is determinable solely by reference to the records of the debtor.

(n) *Customer class* means each of the following two classes of customers which must be recognized by the trustee: public customers and non-public customers.

(o) *Customer property, customer estate* are used interchangeably to mean the property subject to pro rata distribution in a commodity broker bankruptcy which is entitled to the priority set forth in section 766(h) of the Bankruptcy Code and includes certain cash, securities, and other property as set forth in § 190.08(a).

(p) *Dealer option* means an option granted, offered or sold pursuant to section 4c(d) of the Act and the Commission's regulations thereunder.

(q) *Debtor* means an individual, association, partnership, corporation, or trust with respect to which a proceeding is commenced under subchapter IV of chapter 7 of the Bankruptcy Code.

(r) *Equity* means the amount calculated as equity in accordance with § 190.07(b)(1).

(s) *Filing date* means the date a petition commencing a proceeding under the Bankruptcy Code is filed.

(t) *Final net equity determination date* means the latest of

(1) The day immediately following the day on which all commodity contracts held by or for the account of customers of the debtor have been transferred, liquidated or satisfied by exercise or delivery,

(2) The day immediately following the day on which all property other than commodity contracts held for the account of customers has been transferred, returned or liquidated,

(3) The bar date for filing customer proofs of claim, or

(4) The day following the disposition of all disputed claims.

(u) *Foreign future* shall have the same meaning as that set forth in section 761(11) of the Bankruptcy Code.

(v) *Foreign futures commission merchant* shall have the same meaning as that set forth in section 761(12) of the Bankruptcy Code.

(w) *Funded balance* means the amount calculated as funded balance in accordance with § 190.07(c).

(x) *House account* means any commodity contract account owned by the debtor.

(y) *In-the-money amount* means:

(1) With respect to a call option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option exceeds the strike price of the option; and

(2) With respect to a put option, the amount by which the value of the physical commodity or the contract for sale of a commodity for future delivery which is the subject of the option is exceeded by the strike price of the option.

(z) *Joint account* means any commodity contract account held by more than one person and includes any account of a commodity pool which is not a legal entity.

(aa) *Leverage transaction merchant* shall have the same meaning as that set forth in section 761(14) of the Bankruptcy Code.

(bb) *Net equity* means the amount calculated as net equity in accordance with § 190.07(b).

(cc) *Non-public customer* means any person enumerated in the definition of *Proprietary Account* in § 1.3 or § 31.4(e) of this chapter, any person excluded from the definition of ''foreign futures or foreign options customer'' in the proviso to section 30.1(c) of this chapter, or any person enumerated in the definition of *Cleared Swaps Proprietary Account* in § 22.1 of this chapter, in each case, if such person is defined as a ''customer'' under paragraph (k) of this section.

(dd) *Open commodity contract* means a commodity contract which has been established in fact and which has not expired, been redeemed, been fulfilled by delivery or exercise, or been offset by another commodity contract.

(ee) *Order for relief* means the filing of the petition in bankruptcy in a voluntary case and the adjudication of bankruptcy in an involuntary case.

(ff) *Premium* means the amount agreed upon between the purchaser and seller, or their agents, for the purchase or sale of a commodity option.

(gg) *Primary liquidation date* means the first business day immediately following the day on which all commodity contracts have been liquidated or transferred which are not being held open for later transfer in accordance with §190.03.

(hh) *Principal contract* means a contract which is not traded on a designated contract market, and includes leverage contracts and dealer options, but does not include:

(1) Transactions executed off the floor of a designated contract market pursuant to rules approved by the Commission or rules which the designated contract market is required to enforce, or pursuant to rules of a foreign board of trade located outside the United States, its territories or possessions; or

(2) Cleared swaps contracts.

(ii) *Public customer* means any person defined as a customer under paragraph (k) of this section except a non-public customer.

(jj) *Security* shall have the same meaning as that set forth in section 101(36) of the Bankruptcy Code.

(kk) *Short term obligation* means any security, note, or other obligation with a duration or maturity date of 180 days or less.

(ll) *Specifically identifiable property* means:

(1) With respect to the following property received, acquired, or held by or for the account of the debtor from or for the account of a customer to margin, guarantee or secure an open commodity contract:

(i) Any security which as of the filing date is:

(A) Held for the account of a customer;

(B) Registered in such customer's name;

(C) Not transferable by delivery; and

(D) Not a short term obligation; or

(ii) Any warehouse receipt, bill of lading or other document of title which as of the filing date:

(A) Can be identified on the books and records of the debtor as held for the account of a particular customer; and

(B) Is not in bearer form and is not otherwise transferable by delivery.

(2) With respect to open commodity contracts, and except as otherwise provided in paragraph (kk)(7) of this section, any such contract which:

(i) As of the filing date is identified on the books and records of the debtor as held for the account of a particular customer;

(ii) Is a bona fide hedging position or transaction as defined in §1.3 of this chapter or is a commodity option transaction which has been determined by the registered entity to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to rules which have been approved by the Commission pursuant to section 5c(c) of the Commodity Exchange Act; and

(iii) Is in an account designated in the accounting records of the debtor as a hedging account in accordance with §190.04(e)(1).

(3) With respect to warehouse receipts, bills of lading or other documents of title, or physical commodities received, acquired, or held by or for the account of the debtor for the purpose of making or taking delivery or exercise from or for the account of a customer, any such document of title or commodity which as of the entry of the order for relief can be identified on the books and records of the debtor as received from or for the account of a particular customer as held specifically for the purpose of delivery or exercise.

(4) Any cash or other property deposited prior to the entry of the order for relief to pay for the taking of physical delivery on a long commodity contract or for payment of the strike price upon exercise of a short put or a long call option contract on a physical commodity, which cannot be settled in cash, in excess of the amount necessary to margin such commodity contract prior to the notice date or exercise date, which cash or other property is identified on the books and records of the debtor as received from or for the account of a particular customer on or after three calendar days before the

first notice date or three calendar days before the exercise date specifically for the purpose of payment of the notice price upon taking delivery or the strike price upon exercise, respectively, and such customer takes delivery or exercises the option in accordance with the applicable designated contract market rules.

(5) The cash price tendered for any property deposited prior to the entry of the order for relief to make physical delivery on a short commodity contract or for exercise of a long put or a short call option contract on a physical commodity, which cannot be settled in cash, to the extent it exceeds the amount necessary to margin such contract prior to the notice date or exercise date, which property is identified on the books and records of the debtor as received from or for the account of a particular customer on or after three calendar days before the first notice date or three calendar days before the exercise date specifically for the purpose of a delivery or exercise, respectively, and such customer makes delivery or exercises the option in accordance with the applicable contract market rules.

(6) Notwithstanding paragraph (kk)(1) of this section, fully paid, nonexempt securities identified on the books and records of the debtor as held by the debtor for or on behalf of the commodity contract account of a particular customer for which, according to such books and records as of the filing date, no open commodity contracts were held in the same capacity.

(7) Open commodity contracts transferred in accordance with the provisions of § 190.06.

(8) Except as is otherwise specified in this paragraph (kk), no customer property may be treated as specifically identifiable property.

(9) Notwithstanding any other provision of this paragraph (kk), security futures products, and any money, securities or property held to margin, guarantee or secure such products, or accruing as a result of such products, shall not be considered specifically identifiable property for the purposes of Subchapter IV of the Bankruptcy Code or this part 190, if held in a securities account.

(mm) *Strike price* means the price per unit multiplied by the total number of units at which a person may purchase or sell the physical commodity or the contract of sale of a commodity for future delivery which is the subject of a commodity option.

(nn) *Trustee* means, as appropriate, the trustee in bankruptcy apointed to administer the debtor's estate and any interim or successor trustee.

(oo) *Leverage contract* shall have the same meaning as that set forth in § 31.4(w) of this chapter.

(pp) *Cleared Swap*. This term shall have the same meaning as set forth in § 22.1 of this chapter.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983; 48 FR 15122 and 15123, Apr. 7, 1983, as amended at 48 FR 28980, June 24, 1983; 49 FR 5541, Feb. 13, 1984, 50 FR 34617, Sept. 6, 1985; 59 FR 5704, Feb. 8, 1994; 66 FR 20745, Apr. 25, 2001; 67 FR 58298, Sept. 13, 2002; 75 FR 17302, Apr. 6, 2010; 77 FR 6378, Feb. 7, 2012; 78 FR 66637, Nov. 6, 2013]

§ 190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.

Subsequent to the filing date and prior to the primary liquidation date, the debtor's estate shall be operated as follows:

(a) *Notices to the Commission and Designated Self-Regulatory Organizations*.

(1) *General*. Each commodity broker which files a petition in bankruptcy shall, at or before the time of such filing, and each commodity broker against which such a petition is filed shall, as soon as possible, but no later than one calendar day after the receipt of notice of such filing, notify the Commission and such broker's designated self-regulatory organization, if any, in accordance with § 190.10(a) of the filing date, the court in which the proceeding has been filed, and the docket number assigned to that proceeding by the court.

(2) *Of transfers under section 764(b) of the Bankruptcy Code.* As soon as possible, but in no event later than the close of business on third calendar day after the order for relief, the trustee, the applicable self-regulatory organization, or the commodity broker must notify the Commission in accordance with §190.10(a) whether such entity or organization intends to transfer or to apply to transfer open commodity contracts on behalf of the commodity broker in accordance with section 764(b) of the Bankruptcy Code and §190.06 (e) or (f).

(b) *Notices to customers*—(1) *Specifically identifiable property other than commodity contracts.* The trustee must use its best efforts to promptly, but in no event later than two calendar days after entry of the order for relief, commence to publish in a daily newspaper or newspapers of general circulation approved by the court serving the location of each branch office of the commodity broker, for two consecutive days a notice to customers stating that all specifically identifiable property of customers other than open commodity contracts which has not otherwise been liquidated will be liquidated commencing on the sixth calendar day after the second publication date if the customer has not instructed the trustee in writing on or before the fifth calendar day after the second publication date to return such property pursuant to the terms for distribution of specifically identifiable property contained in §190.08(d)(1) and, on the seventh calendar day after such second publication date, if such property has not been returned in accordance with such terms on or prior to that date. Such notice must describe specifically identifiable property in accordance with the definition in this part and must specify the terms upon which that property may be returned. Publication of the form of notice set forth in the appendix to this part will constitute sufficient notice for purposes of this paragraph (b)(1).

(2) *Request for instructions regarding transfer of open commodity contracts.* The trustee must use its best efforts to request promptly, but in no event later than two calendar days after entry of an order for relief, customer instructions concerning the transfer or liquidation of the specifically identifiable open commodity contracts, if any, not required to be liquidated under paragraph (f)(1) of this section. The request for customer instructions required by this paragraph (b)(2) must state that the trustee is required to liquidate any such commodity contract for which transfer instructions have not been received on or before the seventh calendar day after entry of the order for relief, at an hour specified by the trustee, and any such commodity contract for which instructions have been received which has not been transferred in accordance with §190.08(d)(2) on or before the seventh calendar day after entry of the order for relief. A form of notice is set forth in the appendix to this part.

(3) *Involuntary cases.* Prior to entry of an order for relief, and upon leave of the court, the trustee appointed in an involuntary proceeding may notify customers of the commencement of such proceeding and may request customer instructions with respect to the return, liquidation or transfer of specifically identifiable property, including open commodity contracts.

(4) *Notice of bankruptcy and request for proof of customer claim.* The trustee must promptly notify each customer of record in writing that an order for relief has been entered and must instruct each such customer to file a proof of customer claim containing the information specified in paragraph (d) of this section. Such notice may be given separately from the notices required by paragraphs (b) (1) and (3) of this section.

(c) *Disposition of customer instructions in the event of a transfer pursuant to section 764(b) of the Bankruptcy Code.* If the debtor's open commodity contracts have been, or are to be, transferred in accordance with section 764(b) of the Bankruptcy Code and §190.06, customer instructions previously received by the trustee with respect to open commodity contracts, or with respect to specifically identifiable property which is to be transferred with such contracts, shall be transmitted to the transferee of such contracts or property who shall comply therewith to the extent practicable.

(d) *Proof of customer claim.* The trustee shall cause the proof of customer claim form referred to in paragraph (b)(4) of this section to set forth the bar date for its filing and to request that customers provide, to the extent reasonably possible, information sufficient to determine a customer's claim in accordance with the regulations contained in this part, including in the discretion of the trustee:

(1) The class of commodity contract account upon which each claim is based;

(2) The number of accounts held by each claimant, and the capacity in which they are held;

(3) The equity as of the filing date of each account based on commodity contract transactions in that account;

(4) Whether each account is a public or a non-public customer account;

(5) Whether any account is a discretionary account;

(6) A description of all claims against the debtor not based upon a commodity contract account of the claimant;

(7) A description of all claims of the debtor against the claimant not included in the equity of a commodity contract account of the claimant;

(8) A description of any deposits of money, securities or property with the debtor made by the claimant indicating the portion of such, if any, which was contained in the information provided in paragraph (d)(3) of this section and identifying any such property which would be specifically identifiable property as defined in §190.01(kk);

(9) Whether the claimant is or was an ''affiliate,'' ''insider,'' or ''relative'' of the debtor as these terms are defined by sections 101 (2), (25), and (34), respectively, of the Bankruptcy Code;

(10) The amount of the claimant's percentage interest in any joint account;

(11) Whether the claimant's positions in security futures products are held in a futures account or a securities account, as these terms are defined in §1.3 of this chapter;

(12) Whether the claimant wishes to receive payment in kind, to the extent possible, for any claim for securities; and

(13) Copies of any documents which support the information contained in the proof of customer claim, including without limitation, customer confirmations, account statements, and statements of purchase or sale.

A proof of claim form which may be used by the trustee is set forth in the appendix to this part.

(e) *Transfers*—(1) *All cases.* The trustee for a commodity broker must immediately use its best efforts to effect a transfer in accordance with §190.06 (e) and (f) no later than the seventh calendar day after the order for relief of the open commodity contracts and equity held by the commodity broker for or on behalf of its customers.

(2) *Involuntary cases.* A commodity broker against which an involuntary petition in bankruptcy is filed, or the trustee if a trustee has been appointed in such case, must use its best efforts to effect a transfer in accordance with §190.06 (e) and (f) of all open commodity contracts and equity held by the commodity broker for or on behalf of its customers and such other property as the Commission in its discretion may authorize, on or before the seventh calendar day after the filing date, and immediately cease doing business: *Provided, however,* That the commodity broker may trade for liquidation only, unless otherwise directed by the Commission, by any applicable self-regulatory organization or by the court: And, *Provided further,* That if the commodity broker demonstrates to the Commission within such period that it was in compliance with the segregation and financial requirements of this chapter on the filing date, and the Commission determines, in its sole discretion, that such transfer or liquidation is neither appropriate nor in the public interest, the commodity broker may continue in business subject to applicable provisions of the Bankruptcy Code and of this chapter.

(f) *Liquidation or offset.* After entry of the order for relief and subject to paragraph (e) of this section, which requires the trustee to attempt to make certain transfers permitted by §190.06 and section 764(b) of the Bankruptcy Code, the following commodity contracts and

other property held by or for the account of a debtor must be liquidated or offset by the trustee promptly and in an orderly manner, subject to limit moves and to applicable procedures under the Bankruptcy Code:

(1) *Open commodity contracts.* All open commodity contracts except:

(i) Dealer option contracts, if the dealer option grantor is not the debtor, which cannot be transferred on or before the seventh calendar day after the order for relief; and

(ii) Specifically identifiable commodity contracts as defined in §190.01(kk)(2) for which an instruction prohibiting liquidation is noted prominently in the accounting records of the debtor and timely received under paragraph (b)(2) of this section. Notwithstanding the foregoing, an open commodity contract must be offset if: such contract is a futures contract or a Cleared Swaps contract which cannot be settled in cash and which would otherwise remain open either beyond the last day of trading (if applicable), or the first day on which notice of intent to deliver may be tendered with respect thereto, whichever occurs first; such contract is a long option on a physical commodity which cannot be settled in cash and would be automatically exercised, has value and would remain open beyond the last day for exercise; such contract is a short option on a physical commodity which cannot be settled in cash; or, as otherwise specified in these rules.

(2) *Specifically identifiable property other than open commodity contracts.* Specifically identifiable property other than open commodity contracts to the extent that:

(i) The fair market value of such property is less than 90% of its fair market value on the date of entry of the order for relief; or

(ii) The trustee has not received instructions to return, or has not returned, such property upon the terms contained in §190.08(d)(1) on or before the end of the period set forth in paragraph (b)(1) of this section.

(3) *All other property.* All other property not required to be transferred or returned pursuant to customer instructions which has not been liquidated in accordance with paragraphs (f)(1) and (f)(2) of this section.

(g) *Treatment of open commodity contracts*—(1) *Margin payments by the trustee.* Prior to the primary liquidation date, the trustee may make variation and maintenance margin payments to a commodity broker carrying the account of the debtor, as appropriate, pending liquidation of any open commodity contracts required to be liquidated under paragraph (f)(1) of this section, whether or not such contracts are specifically identifiable to a particular customer: *Provided,* That:

(i) No payments may be made on behalf of accounts which are in deficit,

(ii) No payments may be made on behalf of non-public customers or the debtor from funds which are segregated for the benefit of public customers,

(iii) The trustee must make margin payments if payments of margin are received from customers after bankruptcy in response to margin calls, and

(iv) No payments need be made to restore initial margin.

(2) *Margin calls.* The trustee, or in the case of an involuntary bankruptcy, the commodity broker against which the petition is filed or the trustee if a trustee has been appointed, must issue margin calls with respect to any account in which the funded balance less the value on the date of return or transfer of any property previously returned or transferred does not equal or exceed:

(i) 100% of the maintenance margin requirements of the applicable designated contact market or swap execution facility, if any, with respect to the open commodity contracts in such account; or

(ii) If there are no such maintenance margin requirements, 100% of the clearing organization margin requirements applicable to the open commodity contracts in such account; or

(iii) If there are no maintenance margin requirements or clearing organization margin requirements, then 50% of the initial margin applicable to the open commodity contracts in such account;

Provided, That no margin calls need be made by the trustee to restore initial

margin. A margin call for such accounts should be made as soon as possible following the order for relief and the trustee shall be authorized, but not obligated, to liquidate any account for which such margin call is not met within a reasonable time as defined in § 190.04(e)(4): *Provided*, That the trustee must immediately liquidate any account which is in deficit.

(3) *Margin payments by the customer*. The full amount of any margin payment by a customer in response to a margin call under paragraph (g)(2) of this section must be credited to the funded balance of the particular account for which it was made.

[48 FR 8739, Mar. 1, 1983, as amended at 67 FR 58298, Sept. 13, 2002; 77 FR 6378, 6379, Feb. 7, 2012]

§ 190.03 Operation of the debtor's estate subsequent to the primary liquidation date.

Subsequent to the primary liquidation date, accounts which contain open commodity contracts not required to be liquidated under § 190.02 (f)(1) shall be operated by the trustee as follows:

(a) *Operation of accounts held open for transfer*—(1) *Establishment of transfer accounts*. On the primary liquidation date, the trustee must generate a new statement of account for each class of account of a customer which contains a commodity contract not required to be liquidated under § 190.02(f)(1). The opening balance of such statement must be equal to its funded balance, less the value on the date of its transfer or return of any property transferred or returned with respect to the net equity claim for such account prior to the primary liquidation date.

(2) *Accounting for transfer accounts*. The opening balance of any statement generated on the primary liquidation date in accordance with paragraph (a)(1) of this section must be adjusted for operations on or subsequent to the primary liquidation date in the same manner as the equity in a commodity contract account maintained for or on behalf of a customer would adjusted in the ordinary course of business prior to the filing date: *Provided, however*, That such statement of account must also be adjusted to reflect certain adjustments to the funded balance in accordance with § 190.07(c)(2), such that the balance in that account will always be equal to the funded balance of the claimant's net equity claim adjusted for corrections and subsequent operations less the value on the date of transfer or return of any property transferred or returned with respect to that claim prior to the primary liquidation date.

(3) *Margin calls*. The trustee must promptly issue margin calls with respect to any account referred to under paragraph (a)(1) of this section in which the balance does not equal or exceed 100% of the maintenance margin requirements of the applicable designated contact market or swap execution facility, if any, with respect to the open commodity contracts in such account, or if there are no such maintenance margin requirements, 100% of the clearing organization's initial margin requirements applicable to the open commodity contracts in such account, or if there are no such maintenance margin requirements or clearing organization initial margin requirements, then 50% of the customer initial margin applicable to the commodity contracts in such account: *Provided*, That no margin calls need be made to restore customer initial margin.

(4) *Margin payments*. The trustee may make variation or maintenance margin payments to the broker carrying any account referred to in paragraph (a)(1) of this section as appropriate if such payments do not exceed the balance of the statement of account generated under paragraph (a)(1) of this section with respect to which such contracts are credited. Any customer for which commodity contracts remain open subsequent to the primary liquidation date will not be relieved of the obligation to make margin payments by reason of the bankruptcy of the commodity broker: *Provided*, That the full amount of any margin payment made by a customer subsequent to the primary liquidation date must be credited to the account referred to in paragraph (a)(1) of this section for which it was made.

(5) *Distribution*. No distribution of equity may be made to or on behalf of customers by the trustee with respect

to an account established in accordance with paragraph (a)(1) of this section, except pursuant to paragraph (a)(4) of this section and to § 190.08(d).

(b) *Liquidation of open commodity contracts.* Commodity contracts held open by the trustee in accordance with paragraph (a)(1) of this section must be liquidated promptly and in an orderly manner, if:

(1) Any payment of margin would result in a deficit in the account in which they are held;

(2) The customer for, or on whose behalf, the account is held fails to meet a margin call within a reasonable time;

(3) The trustee has received no customer instructions with respect to such contract by the sixth calendar day after entry of the order for relief;

(4) The commodity contract has not been transferred in accordance with § 190.08(d)(2) on or before the seventh calendar day after entry of the order for relief; or

(5) The commodity contract would otherwise remain open (*e.g.*, because it cannot be settled in cash) beyond the last day of trading in such contract (if applicable) or the first day on which notice of delivery may be tendered with respect to such contract, whichever occurs first.

(c) *Liquidation of specifically identifiable property other than open commodity contracts.* All specifically identifiable property other than open commodity contracts which have not been liquidated prior to the primary liquidation date, and for which no customer instructions have been timely received must be liquidated, to the extent reasonably possible, no later than the sixth calendar day after final publication of the notice referred to in § 190.02(b)(1). All other specifically identifiable property must be liquidated or returned, to the extent reasonably possible, no later than the seventh calendar day after final publication of such notice.

[48 FR 8739, Mar. 1, 1983, as amended at 77 FR 6378, 6380, Feb. 7, 2012]

§ 190.04 Operation of the debtor's estate—general.

(a) *Compliance with the Act and regulations.* Except as specifically provided otherwise in this part, the trustee shall comply with all of the provisions of the Act and of the regulations thereunder as if it were the debtor.

(b) *Computation of funded balance.* Using the information available, the trustee must compute a funded balance for each customer account which contains open commodity contracts as of the close of business each day subsequent to the order for relief until the final liquidation date. Such computation must be completed prior to noon on the next business day.

(c) *Records*—(1) *Maintenance.* Subject to the requirements of the Bankruptcy Code, records of the computations required by this part shall be maintained in accordance with § 1.31 of this chapter by the trustee for the greater of the period required by § 1.31 of this chapter or for a period of one year after the close of the bankruptcy proceeding for which they were compiled.

(2) *Accessibility.* The records required to be maintained by paragraph (c)(1) of this section shall be available during business hours to the Court, parties in interest, the Commission and the U.S. Department of Justice. At any time on or after the filing date, the commodity broker, or the trustee if a trustee has been appointed, shall be required to give the Commission and the U.S. Department of Justice immediate access to all records of the debtor, including records required to be retained in accordance with § 1.31 of this chapter and all other records of the commodity broker, whether or not the Act or this chapter would require such records to be maintained by the commodity broker.

(d) *Liquidation* — (1) *Order of Liquidation.* (i) *In the Market.* Liquidation of open commodity contracts held for a house account or customer account by or on behalf of a commodity broker which is a debtor shall be accomplished pursuant to the rules of a clearing organization, a designated contract market, or a swap execution facility, as applicable. Such rules shall ensure that the process for liquidating open commodity contracts, whether for the house account or the customer account, results in competitive pricing, to the extent feasible under market conditions at the time of liquidation. Such rules must be submitted to the

Commission for approval, pursuant to section 5c(c) of the Act, and be approved by the Commission. Alternatively, such rules must otherwise be submitted to and approved by the Commission (or its delegate pursuant to § 190.10(d) of this part) prior to their application.

(ii) *Book entry*. Notwithstanding paragraph (d)(1) of this section, in appropriate cases, upon application by the trustee or the affected clearing organization, the Commission may permit open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset open commodity contracts, whether matched or not matched on the books of the commodity broker, using the settlement price for such commodity contracts as determined by the clearing organization. Such settlement price shall be determined by the rules of the clearing organization, which shall ensure that such settlement price is established in a competitive manner, to the extent feasible under market conditions at the time of liquidation. Such rules must be submitted to the Commission for approval pursuant to section 5c(c) of the Act, and be approved by the Commission. Alternatively, such rules must otherwise be approved by the Commission (or its delegate pursuant to § 190.10(d) of this part) prior to their application.

(2) *Liquidation only*. Nothing in this part shall be interpreted to permit the trustee to purchase or sell new commodity contracts for customers of the debtor except to offset open commodity contracts or to transfer any transferable notice received by the debtor or the trustee under any commodity contract: *Provided, however*, That the trustee may, in its discretion and with approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of price limits or other market conditions, or may take an offsetting position in a new month or at a strike price for which limits have not been reached.

(3) *Exception to Liquidation Only*. Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

(e) *Other matters*—(1) *Determination as to bona fide hedges*. In determining which commodity contracts are eligible to be held open for transfer pursuant to customer instruction, the trustee may rely on the designation in the accounting records of the commodity broker that the account for or on behalf of which the contract is held is a hedging account. Commodity contracts maintained in a hedging account may be treated by the trustee as specifically identifiable.

(2) *Disbursements*. The trustee shall make no disbursements to customers prior to final distribution except with approval of the court or in accordance with § 190.08(d).

(3) *Investment*. The trustee shall promptly invest the equity resulting from the liquidation of commodity contracts, and the proceeds of the liquidation of specifically identifiable property, in obligations of the United States and obligations fully guaranteed as to principal and interest by the United States, and may similarly invest any customer equity in accounts which remain open in accordance with § 190.03: *Provided*, That such obligations are maintained in a depository located in the United States, its territories or possessions.

(4) *Margin calls—reasonable time*. Except as otherwise provided in this part, a reasonable time for meeting margin calls made by the trustee shall be deemed to be one hour, or such greater period not to exceed one business day, as the trustee may determine in its sole discretion.

(5) *Management of Long Option Contracts*. Subject to the applicable liquidation provisions the trustee must use its best efforts to assure that a

long option contract with value does not expire worthless.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983; 75 FR 44893, July 30, 2010; 77 FR 6380, Feb. 7, 2012]

§ 190.05 Making and taking delivery on commodity contracts.

(a) *General.* (1) In the event that the trustee is unable to liquidate an open commodity contract subject to physical delivery or an option on a physical commodity, which cannot be settled in cash, prior to the last day of trading in that contract as required by §§ 190.02(f)(1) and 190.03(b)(5), the trustee must use its best efforts to prevent property which is to be delivered for or on behalf of a customer to fulfill that contract, or property for which delivery is being taken with respect to a customer pursuant to that contract, from becoming part of the debtor's estate.

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in § 190.01(kk) (3), (4), and (5), except that with respect to § 190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

(3) The portion of the price or the proceeds of a commodity contract upon delivery which is not specifically identifiable property under § 190.01(kk) (4) and (5) must be distributed pro rata under section 766(h) of the Code.

(b) *Rules for deliveries on behalf of a customer of a debtor.* Except in the case of a commodity contract which is settled in cash, each designated contract market, swap execution facility, or clearing organization shall adopt, maintain in effect and enforce rules which have been submitted in accordance with section 5c(c) of the Act for approval by the Commission, which:

(1) Permit the making and taking of delivery to fulfill a commodity contract for a physical commodity or an option on a physical commodity, which has not become part of the debtor's estate on the date of the entry of the order for relief but with respect to which commodity contract:

(i) Trading has ceased on the date of the entry of the order for relief;

(ii) Notice of delivery has been tendered on or before the date of the entry of the order for relief; or,

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the payment for such physical commodity in any bankruptcy distribution: *Provided, however,* That a customer shall not be relieved of his obligation to make or take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and

(2) Recognize that the equity of a customer of the debtor in a commodity contract upon which delivery is made or taken must be included in the net equity claim of that customer and, as such, can only be distributed pro rata at the time of, and as part of, any distributions to customers made by the trustee.

(c) *Delivery made or taken within the debtor's estate.* (1) Any property in a delivery account which is part of the debtor's estate on the date of the order for relief may be returned under the terms set forth in § 190.08(d)(1)(ii).

(2) If the property to be delivered is part of the debtor's estate on the date of the order for relief and a customer of the debtor is required to make delivery, the trustee must make delivery in the same manner as if no bankruptcy had occurred and the party by whom delivery is taken must pay the full notice price or strike price for delivery.

(3) If delivery is to be made or taken on behalf of a house account the trustee must either make or take delivery, as the case may be, on behalf of the debtor's estate: *Provided*, That if the trustee, at any time, takes delivery of a physical commodity, the trustee must convert that physical commodity to cash as promptly as possible.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983; 59 FR 5704, Feb. 8, 1994; 77 FR 6381, Feb. 7, 2012]

§ 190.06 Transfers.

(a) *Transfer rules*. No clearing organization or other self-regulatory organization may adopt, maintain in effect or enforce rules which:

(1) Are inconsistent with the provisions of this part;

(2) Interfere with the acceptance by its members of open commodity contracts and the equity margining or securing such contracts from futures commission merchants, or persons which are required to be registered as futures com-mission merchants, which are required to transfer accounts pursuant to § 1.17(a)(4) of this chapter; or

(3) Prevent the acceptance by its members of transfers of open commodity contracts and the equity margining or securing such contracts from futures commission merchants with respect to which a petition in bankruptcy has been filed, if such transfers have been approved by the Commission. *Provided, however*, that this paragraph shall not limit the exercise of any contractual right of a clearing organization or other registered entity to liquidate open commodity contracts.

(b) *Notice*. Unless notice has been filed pursuant to § 1.65(b) of this chapter, if a futures commission merchant, or a person required to be registered as a futures commission merchant, intends to transfer commodity contracts held by or for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant after a petition in bankruptcy has been filed by or against such commodity broker, the transferor must notify the Commission no later than is required under § 190.02(a)(2).

(c) *Financial requirements for transferees*. (1) No transfer may be made which would cause the transferee to be in violation of the minimum financial requirements set forth in this chapter.

(2) A transferee may accept a transfer of open commodity contracts even though the money, securities and other property eligible for transfer under the regulations contained in this part is insufficient to fully margin such positions, if the transferee agrees to accept the transfer subject to any loss due to the failure to recover such deficiency from the customers whose contracts it has accepted or from the estate of the debtor.

(3) The transferee of a commodity contract for which notice is given under § 190.06(b)(2) must keep that contract open one business day after its receipt, unless the customer for whom the transfer is made fails to respond within a reasonable time to a margin call for the difference between the margin transferred with such contract and the margin which such transferee would require with respect to a similar commodity contract held for the account of a customer in the ordinary course of business.

(4) No commission may be collected by the transferor with respect to the transfer of an open commodity contract for which notice is given under § 190.06(b)(2).

(d) *Customer instructions*—(1) *Customer instructions*. A commodity broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee without seeking customer instructions. Such commodity broker may obtain evidence of the customer instructions as provided in § 1.55(d) of this chapter.

(2) *Record of customer instructions*. Each futures commission merchant

must indicate prominently in the accounting records in which it maintains open trade balances any customer accounts which are hedging accounts for which the customer has not specified that it prefers open contracts to be liquidated in bankruptcy by the trustee without instruction.

(e) *Eligibility for transfer under section 764(b) of the Bankruptcy Code*—(1) *Accounts eligible for transfer*. Subject to the requirements of paragraph (e)(2) of this section, all accounts are eligible for transfer after the filing date pursuant to section 764(b) of the Bankruptcy Code, except:

(i) House accounts or the accounts of general partners of the debtor if the debtor is a partnership;

(ii) Leverage accounts, if the debtor is the leverage transaction merchant with respect to such accounts;

(iii) Dealer option accounts, if the debtor is the dealer option grantor with respect to such accounts; or

(iv) Accounts which are in deficit.

(2) *Amount of equity which may be transferred*. In no case may money, securities or property be transferred in respect of any eligible account if the value of such money, securities or property would exceed the funded balance of such account based on available information as of the calendar day immediately preceding transfer less the value on the date of return or transfer of any property previously returned or transferred with respect thereto.

(f) *Special rules for transfers under section 764(b) of the Bankruptcy Code*—(1) *Dealer options*—(i) *Eligibility for transfer*. Prior to exercise, any dealer option contract held by or for the account of a debtor which is a futures commission merchant from or for the account of a customer may be transferred even if the funded balance available for transfer which is attributable to such contract does not equal 100% of the portion of the purchase price required to be segregated with respect to such contract: *Provided*, That a dealer option contract will be eligible for transfer only if any deficiency in the funded balance of the customer account in which it is held is not due to amounts owed by such customer to the debtor; and, *Provided further*, That the transferee of any dealer option contract need not segregate more than an amount equal to that portion of the purchase price due the grantor which is transferred with the contract which should be equal to the grantor's funded balance in the portion of the purchase price segregated less any reasonable reserve established by the trustee for the nonrecovery of overpayments.

(ii) *Obligation of the dealer option grantor*. In the event of the transfer of a dealer option contract pursuant to this section, the failure of the debtor futures commission merchant to segregate 100% of the purchase price due the grantor for such contract, or the failure of the dealer option grantor to collect 100% of such purchase price due the grantor, shall not excuse the dealer option grantor from its obligation to perform such contract in full upon its exercise, without any setoff or set aside for the premium deficiency.

(2) *Clearing organizations*. Commodity contracts held by a clearing organization which is a debtor may not be transferred.

(3) *Partial transfers*—(i) *Of the customer estate*. If all eligible customer accounts held by a debtor cannot be transferred under this section, a partial transfer may nonetheless be made. The Commission will not disapprove such a transfer for the sole reason that it was a partial transfer if it would prefer the transfer of accounts, the liquidation of which could adversely affect the market or the bankrupt estate. Any dealer option contract held by or for the account of a debtor which is a futures commission merchant from or for the account of a customer which has not previously been transferred, and is eligible for transfer, must be transferred on or before the seventh calendar day after entry of the order for relief.

(ii) *Of a customer account*. If all of a customer's open commodity contracts cannot be transferred under this section, a partial transfer of contracts may be made. A partial transfer may be effected by liquidating that portion of the open commodity contracts held by a customer which represents sufficient equity to permit the transfer of the remainder. If any commodity contracts to be transferred in a partial

transfer are part of a spread or straddle, both sides of such spread or straddle must be transferred or neither side may be transferred.

(g) *Prohibition on avoidance of transfers under section 764(b) of the Bankruptcy Code*—(1) *Pre-relief transfers*. Notwithstanding the provisions of paragraph (e) of this section, the following transfers may not be avoided by a trustee:

(i) The transfer of commodity contract accounts prior to the entry of the order for relief in compliance with §1.17(a)(4) of this chapter unless such transfer is disapproved by the Commission; or

(ii) The transfer prior to the order for relief by a public customer, including a transfer by a public customer which is a commodity broker, of commodity contract accounts held from or for the account of such customer by or on behalf of the debtor unless:

(A) The customer acted in collusion with the debtor or its principals to obtain a greater share of the bankrupt estate than that to which it would be entitled in a bankruptcy distribution; or

(B) The transfer is disapproved by the Commission.

(iii) The transfer prior to the order for relief by a clearing organization of one or more accounts held for or on behalf of customers of the debtor, provided that (I) the money, securities, or other property accompanying such transfer did not exceed the funded balance of each account based on available information as of the close of business on the business day immediately preceding such transfer less the value on the date of return or transfer of any property previously returned or transferred thereto, and (II) the transfer is not disapproved by the Commission.

(2) *Post-relief transfers*. On or after the entry of the order for relief, the following transfers to one or more transferees may not be avoided by the trustee:

(i) The transfer of a customer account eligible to be transferred under paragraph (e) or (f) of this section made by the trustee of the commodity broker or by any self-regulatory organization of the commodity broker:

(A) On or before the seventh calendar day after the entry of the order for relief; and

(B) The Commission is notified in accordance with §190.02(a)(2) prior to the transfer and does not disapprove the transfer; or

(ii) The transfer of a customer account at the direction of the Commission on or before the seventh calendar day after the order for relief upon such terms and conditions as the Commission may deem appropriate and in the public interest.

(3) *Withdrawals prior to bankruptcy*. The withdrawal or settlement of a commodity contract account by a public customer including a public customer which is a commodity broker, prior to the filing date may not be avoided by a trustee unless:

(i) The customer making the withdrawal or settlement acted in collusion with the debtor or its principals to obtain a greater share of the bankruptcy estate than that to which such customer would be entitled in a bankruptcy distribution; or

(ii) The withdrawal or settlement is disapproved by the Commission.

(h) *Commission action*. Notwithstanding any other provision of this section, in appropriate cases and to protect the public interest, the Commission may:

(1) Prohibit the transfer of customer accounts; or

(2) Permit transfers of accounts which do not comply with the requirements of this section.

[48 FR 8739, Mar. 1, 1983; 48 FR 15122 and 15123, Apr. 7, 1983; 58 FR 17505, Apr. 5, 1993; 77 FR 6378, 6381, Feb. 7, 2012]

§190.07 Calculation of allowed net equity.

Allowed net equity shall be computed as follows:

(a) *Allowed claim*. The allowed net equity claim of a customer shall be equal to the aggregate of the funded balances of such customer's net equity claim for each account class plus or minus the adjustments specified in paragraph (d) of this section.

(b) *Net equity*. Net equity means the total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for

or on behalf of such customer less any indebtedness of the customer to the debtor. Net equity shall be calculated as follows:

(1) *Step 1—Equity determination.* Determine the equity balance of each customer account by computing, with respect to such account, the sum of:

(i) The ledger balance;

(ii) The open trade balance; and

(iii) The current realizable market value, determined as of the close of the market on the last preceding market day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

(A) For the purposes of this paragraph (b)(1), the ledger balance of a customer account shall be calculated by adding:

(*1*) Cash deposited to purchase, margin, guarantee, secure, or settle a commodity contract;

(*2*) Except as is otherwise provided in this chapter, the cash proceeds of such cash, or of securities or other property referred to in paragraph (b)(1) of this section held from or for the customer by or for the account of the commodity broker; and

(*3*) Gains realized on trades, and

(B) Subtracting from the result:

(*1*) Losses realized on trades;

(*2*) Disbursements to or on behalf of the customer; and

(*3*) The normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees, insurance and other costs and charges lawfully incurred in connection with the purchase, sale, exercise, or liquidation of any commodity contract in such account. For purposes of this paragraph (b)(1), the open trade balance of a customer's account shall be computed by subtracting the unrealized loss in value of the open commodity contracts held by or for such account from the unrealized gain in value of the open commodity contracts held by or for such account. In calculating the ledger balance or open trade balance of any customer, exclude any security futures products, any gains or losses realized on trades in such products, any property received to margin, guarantee or secure such products (including interest thereon or the proceeds thereof), to the extent any of the foregoing are held in a securities account, and any disbursements to or on behalf of such customer in connection with such products or such property held in a securities account.

(2) *Step 2—Customer determination (aggregation).* Aggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity. Paragraphs (b)(2)(i) through (b)(2)(xiii) of this section prescribe which accounts must be treated as being held in the same capacity and which accounts must be treated as being held in a separate capacity.

(i) Except as otherwise provided in this paragraph (b)(2), all accounts which are maintained with a debtor in a person's name and which, under this paragraph (b)(2), are deemed to be held by that person in its individual capacity shall be deemed to be held in the same capacity.

(ii) An account maintained with a debtor by a guardian, custodian, or conservator for the benefit of a ward, or for the benefit of a minor under the Uniform Gift to Minors Act, shall be deemed to be held in a separate capacity from accounts held by such guardian, custodian or conservator in its individual capacity.

(iii) An account maintained with a debtor in the name of an executor or administrator of an estate shall be deemed to be held in a separate capacity from accounts held by such executor or administrator in its individual capacity.

(iv) Subject to paragraph (b)(2)(iii) of this section, an account maintained with a debtor in the name of a decedent, in the name of the decedent's estate, or in the name of the executor or administrator of such estate shall be deemed to be accounts held in the same capacity.

(v) An account maintained with a debtor by a trustee shall be deemed to be held in the individual capacity of the grantor of the trust unless the trust is created by a valid written instrument for a purpose other than avoidance of an offset under the regulations contained in this part. A trust account which is not deemed to be held in the individual capacity of its grantor under paragraph (b)(2)(v) of this section

shall be deemed to be held in a separate capacity from accounts held in an individual capacity by the trustee, by the grantor or any successor in interest of the grantor, or by any trust beneficiary, and from accounts held by any other trust.

(vi) An account maintained with a debtor by a corporation, partnership, or unincorporated association shall be deemed to be held in a separate capacity from accounts held by the shareholders, partners or members of such corporation, partnership or unincorporated association, if such entity was created for purposes other than avoidance of an offset under the regulations contained in this part.

(vii) A hedging account of a person shall be deemed to be held in the same capacity as a speculative account of such person.

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, delivery accounts (as defined in §190.05(a)(2)), and cleared swaps accounts of the same person shall not be deemed to be held in separate capacities: *Provided, however,* that such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

(ix) An omnibus customer account of a futures commission merchant maintained with a debtor shall be deemed to be held in a separate capacity from the house account and any other omnibus customer account of such futures commission merchant.

(x) A joint account maintained with the debtor shall be deemed to be held in a separate capacity from any account held in an individual capacity by the participants in such account, from any account held in an individual capacity by a commodity pool operator or commodity trading advisor for such account, and from any other joint account: *Provided, however,* That if such account is not transferred in accordance with §190.06, it shall be deemed to be held in the same capacity as any other joint account held by identical participants and a participant's percentage interest therein shall be deemed to be held in the same capacity as any account held in an individual capacity by such participant.

(xi) An account maintained with a debtor in the name of a plan which, on the filing date, has in effect a registration statement in accordance with the requirements of section 1031 of the Employee Retirement Income Security Act of 1974 and the regulations thereunder shall be deemed to be held in a separate capacity from an account held in an individual capacity by the plan administrator, any employer, employee, participant, or beneficiary with respect to such plan.

(xii) Except as otherwise provided in this section, an account maintained with a debtor by an agent or nominee for a principal or a beneficial owner shall be deemed to be an account held in the individual capacity of such principal or beneficial owner.

(xiii) With respect to the cleared swaps account class, each individual customer account within each omnibus customer account referred to in paragraph (ix) of this section shall be deemed to be held in a separate capacity from each other such individual customer account; subject to the provisions of paragraphs (b)(2)(i) through (xii) of this paragraph (b)(2).

(xiv) Accounts held by a customer in separate capacities shall be deemed to be accounts of different customers. The burden of proving that an account is held in a separate capacity shall be upon the customer.

(3) *Step 3—Setoffs.* (i) The net equity of one customer account may not be offset against the net equity of any other customer.

(ii) Any obligation which is not required to be included in computing the equity of a customer under paragraph (b)(1) of this section, but which is owed by such customer to the debtor must be deducted from any obligation not required to be included in computing the equity of a customer which is owed by such debtor to the customer. If the former amount exceeds the latter, the excess must be deducted from the equity balance of the customer obtained after performing the preceding calculations required by paragraph (b) of this section: *Provided,* That if the customer owns more than two classes of accounts the excess must be offset against each positive equity balance in the same proportion as that positive

equity balance bears to the total of all positive equity balances of accounts of different classes held by such customer.

(iii) A negative equity balance obtained with respect to one customer account class must be set off against a positive equity balance in any other account class of such customer held in the same capacity: *Provided*, That if a customer owns more than two classes of accounts such balance must be offset against each positive equity balance in the same proportion as that positive equity balance bears to the total of all positive equity balances in accounts of different classes held by such customer.

(iv) To the extent any indebtedness of the debtor to the customer which is not required to be included in computing the equity of such customer under paragraph (b)(1) of this section exceeds such indebtedness of the customer to the debtor, the customer claim therefor will constitute a general creditor's claim rather than a customer property claim, and the net equity therefor shall be separately calculated.

(v) The rules pertaining to separate capacities and permitted setoffs contained in this section must be applied subsequent to the entry of an order for relief; prior to the filing date, the provisions of §1.22 of this chapter and of sections 4d(a)(2) and 4d(f) of the Act (and, in each case, the regulations promulgated thereunder) shall govern what setoffs are permitted.

(4) *Step 4—Correction for distributions.* The value on the date of transfer or distribution of any property transferred or distributed subsequent to the filing date and prior to the primary liquidation data with respect to each class of account held by a customer must be added to the equity obtained for that customer for accounts of that class after performing the steps contained in paragraphs (b)(1)–(3) of this section: *Provided, however,* That if all accounts for which there are customer claims of record and 100% of the equity pertaining thereto are transferred in accordance with §190.06 and section 764(b) of the Bankruptcy Code, net equity shall be computed based solely upon those customer claims, if any, filed subsequent to bankruptcy which are not claims of record on the filing date.

(5) *Step 5—Correction for subsequent events.* Compute any adjustments to Steps 1 through 4 of this paragraph (b) required to correct misestimates or errors including, without limitation, corrections for subsequent events such as the liquidation of unliquidated claims at a value different from the estimated value previously used in computing net equity.

(6) *Step 6—Net equity of accounts which remain open subsequent to the primary liquidation date.* If the accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the trustee must adjust the net equity obtained for that customer pursuant to the steps contained in paragraphs (b) (1) through (5) of this section as provided in paragraphs (d)(1) and (d)(2) of this section.

(c) *Calculation of funded balance.* ''Funded balance'' means a customer's pro rata share of the customer estate with respect to each account class available as of the primary liquidation date for distribution to customers of the same class.

(1) The funded balance of any customer claim shall be computed by:

(i) Multiplying the ratio of the amount of the net equity claim less the amounts referred to in paragraph (c)(1)(ii) of this section of such customer for any account class bears to the sum of the net equity claims less the amounts referred to in paragraph (c)(1)(ii) of this section of all customers for accounts of that class by the sum of:

(A) The value of the money, securities or property segregated on behalf of all accounts of the same class less the amounts referred to in paragraph (c)(1)(ii) of this section;

(B) The value of any money, securities or property which must be allocated under §190.08 to customer accounts of the same class; and

(C) The amount of any add-back required under paragraph (b)(4) of this section; and

(ii) Then adding 100% of any margin payment made between the entry of the order for relief and the primary liquidation date.

(2) *Corrections to funded balance.* The funded balance must be adjusted, as of the primary liquidation date, to correct for subsequent events including, without limitation:

(i) Added claimants;

(ii) Disallowed claims;

(iii) Liquidation of unliquidated claims at a value other than their estimated value;

(iv) Recovery of property; and

(v) Deficits generated by the continued operation of accounts after the primary liquidation date which cannot be fully adjusted under paragraph (d) of this section.

(d) *Adjustments to funded balance for operations subsequent to the primary liquidation date.* If accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the funded balance for each class must be adjusted until liquidation or transfer of all such open commodity contracts of that customer of the same class, as follows:

(1) Unrealized and realized gains and any receipts of margin with respect thereto must be added to the funded balance;

(2) Unrealized and realized losses, and the normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees and other costs and charges lawfully incurred with respect to the maintenance or liquidation of such open commodity contracts, and any distributions must be subtracted from the funded balance; and

(3) Subject to claims against the trustee for failure to liquidate, any deficit which is not recovered from the customer on whose behalf it is incurred must be charged against the funded balance of each account which remained open on the date the deficit occurred in the same proportion as the funded balance of each account bears to all the funded balances of all accounts which remained open on that date.

(e) *Valuation.* In computing net equity, commodity contracts and other property held by or for a commodity broker must be valued as provided in this paragraph (e): *Provided, however,* that for all commodity contracts other than those listed in paragraph (e)(1) of this section, if identical commodity contracts, securities, or other property are liquidated on the same date, but cannot be liquidated at the same price, the trustee may use the weighted average of the liquidation prices in computing the net equity of each customer holding such contracts, securities, or property.

(1) *Commodity Contracts.* Unless otherwise specified in this paragraph (e), the value of an open commodity contract shall be equal to the settlement price as calculated by the clearing organization pursuant to its rules: *Provided,* that such rules must either be submitted to the Commission, pursuant to section 5c(c)(4) of the Act and be approved by the Commission, or such rules must be otherwise approved by the Commission (or its delegate pursuant to §190.10(d) of this part) prior to their application; *Provided, further,* that if such contract is transferred its value shall be determined as of the end of the settlement cycle in which it is transferred; and *Provided, finally,* that if such contract is liquidated, its value shall be equal to the net proceeds of liquidation.

(2) *Principal contracts.* The valuation date of principal contracts which are not transferred shall be the date of the order for relief unless there is specific property which constitutes cover by the principal for the principal contract in which case it shall be the date of liquidation of the cover. For purposes of valuing contracts for which there is no established secondary market:

(i) *Cash price series approved by Commission.* The market value of the physical commodity which is the subject of a principal contract shall be computed using a cash price series approved by the Commission for use by the dealer option grantor, in the case of dealer options, and by the leverage transaction merchant, in the case of leverage contracts.

(ii) *No cash price series approved by Commission.* If no applicable cash price series has been submitted to the Commission, or if such a cash price series has been submitted, but has not been approved by the Commission, the market value of the physical commodity which is the subject of a principal contract shall be equal to the lesser of:

(A) The market value of the physical commodity as of the close of business on the local cash market most proximate to the debtor's principal place of business; or

(B) The spot month settlement price on a designated contract market which trades contracts in that physical commodity most proximate to the debtor's principal place of business: *Provided*, That where there is more than one local market as described in paragraphs (e)(2)(ii) (A) or (B) of this section, the trustee should use the most active market.

(iii) *Special rule for valuing dealer options*. A dealer option which is in-the-money will be deemed to have been exercised for purposes of determining its value which shall be equal to the greater of:

(A) The in-the-money amount; or

(B) The premium paid for such option divided by the number of days contained in the option period and multiplied by the number of days remaining in such period on the liquidation date: *Provided*, That in the trustee's sole discretion, the trustee may reduce such value to an amount which does not exceed the average of the premiums recently paid for similar options granted by the same grantor.

Any time value not reflected in this computation claimed by a customer must be treated as a general creditor's claim.

(iv) *Special rule for valuing leverage contracts*. Notwithstanding paragraphs (e)(2) (i) and (ii) of this section, if the records of the debtor are not sufficient to substantiate customer claims for profits and to identify the owners of contracts with losses, the liquidation value of a leverage contract shall be deemed to be an amount equal to the total deposit made by a customer in respect to such contract.

(3) *Bucketed contracts*. The value of a commodity contract which has not been established in fact shall be deemed to be equal to the value of the total deposit made by a customer in respect to such contract.

(4) *Securities*. The value of a listed security shall be equal to the closing price for such security on the exchange upon which it is traded. The value of all securities not traded on an exchange shall be equal in the case of a long position, to the average of the bid prices for long positions, and in the case of a short position, to the average of the asking prices for the short positions. If liquidated prior to the primary liquidation date, the value of such security shall be equal to the net proceeds of its liquidation. Securities which are not publicly traded shall be valued by the trustee, subject to approval of the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances.

(5) *Property*. Cash commodities held in inventory, as collateral or otherwise, shall be valued at their fair market value. Subject to the other provisions of this paragraph (e), all other property shall be valued by the trustee subject to approval by the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances: *Provided, however*, That if such property is sold, its value for purposes of the calculations required by this part shall be the net proceeds of such sale: *Provided further*, That the sale is made in compliance with all applicable statutes, rules and orders of any court or governmental entity with jurisdiction thereover.

[48 FR 8739, Mar. 1, 1983; 48 FR 15122 and 15123, Apr. 7, 1983, as amended at 67 FR 58298, Sept. 13, 2002; 69 FR 41427, July 9, 2004; 75 FR 17303, Apr. 6, 2010; 77 FR 6378, 6381, Feb. 7, 2012]

§ 190.08 Allocation of property and allowance of claims.

The property of the debtor's estate must be allocated among account classes and between customer classes as provided in this section, except for special distributions required under appendix B to this part. The property so allocated will constitute a separate estate of the customer class and the account class to which it is allocated, and will be designated by reference to such customer class and account class.

(a) *Scope of customer property*. (1) Customer property includes the following:

(i) All cash, securities, or other property or the proceeds of such cash, securities or other property received, acquired, or held by or for the account of

the debtor, from or for the account of a customer, including a non-public customer, which is:

(A) Property received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(B) Open commodity contracts;

(C) Warehouse receipts, bills of lading, or other documents of title or property held or acquired by the debtor to fulfill a commodity contract;

(D) Profits or contractual rights accruing to a customer as the result of a commodity contract;

(E) The full proceeds of a letter of credit if such letter of credit was received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(F) To the extent not otherwise included, securities held in a portfolio margining account carried as a futures account or a cleared swaps customer account;

(G) Property hypothecated under §1.30 of this chapter to the extent that the value of such property exceeds the proceeds of any loan of margin made with respect thereto, and

(ii) All cash, securities, or other property which:

(A) Is segregated on the filing date;

(B) Is a security owned by the debtor to the extent there are customer claims for securities of the same class and series of an issuer;

(C) Is specifically identifiable to a customer;

(D) Is property of a type described in paragraph (a)(1)(i)(A) of this section which has been withdrawn and subsequently is recovered by the avoidance powers of the trustee;

(E) Represents recovery of any debit balance, margin deficit, or other claim of the debtor against a customer account;

(F) Was unlawfully converted but is part of the debtor's estate;

(G) Is property of the debtor that any applicable law, rule, regulation, or order requires to be set aside for the benefit of customers, unless including such property in the customer estate would not significantly increase the customer estate;

(H) Is property of the debtor's estate recovered by the Commission in any proceeding brought against the principals, agents, or employees of the debtor;

(I) Is proceeds from the investment of customer property by the trustee pending final distribution; or

(J) Is cash, securities or other property of the debtor's estate, including the debtor's trading or operating accounts and commodities of the debtor held in inventory, but only to the extent that the property enumerated in paragraphs (a)(1)(i)(E) and (a)(1)(ii)(A) through (a)(1)(ii)(H) of this section is insufficient to satisfy in full all claims of public customers.

(2) Customer property will not include:

(i) Claims against the debtor for damages for any wrongdoing of the debtor, including claims for misrepresentation or fraud, or for any violation of the Act or of the regulations thereunder;

(ii) Other claims for property which are not based upon property received, acquired or held by or for the account of the debtor, from or for the account of the customer;

(iii) Forward contracts;

(iv) Property delivered to or from a customer to or by another customer to fulfill a commodity contract held for or on behalf of either customer by the debtor if such delivery is effected pursuant to §190.05 by a commodity broker other than the debtor;

(v) Property deposited by a customer with a commodity broker after the entry of an order for relief which is not necessary to meet the maintenance margin requirements applicable to the accounts of such customer;

(vi) Property hypothecated pursuant to §1.30 of this chapter to the extent of the loan of margin with respect thereto; and

(vii) Money, securities or property held to margin, guarantee or secure security futures products, or accruing as a result of such products, if held in a securities account.

(b) *Allocation of property between customer classes.* No portion of the customer estate may be allocated to pay non-public customer claims until all public customer claims have been satisfied in full. Any property segregated on behalf of non-public customers must

be treated initially as part of the public customer estate and allocated under paragraph (c)(2) of this section.

(c) *Allocation of property among account classes*—(1) *Segregated property*. Subject to paragraph (b) of this section, property held by or for the account of a customer, which is segregated on behalf of a specific account class, or readily traceable on the filing date to customers of such account class, must be allocated to the customer estate of the account class for which it is segregated or to which it is readily traceable.

(2) *All other property*. Money, securities and property received from or for the account of customers on behalf of any account class which is recovered on behalf of the customer estate and which cannot be allocated in accordance with paragraph (c)(1) of this section, must be allocated as of the primary liquidation date in the following order:

(i) To the estate of the account class for which, after the allocation required in paragraph (c)(1) of this section, the percentage of each public customer net equity claim which is funded is the lowest, until the funded percentage of net equity claims of such class equals the percentage of each public customer's net equity claim which is funded for the account class with the next lowest percentage of the funded claims; and then

(ii) To the estate of the two account classes referred to in paragraph (c)(2)(i) of this section so that the percentage of the net equity claims which are funded for each class remains equal until the percentage of each public customer net equity claim which is funded equals the percentage of each public customer net equity claim which is funded for the account class with the next lowest percentage of funded claims, and so forth, until the percentage of each public customer net equity claim which is funded is equal for all classes of accounts; and then,

(iii) Among account classes in the same proportion as the public customer net equity claims for each such account class bears to the total of public customer net equity claims of all account classes until the public customer claims of each account class are paid in full; and, thereafter,

(iv) To the non-public customer estate for each account class in the same order as is prescribed in paragraphs (c)(2) (i) to (iii) of this section for the allocation of the customer estate among account classes.

(d) *Distribution of customer property*—(1) *Return or transfer of specifically identifiable property other than a commodity contract*. Specifically identifiable property other than an open commodity contract not required to be liquidated under § 190.02(f)(2) may be returned or transferred on behalf of the customer to which it is identified:

(i) If it is margining an open commodity contract, only if cash is first deposited with the trustee in an amount equal to the greater of the full fair market value of such property on the return date or the balance due on the return date on any loan by the debtor to the customer for which such property constitutes security; or

(ii) If it is not so margining an open contract, at the option of the customer, either pursuant to the terms of paragraph (d)(1)(i) of this section, or pursuant to the following terms: such customer first deposits cash with the trustee in an amount equal to the amount by which the greater of the value of the specifically identifiable property to be transferred or returned on the date of such transfer or return or the balance due on the return date on any loan by the debtor to the customer for which such property constitutes security, together with any other disbursements made, or to be made, to such customer, plus a reasonable reserve in the trustee's sole discretion, exceeds the estimated aggregate of the funded balances for each class of account of such customer less the value on the date of its transfer or return of any property transferred or returned prior to the primary liquidation date with respect to the customer's net equity claim for such account; *Provided*, That adequate security for the nonrecovery of any overpayments by the trustee is provided to the debtor's estate by the customer.

(2) *Transfers of specifically identifiable commodity contracts under section 766 of the Bankruptcy Code*. Any specifically

identifiable commodity contract which is not required to be liquidated under §190.02(f)(1) or §190.03(b), and which is not otherwise liquidated, may be transferred on behalf of a customer: *Provided*, That such customer must first deposit cash with the trustee in an amount equal to the amount by which the equity to be transferred to margin such contract together with any other transfers or returns of specifically identifiable property or disbursements made, or to be made, to such customer, plus a reasonable reserve in the trustee's sole discretion, exceeds the estimated aggregate of the funded balances for each class of account of such customer less the value on the date of its transfer or return of any property transferred or returned prior to the primary liquidation date with the respect to the customer's net equity claim for such account: and, *Provided further*, That adequate security for the nonrecovery of any overpayments by the trustee is provided to the debtor's estate by the customer.

(3) *Distribution in kind of specifically identifiable securities.* If any securities of a customer would have been specifically identifiable under §190.01(kk)(6) if that customer had had no open commodity contracts, the customer may request that the trustee purchase or otherwise obtain the largest whole number of like-kind securities, with a fair market value (inclusive of transaction costs) which does not exceed that portion of such customer's allowed net equity claim that constitutes a claim for securities, if like-kind securities can be purchased in a fair and orderly manner.

(4) *Proof of customer claim.* No distribution shall be made pursuant to paragraphs (d)(1) and (d)(3) of this section prior to receipt of a completed proof of customer claim as described in §190.02(d).

(5) *No differential distributions.* No further disbursements may be made to customers for whom transfers have been made pursuant to §190.06 and paragraph (d)(2) of this section, until a percentage of each net equity claim equivalent to the percentage distributed to such customers is distributed to all public customers. Partial distributions, other than the transfers referred to in §190.06 and paragraph (d)(2) of this section, made prior to the final net equity determination date must be made pursuant to a preliminary plan of distribution approved by the court, upon notice to the parties and to all customers, which plan requires adequate security to the debtor's estate for the nonrecovery of any overpayments by the trustee and distributes an equal percentage of net equity to all public customers.

(6) *Margin payments.* The trustee may make margin payments on behalf of any account which do not exceed the funded balance of that account.

[48 FR 8739, Mar. 1, 1983; 48 FR 15122, Apr. 1, 1983, as amended at 59 FR 17471, Apr. 13, 1994; 67 FR 58298, Sept. 13, 2002; 78 FR 66637, Nov. 6, 2013]

§190.09 Member property.

(a) *Member property.* ''Member property'' means, in connection with a clearing organization bankruptcy, the property which may be used to pay that portion of the net equity claim of a member which is based on its house account.

(b) *Scope of member property.* Member property shall include all money, securities and property received, acquired, or held by a clearing organization to margin, guarantee or secure, on behalf of a clearing member, the proprietary account, as defined in §1.3 of this chapter, any account not belonging to a foreign futures or foreign options customer pursuant to the proviso in §30.1(c) of this chapter, and any Cleared Swaps Proprietary Account, as defined in §22.1 of this chapter: *Provided, however*, that any guaranty deposit or similar payment or deposit made by such member and any capital stock, or membership of such member in the clearing organization shall also be included in member property after payment in full, in each case in accordance with the by-laws or rules of the clearing organization, of that portion of:

(1) The net equity claim of the member based on its customer account; and

(2) Any obligations due to the clearing organization which may be paid therefrom, including any obligations

due from the clearing organization to the customers of other members.

[48 FR 8739, Mar. 1, 1983, as amended at 77 FR 6382, Feb. 7, 2012; 78 FR 72524, Dec. 2, 2013]

§ 190.10 General.

(a) *Notices*. Unless instructed otherwise by the Commission, all mandatory or discretionary notices to be given to the Commission under this part shall be directed by electronic mail to *bankruptcyfilings@cftc.gov*, with a copy sent by overnight mail to Director, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. For purposes of this part, notice to the Commission shall be deemed to be given only upon actual receipt.

(b) *Request for exemption from time limit*. (1) A trustee or any other person charged with the management of a commodity broker which has filed a petition in bankruptcy, or against which such a petition has been filed, may for good cause shown request from the Commission an exemption from, or extension of, any time limit prescribed by this part 190: *Provided*, That no such exemption or extension will be granted for any time period established by the Bankruptcy Code, as amended, 11 U.S.C. 101 *et seq*.

(2) Such a request shall be made *ex parte* and by any means of communication, written or oral: *Provided*, That an oral request shall be confirmed in writing within one business day and such confirmation shall contain all the information required by paragraph (b)(3) of this section. Any such request shall be directed to the person as provided in paragarph (a) of this section, and at the address provided therein.

(3) Such a request shall state the particular provision of the part 190 rules with respect to which the exemption or extension is sought, the reason for the requested exemption or extension, the amount of time sought if the request is for an extension, and the reason why such exemption or extension would not be contrary to the purposes of the Bankruptcy Code and the Commission's part 190 regulations promulgated thereunder.

(4) The Director of the Division of Clearing and Risk, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, after consultation with the Director of the Division of Swap Dealer and Intermediary Oversight, or such member of the Commission's staff under his direction as he may designate, unless exigent circumstances require immediate action precluding such prior consultation, whether to grant, deny or otherwise respond to a request, and shall communicate that determination by the most appropriate means to the person making the request and to the bankruptcy court with jurisdiction over the case.

(c) *Disclosure statement for non-cash margin*. (1) Except as provided in § 1.65 of this chapter, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in § 1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

(2) The disclosure statement required by paragraph (c)(1) of this section is as follows:

THIS STATEMENT IS FURNISHED TO YOU BECAUSE RULE 190.10 (c) OF THE COMMODITY FUTURES TRADING COMMISSION REQUIRES IT FOR REASONS OF FAIR NOTICE UNRELATED TO THIS COMPANY'S CURRENT FINANCIAL CONDITION.

1. YOU SHOULD KNOW THAT IN THE UNLIKELY EVENT OF THIS COMPANY'S BANKRUPTCY, PROPERTY, INCLUDING PROPERTY SPECIFICALLY TRACEABLE TO YOU, WILL BE RETURNED, TRANSFERRED OR DISTRIBUTED TO YOU, OR ON YOUR BEHALF, ONLY TO THE EXTENT OF YOUR PRO RATA SHARE OF ALL PROPERTY AVAILABLE FOR DISTRIBUTION TO CUSTOMERS.

2. NOTICE CONCERNING THE TERMS FOR THE RETURN OF SPECIFICALLY

IDENTIFIABLE PROPERTY WILL BE BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

3. THE COMMISSION'S REGULATIONS CONCERNING BANKRUPTCIES OF COMMODITY BROKERS CAN BE FOUND AT 17 CODE OF FEDERAL REGULATIONS PART 190.

(3) The statement contained in paragraph (c)(2) of this section need be furnished only once to each customer to whom it is required to be furnished by this section.

(d) *Delegation of authority to the Director of the Division of Clearing and Risk.* (1) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Clearing and Risk, and to such members of the Commission's staff acting under his direction as he may designate, after consultation with the Director of the Division of Swap Dealer and Intermediary Oversight, or such member of the Commission's staff under his direction as he may designate, unless exigent circumstances require immediate action, all the functions of the Commission set forth in this part except the authority to approve or disapprove a withdrawal or settlement of a commodity contract account by a public customer pursuant to §190.06(g)(3).

(2) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (d)(1) of this section.

(3) Nothing in this section shall prohibit the Commission, at its election, from exercising its authority delegated to the Director of the Division of Clearing and Risk under paragraph (d)(1) of this section.

(e) *Forward contracts.* For purposes of this part, an entity for or with whom the debtor deals who holds a claim against the debtor solely on account of a forward contract will not be deemed to be a customer.

(f) *Notice of court papers pertaining to the operation of the estate.* The trustee shall promptly provide the Commission with copies of any complaint, motion, or petition filed in a commodity broker bankruptcy which concerns the disposition of customer property. Court papers shall be directed to the Washington, DC headquarters of the Commission addressed as provided in paragraph (a) of this section.

(g) *Other.* The Bankruptcy Code will not be construed by the Commission to prohibit a commodity broker from doing business as any combination of the following: futures commission merchant, commodity option dealer, foreign futures commission merchant or leverage transaction merchant, nor will the Commission construe the Bankruptcy Code to permit any operation, trade or business, or any combination of the foregoing, otherwise prohibited by the Act or by any rule, regulation or order of the Commission thereunder.

(h) *Rule of construction.* Contracts in security futures products held in a securities account shall not be considered to be ''from or for the commodity contract account'' or ''from or for the commodity options account'' of such customers, as such terms are used in section 761(9) of the Bankruptcy Code.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97–444); secs. 761–766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97–222, 96 Stat. 235 (1982), 11 U.S.C. 761–766 (Supp. V. 1981 as amended by Pub. L. 97–222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983; 58 FR 17505, Apr. 5, 1993; 59 FR 34382, July 5, 1994; 60 FR 49336, Sept. 25, 1995; 63 FR 8571, Feb. 20, 1998; 67 FR 58298, Sept. 13, 2002; 67 FR 62353, Oct. 7, 2002; 77 FR 6378, 6382, Feb. 7, 2012; 78 FR 22420, Apr. 16, 2013]

APPENDIX A TO PART 190—BANKRUPTCY FORMS

BANKRUPTCY APPENDIX FORM 1—OPERATION OF THE DEBTOR'S ESTATE—SCHEDULE OF TRUSTEE'S DUTIES

For the convenience of a prospective trustee, the Commission has constructed an approximate schedule of important duties which the trustee should perform during the early stages of a commodity broker bankruptcy proceeding. The schedule includes duties required by this part, subchapter IV of chapter 7 of the Bankruptcy Code as well as certain practical suggestions, but it is only intended to highlight the more significant duties and is not an exhaustive description of all the trustee's responsibilities. It also

assumes that the commodity broker being liquidated is an FCM. Moreover, it is important to note that the operating facts in a particular bankruptcy proceeding may vary the schedule or obviate the need for any of the particular activities.

ALL CASES

Date of Order for Relief

1. Assure that the commodity broker has notified the Commission, its designated self-regulatory organization (''DSRO'') (if any), and all applicable clearing organizations of which it is a member that a petition or order for relief has been filed (§ 190.02(a)(1)).

2. Attempt to effectuate the transfer of entire customer accounts wherein the commodity contracts are transferred together with the money, securities, or other property margining, guaranteeing, or securing the commodity contracts (hereinafter the ''transfer'').

3. Attempt to estimate shortfall of customer funds segregated pursuant to sections 4d(a) and (b) of the Act; customer funds segregated pursuant to section 4f of the Act; and the foreign futures or foreign options secured amount, as defined in § 1.3 of this chapter.

a. The trustee should:

i. Contact the DSRO (if any) and the clearing organizations and attempt to effectuate a transfer with such shortfall under section 764(b) of the Code; notify the Commission for assistance (§ 190.02(a)(2) and (e)(1), § 190.06(b)(2), (e), (f)(3), (g)(2), and (h)) but recognize that if there is a substantial shortfall, a transfer of such funds or amounts is highly unlikely.

ii. If a transfer cannot be effectuated, liquidate all customer commodity contracts that are margined, guaranteed, or secured by funds or amounts with such shortfall, except dealer options and specifically identifiable commodity contracts which are bona fide hedging positions (as defined in § 190.01(kk)(2)) with instructions not to be liquidated. (See §§ 190.02(f) and 190.06(d)(1)). (In this connection, depending upon the size of the debtor and other complications of liquidation, the trustee should be aware of special liquidation rules, and in particular the availability under certain circumstances of book-entry liquidation (§ 190.04(d)(1)(ii)).

b. If there is a small shortfall in any of the funds or amounts listed in paragraph 2, negotiate with the clearing organization to effect a transfer; notify the Commission (§§ 190.02(a)(2) and (e)(1), 190.06(b)(2), (e), (f)(3), (g)(2), and (h)).

4. Whether or not a transfer has occurred, liquidate or offset open commodity contracts not eligible for transfer (*e.g.*, deficit accounts) (§ 190.06(e)(1)).

5. Offset all futures contracts and Cleared Swaps contracts which cannot be settled in cash and which would otherwise remain open either beyond the last day of trading (if applicable) or the first day on which notice of intent to deliver may be tendered with respect thereto, whichever occurs first; offset all long options on a physical commodity which cannot be settled in cash, have value and would be automatically exercised or would remain open beyond the last day of exercise; and offset all short options on a physical commodity which cannot be settled in cash (§ 190.02(f)(1)).

6. Compute estimated funded balance for each customer commodity contract account containing open commodity contracts (§ 190.04(b)) (daily thereafter).

7. Make margin calls if necessary (§ 190.02(g)(1)) (daily thereafter).

8. Liquidate or offset any open commodity contact account for which a customer has failed to meet a margin call (§ 190.02(f)(1)) (daily thereafter).

9. Commence liquidation or offset of specifically identifiable property described in § 190.02(f)(2)(i) (property which has lost 10% or more of value) (and as appropriate thereafter).

10. Commence liquidation or offset of property described in § 190.02(f)(3) (''all other property'').

11. Be aware of any contracts in delivery position and rules pertaining to such contracts (§ 190.05).

First Calendar Day After the Entry of an Order for Relief

1. If a transfer occurred on the date of entry of the order for relief:

a. Liquidate any remaining open commodity contracts, except any dealer option or specifically identifiable commodity contract [hedge] (See § 190.01(kk)(2) and § 190.02(f)(1)), and not otherwise transferred in the transfer.

b. Primary liquidation date for transferred or liquidated commodity contracts (§ 190.01(ff)).

2. If no transfer has yet been effected, continue attempt to negotiate transfer of open commodity contracts and dealer options (§ 190.02(c)(1)).

3. Provide the clearing organization or Collecting Futures Commission Merchant (as such term is defined in § 22.1) with assurances to prevent liquidation of open commodity contract accounts available for transfer at the customer's instruction or liquidate all open commodity contracts except those available for transfer at a customer's instruction and dealer options.

Second Calendar Day After the Entry of an Order for Relief

If no transfer has yet been effected, request directly customer instructions regarding transfer of open commodity contracts and

publish notice for customer instructions regarding the return of specifically identifiable property other than commodity contracts (§§ 190.02(b) (1) and (2)).

Third Calendar Day After the Entry of an Order for Relief

1. Second publication date for customer instructions (§ 190.02(b)(1)) (publication is to be made on two consecutive days, whether or not the second day is a business day).
2. Last day on which to notify the Commission with regard to whether a transfer in accordance with section 764(b) of the Bankruptcy Code will take place (§ 190.02(a)(2) and § 190.06(e)).

Sixth Calendar Day After the Entry of an Order for Relief

Last day for customers to instruct the trustee concerning open commodity contracts (§ 190.02(b)(2)).

Seventh Calendar Day After the Entry of an Order for Relief

1. If not previously concluded, conclude transfers under §*190.06(e)* and (f). (See § 190.02(e)(1) and § 190.06(g)(2)(i)(A)).
2. Transfer all open dealer option contracts which have not previously been transferred (§ 190.06(f)(3)(i)).
3. Primary liquidation date (§ 190.01(ff)) (assuming no transfers and liquidation effected for all open commodity contracts for which no customer instructions were received by the sixth calendar day).
4. Establishment of transfer accounts (§ 190.03(a)(1)) (assuming this is the primary liquidation date); mark such accounts to market (§ 190.03(a)(2)) (daily thereafter until closed).
5. Liquidate or offset all remaining open commodity contracts (§ 190.02(b)(2)).
6. If not done previously, notify customers of bankruptcy and request customer proof of claim (§ 190.02(b)(4)).

Eighth Calendar Day After the Entry of an Order for Relief

Customer instructions due to trustee concerning specifically identifiable property (§ 190.02(b)(1)).

Ninth Calendar Day After the Entry of an Order for Relief

Commence liquidation of specifically identifiable property for which no arrangements for return have been made in accordance with customer instructions (§§ 190.02(b)(1), 190.03(c)).

Tenth Calendar Day After the Entry of an Order for Relief

Complete liquidation to the extent reasonably possible of specifically identifiable property which has yet to be liquidated and for which no customer instructions have been received (§ 190.03(c)).

Separate Procedures for Involuntary Petitions for Bankruptcy

1. Within one calendar day after notice of receipt of filing of the petition in bankruptcy, the trustee should assure that proper notification has been given to the Commission, the commodity broker's designated self-regulatory organization (*§ 190.02(a)(1)*) (if any), and all applicable clearing organizations; margin calls should be issued if necessary (*§ 190.02(g)(2)*).
2. On or before the seventh calendar day after the filing of a petition in bankruptcy, the trustee should use his best efforts to effect a transfer in accordance with *§ 190.06(e)* and (*f*) of all open commodity contracts and equity held for or on behalf of customers of the commodity broker (*§ 190.02(e)(2)*) unless the debtor can provide certain assurances to the trustee.

BANKRUPTCY APPENDIX FORM 2— REQUEST FOR INSTRUCTIONS CONCERNING NON-CASH PROPERTY DEPOSITED WITH (COMMODITY BROKER)

Please take notice: On (date), a petition in bankruptcy was filed by [against] (commodity broker). Those customers of (commodity broker) who deposited certain kinds of non-cash property (see below) with (commodity broker) may instruct the trustee of the estate to return their property to them as provided below.

As no customer may obtain more than his or her proportionate share of the property available to satisfy customer claims, if you instruct the trustee to return your property to you, you will be required to pay the estate, as a condition to the return of your property, an amount determined by the trustee. If your property is not margining an open contract, this amount will approximate the difference between the market value of your property and your *pro rata* share of the estate, as estimated by the trustee. If your property is margining an open commodity contract, this amount will be approximately the full fair market value of the property on the date of its return.

Kinds of Property to Which This Notice Applies

1. Any security deposited as margin which, as of (date petition was filed), was securing an open commodity contract and is:

—registered in your name,
—not transferrable by delivery, and
—not a short-term obligation.

2. Any fully-paid, non-exempt security held for your account in which there were no open commodity contracts as of (date petition was filed). (Rather than the return, at this time, of the specific securities you deposited with

(commodity broker), you may instead request now, or at any later time, that the trustee purchase ''like-kind'' securities of a fair market value which does not exceed your proportionate share of the estate).

3. Any warehouse receipt, bill of lading or other document of title deposited as margin which, as of (date petition was filed), was securing an open commodity contract and—can be identified in (commodity broker)'s records as being held for your account, and—is neither in bearer form nor otherwise transferable by delivery.

4. Any warehouse receipt bill of lading or other document of title, or any commodity received, acquired or held by (commodity broker) to make or take delivery or exercise from or for your account and which—can be identified in (commodity broker)'s records as received from or for your account as held specifically for the purpose of delivery or exercise.

5. Any cash or other property deposited to make or take delivery on a commodity contract may be eligible to be returned. The trustee should be contacted directly for further information if you have deposited such property with (commodity broker) and desire its return.

Instructions must be received by (the 5th calendar day after 2d publication date) or the trustee will liquidate your property. (If you own such property but fail to provide the trustee with instructions, you will still have a claim against (commodity broker) but you will not be able to have your specific property returned to you).

NOTE: Prior to receipt of your instructions, circumstances may require the trustee to liquidate your property, or transfer your property to another broker if it is margining open commodity contracts. If your property is transferred and your instructions were received within the required time, your instructions will be forwarded to the new broker.

Instructions should be directed to: (Trustee's name, address, and/or telephone).

Even if you request the return of your property, you must also pay the trustee the amount he specifies and provide the trustee with proof of your claim before (the 7th calendar day after 2d publication date) or your property will be liquidated. (Upon receipt of customer instructions to return property, the trustee will mail the sender a form which describes the information he must provide to substantiate his claim).

NOTE: The trustee is required to liquidate your property despite the timely receipt of your instructions, money, and proof of claim if, for any reason, your property cannot be returned by (close of business on the 7th calendar day after 2d publication date).

BANKRUPTCY APPENDIX FORM 3—REQUEST FOR INSTRUCTIONS CONCERNING TRANSFER OF YOUR HEDGE CONTRACTS HELD BY (COMMODITY BROKER)

United States Bankruptcy Court ____District of ____In re ____, Debtor, No. ____.

Please take notice: On (date), a petition in bankruptcy was filed by [against] (commodity broker).

You indicated when your hedge account was opened that the commodity contracts in your hedge account should not be liquidated automatically in the event of the bankruptcy of (commodity broker), and that you wished to provide instructions at this time concerning their disposition.

Instructions to transfer your commodity contracts and a cash deposit (as described below) must be received by the trustee by (the 6th calendar day after entry of order for relief) or your commodity contracts will be liquidated.

If you request the transfer of your commodity contracts, prior to their transfer, you must pay the trustee in cash an amount determined by the trustee which will approximate the difference between the value of the equity margining your commodity contracts and your *pro rata* share of the estate plus an amount constituting security for the nonrecovery of any overpayments. In your instructions, you should specify the broker to which you wish your commodity contracts transferred.

Be further advised that prior to receipt of your instructions, circumstances may, in any event, require the trustee to liquidate or transfer your commodity contracts. If your commodity contracts are so transferred and your instructions are received, your instructions will be forwarded to the new broker.

Note also that the trustee is required to liquidate your positions despite the timely receipt of your instructions and money if, for any reason, you have not made arrangements to transfer and/or your contracts are not transferred by (7 calendar days after entry of order for relief).

Instructions should be sent to: (Trustee's or designee's name, address, and/or telephone). [Instructions may also be provided by phone].

BANKRUPTCY APPENDIX FORM 4—PROOF OF CLAIM

[Note to trustee: As indicated in §190.02(d), this form is provided as a guide to the trustee and should be modified as necessary depending upon the information which the trustee needs at the time a proof of claim is requested and the time provided for a response.]

PROOF OF CLAIM

United States Bankruptcy Court ____District of ____In re ____, Debtor, No. ____.

Return this form by ____ or your claim will be barred (unless extended, for good cause only).

I. [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at ____.

[If claimant is a partnership claiming through a member] The undersigned, who resides at ____, is a member of ____, a partnership, composed of the undersigned and ____, of ____, and doing business at ____, and is duly authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming though a duly authorized officer] The undersigned, who resides at ____ is the ____ of ____, a corporation organized under the laws of ____ and doing business at ____, and is duly authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at ____, is the agent of ____, and is duly authorized to make this proof of claim on behalf of the claimant.

II. The debtor was, at the time of the filing of the petition initiating this case, and still is, indebted to this claimant for the total sum of $ ____.

III. List EACH account on behalf of which a claim is being made by number and name of account holder[s], and for EACH account, specify the following information:

a. Whether the account is a futures, foreign futures, leverage, option (if an option account, specify whether exchange-traded, dealer or cleared swap), ''delivery'' account, or a cleared swaps account. A ''delivery'' account is one which contains only documents of title, commodities, cash, or other property identified to the claimant and deposited for the purposes of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option.

b. The capacity in which the account is held, as follows (and if more than one is applicable, so state):

1. [The account is held in the name of the undersigned in his individual capacity];

2. [The account is held by the undersigned as guardian, custodian, or conservator for the benefit of a ward or a minor under the Uniform Gift to Minors Act];

3. [The account is held by the undersigned as executor or administrator of an estate];

4. [The account is held by the undersigned as trustee for the trust beneficiary];

5. [The account is held by the undersigned in the name of a corporation, partnership, or unincorporated association];

6. [The account is held as an omnibus customer account of the undersigned futures commission merchant];

7. [The account is held by the undersigned as part owner of a joint account];

8. [The account is held by the undersigned in the name of a plan which, on the date the petition in bankruptcy was filed, had in effect a registration statement in accordance with the requirements of §1031 of the Employee Retirement Income Security Act of 1974 and the regulations thereunder]; or

9. [The account is held by the undersigned as agent or nominee for a principal or beneficial owner (and not described above in items 1–8 of this II, b)].

10. [The account is held in any other capacity not described above in items 1–9 of this II, b. Specify the capacity].

c. The equity, as of the date the petition in bankruptcy was filed, based on the commodity contracts in the account.

d. Whether the person[s] (including a general partnership, limited partnership, corporation, or other type of association) on whose behalf the account is held is one of the following persons OR whether one of the following persons, alone or jointly, owns 10% or more of the account:

1. [If the debtor is an individual—

A. Such individual;

B. Relative (as defined below in item 8 of this III.d) of the debtor or of a general partner of the debtor;

C. Partnership in which the debtor is a general partner;

D. General partner of the debtor; or

E. Corporation of which the debtor is a director, officer, or person in control];

2. [If the debtor is a partnership—

A. Such partnership;

B. General partner in the debtor;

C. Relative (as defined in item 8 of this III.d) of a general partner in, general partner of, or person in control of the debtor;

D. Partnership in which the debtor is a general partner;

E. General partner of the debtor; or

F. Person in control of the debtor];

3. [If the debtor is a limited partnership—

A. Such limited partnership;

B. A limited or special partner in such partnership whose duties include:

i. The management of the partnership business or any part thereof;

ii. The handling of the trades or customer funds of customers of such partnership;

iii. The keeping of records pertaining to the trades or customer funds of customers of such partnership; or

iv. The signing or co-signing of checks or drafts on behalf of such partnership];

4. [If the debtor is a corporation or association (except a debtor which is a futures commission merchant and is also a cooperative association of producers)—

A. Such corporation or association;

B. Director of the debtor;

C. Officer of the debtor;

D. Person in control of the debtor;

E. Partnership in which the debtor is a general partner;

F. General partner of the debtor;

G. Relative (as defined in item 8 of this III.d) of a general partner, director, officer, or person in control of the debtor;

H. An officer, director or owner of ten percent or more of the capital stock of such organization];

5. [If the debtor is a futures commission merchant which is a cooperative association of producers—

Shareholder or member of the debtor which is an officer, director or manager];

6. [An employee of such individual, partnership, limited partnership, corporation or association whose duties include:

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

B. The handling of the trades or customer funds of customers of such individual, partnership, limited partnership, corporation or association;

C. The keeping of records pertaining to the trades or funds of customers of such individual, partnership, limited partnership, corporation or association; or

D. The signing or co-signing of checks or drafts on behalf of such individual, partnership, limited partnership, corporation or association];

7. [Managing agent of the debtor];

8. [A spouse or minor dependent living in the same household of ANY OF THE FOREGOING PERSONS, or any other relative, regardless of residency, (unless previously described in items 1–B, 2–C, or 4–G of this III.d) defined as an individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such degree];

9. [''Affiliate'' of the debtor, defined as:

A. Entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the out-standing voting securities of the debtor, other than an entity that holds such securities—

i. In a fiduciary or agency capacity without sole discretionary power to vote such securities; or

ii. Solely to secure a debt, if such entity has not in fact exercised such power to vote;

B. Corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, con-trolled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

i. In a fiduciary or agency capacity without sole discretionary power to vote such securities; or

ii. Solely to secure a debt, if such entity has not in fact exercised such power to vote;

C. Person whose business is operated under a lease or operating agreement by the debtor, or person substantially all of whose property is operated under an operating agreement with the debtor;

D. Entity that otherwise, directly or indirectly, is controlled by or is under common control with the debtor];

E. Entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement; or

F. Entity that otherwise, directly or indirectly, controls the debtor; or

10. [Any of the persons listed in items 1–7 above of this III.d if such person is associated with an affiliate (see item 9 above) of the debtor as if the affiliate were the debtor].

e. Whether the account is a discretionary account. (If it is, the name in which the ''attorney in fact'' is held).

f. If the account is a joint account, the amount of the claimant's percentage interest in the account. (Also specify whether participants in a joint account are claiming separately or jointly).

g. Whether the claimant's positions in security futures products are held in a futures account or securities account, as those terms are defined in §1.3 of this chapter.

IV. Describe all claims against the debtor not based upon a commodity contract account of the claimant (*e.g.*, if landlord, for rent; if customer, for misrepresentation or fraud).

V. Describe all claims of the DEBTOR against the CLAIMANT not already included in the equity of a commodity contract account[s] of the claimant (see III.c above).

VI. Describe any deposits of money, securities or other property held by or for the debtor from or for the claimant, and indicate if any of this property was included in your answer to III.c above.

VII. Of the money, securities, or other property described in VI above, identify any which consists of the following:

a. With respect to property received, acquired, or held by or for the account of the debtor from or for the account of the claimant to margin, guarantee or secure an open commodity contract, the following:

1. Any security which as of the filing date is:

A. Held for the claimant's account;

B. Registered in the claimant's name;

C. Not transferable by delivery; and

D. Not a short term obligation; or

2. Any warehouse receipt, bill of lading or other document of title which as of the filing date:

A. Can be identified on the books and records of the debtor as held for the account of the claimant; and

B. Is not in bearer form and is not otherwise transferable by delivery.

b. With respect to open commodity contracts, and except as otherwise provided below in item g of this VII, any such contract which:

1. As of the date the petition in bankruptcy was filed, is identified on the books and records of the debtor as held for the account of the claimant;

2. Is a bona fide hedging position or transaction as defined in Rule 1.3 of the Commodity Futures Trading Commission (''CFTC'') or is a commodity option transaction which has been determined by a registered entity to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to rules which have been approved by the CFTC pursuant to section 5c(c) of the Commodity Exchange Act;

3. Is in an account designated in the accounting records of the debtor as a hedging account.

c. With respect to warehouse receipts, bills of lading or other documents of title, or physical commodities received, acquired, or held by or for the account of the debtor for the purpose of making or taking delivery or exercise from or for the claimant's account, any such document of title or commodity which as of the filing date can be identified on the books and records of the debtor as received from or for the account of the claimant specifically for the purpose of delivery or exercise.

d. Any cash or other property deposited prior to bankruptcy to pay for the taking of physical delivery on a long commodity contract or for payment of the strike price upon exercise of a short put or a long call option contract on a physical commodity, which cannot be settled in cash, in excess of the amount necessary to margin such commodity contract prior to the notice date or exercise date which cash or other property is identified on the books and records of the debtor as received from or for the account of the claimant within three or less days of the notice date or three or less days of the exercise date specifically for the purpose of payment of the notice price upon taking delivery or the strike price upon exercise.

e. The cash price tendered for any property deposited prior to bankruptcy to make physical delivery on a short commodity contract or for exercise of a long put or a short call option contract on a physical commodity, which cannot be settled in cash, to the extent it exceeds the amount necessary to margin such contract prior to the notice exercise date which property is identified on the books and records of the debtor as received from or for the account of the claimant within three or less days of the notice date or of the exercise date specifically for the purpose of a delivery or exercise.

f. Fully paid, non-exempt securities identified on the books and records of the debtor as held by the debtor for or on behalf of the commodity contract account of the claimant for which, according to such books and records as of the filing date, no open commodity contracts were held in the same capacity.

g. Open commodity contracts transferred to another futures commission merchant by the trustee.

VIII. Specify whether the claimant wishes to receive payment in kind, to the extent possible, for any claim for securities.

IX. Attach copies of any documents which support the information provided in this proof of claim, including but not limited to customer confirmations, account statements, and statements of purchase or sale.

This proof of claim must be filed with the trustee no later than ____, or your claim will be barred unless an extension has been granted, available only for good cause.

Return this form to:
(Trustee's name (or designee's) and address)

_____

Dated: _____
(Signed) _____

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than five years or both—Title 18, U.S.C. 152.

(Approved by the Office of Management and Budget under control number 3038–0021)

[77 FR 6382, Feb. 7, 2012]

Appendix B to Part 190—Special Bankruptcy Distributions

Framework 1—Special Distribution of Customer Funds for Futures Contracts When FCM Participated in Cross-Margining

The Commission has established the following distributional convention with respect to ''customer funds'' (as §1.3 of this chapter defines such term) for futures contracts held by a futures commission merchant (FCM) that participated in a cross-margining (XM) program which shall apply if participating market professionals sign an agreement that makes reference to this distributional rule and the form of such agreement has been approved by the Commission by rule, regulation or order:

All customer funds for futures contracts held in respect of XM accounts, regardless of the product that customers holding such accounts are trading, are required by Commission order to be segregated separately from all other customer segregated funds. For purposes of this distributional rule, XM accounts will be deemed to be commodity interest accounts and securities held in XM accounts will be deemed to be received by the FCM to margin, guarantee or secure commodity interest contracts. The maintenance

of property in an XM account will result in subordination of the claim for such property to certain non-XM customer claims and thereby will operate to cause such XM claim not to be treated as a customer claim for purposes of the Securities Investors Protection Act and the XM securities to be excluded from the securities estate. This creates subclasses of futures customer accounts, an XM account and a non-XM account (a person could hold each type of account), and results in two pools of segregated funds belonging to futures customers: An XM pool and a non-XM pool. In the event that there is a shortfall in the non-XM pool of customer class segregated funds and there is no shortfall in the XM pool of customer segregated funds, all futures customer net equity claims, whether or not they arise out of the XM subclass of accounts, will be combined and will be paid *pro rata* out of the total pool of available XM and non-XM customer funds for futures contracts. In the event that there is a shortfall in the XM pool of customer segregated funds and there is no shortfall in the non-XM pool of customer segregated funds, then futures customer net equity claims arising from the XM subclass of accounts shall be satisfied first from the XM pool of customer segregated funds, and futures customer net equity claims arising from the non-XM subclass of accounts shall be satisfied first from the non-XM customer segregated funds. Furthermore, in the event that there is a shortfall in both the non-XM and XM pools of customer segregated funds: (1) If the non-XM shortfall as a percentage of the segregation requirement in the non-XM pool is greater than or equal to the XM shortfall as a percentage of the segregation requirement in the XM pool, all futures customer net equity claims will be paid *pro rata;* and (2) if the XM shortfall as a percentage of the segregation requirement in the XM pool is greater than the non-XM shortfall as a percentage of the segregation requirement of the non-XM pool, non-XM futures customer net equity claims will be paid *pro rata* out of the available non-XM segregated funds, and XM futures customer net equity claims will be paid *pro rata* out of the available XM segregated funds. In this way, non-XM customers will never be adversely affected by an XM shortfall.

The following examples illustrate the operation of this convention. The examples assume that the FCM has two customers, one with exclusively XM accounts and one with exclusively non-XM accounts. However, the examples would apply equally if there were only one customer, with both an XM account and a non-XM account.

1. Sufficient Funds to Meet Non-XM and XM Customer Claims:

	Non-XM	XM	Total
Funds in 4d(a) segregation	150	150	300
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	0	0	
Shortfall (percent)	0	0	
Distribution	150	150	300

There are adequate funds available and both the non-XM and the XM customer claims will be paid in full.

2. Shortfall in Non-XM Only:

	Non-XM	XM	Total
Funds in 4d(a) segregation	100	150	250
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	50	0	
Shortfall (percent)	50/150=33.3	0	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	125	125	
Distribution	125	125	250

Due to the non-XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Each customer will receive his pro rata share of the funds available, or 50% of the $250 available, or $125.

3. Shortfall in XM Only:

	Non-XM	XM	Total
Funds in 4d(a) segregation	150	100	250
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	0	50	
Shortfall (percent)	0	50/150=33.3	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	125	125	
Distribution	150	100	250

Due to the XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Accordingly, the XM funds and non-XM funds are treated as separate pools, and the non-XM customer will be paid in full, receiving $150 while the XM customer will receive the remaining $100.

4. Shortfall in Both, With XM Shortfall Exceeding Non-XM Shortfall:

	Non-XM	XM	Total
Funds in 4d(a) segregation	125	100	225
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	25	50	
Shortfall (percent)	25/150=16.7	50/150=33.3	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	112.50	112.50	
Distribution	125	100	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the XM shortfall exceeds the non-XM shortfall. The non-XM

customer will receive the $125 available with respect to non-XM claims while the XM customer will receive the $100 available with respect to XM claims.

5. Shortfall in Both, With Non-XM Shortfall Exceeding XM Shortfall:

	Non-XM	XM	Total
Funds in 4d(a) segregation	100	125	225
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	50	25	
Shortfall (percent)	50/150=33.3	25/150=16.7	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	112.50	112.50	
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall exceeds the XM shortfall. Each customer will receive 50% of the $225 available, or $112.50.

6. Shortfall in Both, Non-XM Shortfall = XM Shortfall:

	Non-XM	XM	Total
Funds in 4d(a) segregation	100	100	200
4d(a) Segregation requirement	150	150	300
Shortfall (dollars)	50	50	
Shortfall (percent)	50/150=33.3	50/150=33.3	
Pro rata (percent)	150/300=50	150/300=50	
Pro rata (dollars)	100	100	
Distribution	100	100	200

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall equals the XM shortfall. Each customer will receive 50% of the $200 available, or $100.

These examples illustrate the principle that pro rata distribution across both accounts is the preferable approach except when a shortfall in the XM account could harm non-XM customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the XM and non-XM accounts occurs in Examples 3 and 4.

FRAMEWORK 2 —SPECIAL ALLOCATION OF SHORTFALL TO CUSTOMER CLAIMS WHEN CUSTOMER FUNDS FOR FUTURES CONTRACTS AND CLEARED SWAPS CUSTOMER COLLATERAL ARE HELD IN A DEPOSITORY OUTSIDE OF THE UNITED STATES OR IN A FOREIGN CURRENCY

The Commission has established the following allocation convention with respect to customer funds (as §1.3 of this chapter defines such term) for futures contracts and Cleared Swaps Customer Collateral (as §22.1 of this chapter defines such term) segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant ("FCM") or derivatives clearing organization ("DCO") in a depository outside the United States ("U.S.") or in a foreign currency. The maintenance of customer funds for futures contracts or Cleared Swaps Customer Collateral in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules,

regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds for futures contracts or Cleared Swaps Customer Collateral in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each futures customer or Cleared Swaps Customer (as §22.1 of this chapter defines such term). The allocation procedures should be performed separately with respect to each futures customer or Cleared Swaps Customer.

I. REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

A. Determination of losses not attributable to sovereign action

1. Convert the claim of each futures customer or Cleared Swaps Customer in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in §190.01(s) (the "Exchange Rate").

2. Determine the amount of assets available for distribution to futures customers or Cleared Swaps Customers. In making this calculation, include customer funds for futures contracts and Cleared Swaps Customer Collateral that would be available for distribution but for the sovereign action.

3. Convert the amount of customer funds for futures contracts and Cleared Swaps Customer Collateral available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is not attributable to sovereign action, as follows:

$$\textit{Shortfall}\ \text{Percentage} = \left(1 - \left[\frac{\textit{Total}\ \text{Customer Assets}}{\textit{Total}\ \text{Customer Claims}}\right]\right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce the claim of each futures customer or Cleared Swaps Customer by the Shortfall Percentage.

II. REDUCTION IN CLAIMS FOR SOVEREIGN LOSS

A. Determination of Losses Attributable to Sovereign Action ("Sovereign Loss")

1. If any portion of the claim of a futures customer or Cleared Swaps Customer is required to be kept in U.S. dollars in the U.S., that portion of the claim is not exposed to Sovereign Loss.

2. If any portion of the claim of a futures customer or Cleared Swaps Customer is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the claim is exposed to Sovereign Loss.

3. If any portion of the claim of a futures customer or Cleared Swaps Customer is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the claim is exposed to Sovereign Loss.

4. If any portion of the claim of a futures customer or Cleared Swaps Customer is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the claim will be exposed to Sovereign Loss in each such location.

5. If any portion of the claim of a futures customer or Cleared Swaps Customer is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds for futures contracts or Cleared Swaps Customer Collateral deposited in depositories in that location and

b. The amount of customer funds for futures contracts or Cleared Swaps Customer Collateral in that location that is available to be distributed to futures customers or Cleared Swaps Customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the customer funds for futures contracts or Cleared Swaps Customer Collateral held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the customer funds for futures contracts or Cleared Swaps Customer Collateral held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of the claim of a futures customer or Cleared Swaps Customer exposed to Sovereign Loss in a location will be reduced by:

$$\textit{Total}\ \text{Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\textit{All}\ \text{portions of customer claims exposed to loss in that location}}$$

2. Each portion of the claim of a futures customer or Cleared Swaps Customer exposed to Sovereign Loss in a currency will be reduced by:

$$\textit{Total}\ \text{Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\textit{All}\ \text{portions of customer claims exposed to loss in that currency}}$$

3. A portion of the claim of a futures customer or Cleared Swaps Customer exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds for futures contracts or Cleared Swaps Customer Funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of customer funds for futures contracts or Cleared Swaps Customer Funds authorized to be kept in that location or currency (calculated in accord with section II.1 above) ("Total Excess Sovereign Loss") will be divided among all futures customers or Cleared Swaps Customer who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such futures customer or Cleared Swaps Customer claim reduced by the following amount:

$$\textit{Total}\ \text{Excess Sovereign Loss} \times \left[\frac{\left(\begin{array}{c}\text{This customer's total claim} - \text{The portion of this Customer's claim}\\ \text{required to be kept in U.S. dollars, in the U.S.}\end{array}\right)}{\begin{array}{c}\textit{Total}\ \text{customer claims} - \text{Total of all customer claims}\\ \text{required to be kept in U.S. dollars, in the U.S.}\end{array}}\right]$$

The following examples illustrate the operation of this convention.

Example 1. No shortfall in any location.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	£300	U.K.

Location	Actual asset balance
U.S.	$50
U.K.	£300
U.K.	€50
Germany	€50

Note: Conversion Rates: £1 = $1; £1=$1.5.

Convert the claim of each futures customer or Cleared Swaps Customer in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in U.S. dollars
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	£300	1.5	450
Total			$600.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50			$50
U.K.	£300	1.5	450			450
U.K.	€50	1.0	50			50
Germany	€50	1.0	50			50
Total			$600.00		0	$600.00

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of futures customer or Cleared Swaps Customer claims.

Claims:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$50	$0	$50
B	50	0	50
C	50	0	50
D	450	0	450
Total	600.00	0.00	600.00

Example 2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€100	U.K., Germany, or Japan

Location	Actual asset balance
U.S.	$50
U.K.	€100
Germany	€50

Note: Conversion Rates: €1=$1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

There is a shortfall in the funds held in the U.S. such that only1/2 of the funds are available. Convert the claim of each futures customer or Cleared Swaps Customer in each currency to U.S. Dollars:

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	€50	1.0	50
C	€100	1.0	100
Total			250.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$50	1.0	$50.00			$50
U.K.	€100	1.0	100			100
Germany	€50	1.0	50			$50
Total			200.00			200.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−(200/250)) = (1−80%) = 20%.

Reduce each futures customer or Cleared Swaps Customer claim by the Shortfall Percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$20.00	$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250.00	50.00	200.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the futures customer or Cleared Swaps Customer claims will not be further reduced.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$80		$80.00
B	40		40.00
C	80		80.00
Total	200.00	0	200.00

Example 3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	$150	U.S.
B	€100	U.K.
C	€50	Germany
D	$100	U.S.
D	€100	U.K. or Germany

Location	Actual asset balance
U.S.	$250
U.K.	€50
Germany	€100

Note: Conversion Rates: €1=$1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert the claim of each futures customer or Cleared Swaps Customer in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$150	1.0	$150
B	€100	1.0	100
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			500.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€100	1.0	100			100
Total			400.00		0	400.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−400/500) = (1−80%) = 20%.

Reduce each futures customer or Cleared Swaps Customer by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$150	$30.00	120.00
B	100	20.00	80.00
C	50	10.00	40.00
D	200	40.00	160.00
Total	500.00	100.00	400.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$120.00		$120
B	80.00		80
C	40.00		40
D	160.00	0	160
Total	400.00	0	400

Example 4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	$50	U.S.
B	€50	U.K.
C	€50	Germany
D	$100.	U.S.
D	€100	U.K. or Germany

Location	Actual asset balance
U.S.	$150
U.K.	100
Germany	100

Notice: Conversion Rates: €1 = $1; ¥1= $0.01, £1= $1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each futures customer or Cleared Swaps Customer claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	€50	1.0	50
D	$100	1.0	100
D	€100	1.0	100
Total			350.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$150	1.0	$150			$150
U.K.	€100	1.0	100			100
Germany	€100	1.0	100	50%	50	50
Total			350.00		50.00	300.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−350/350) = (1−100%) = 0%.

Reduce each futures customer or Cleared Swaps Customer claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	0	$50.00
B	50	0	50.00
C	50	0	50.00
D	200	0	200.00
Total	350.00	0.00	350.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, only1/2of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B		$50	
C			$50
D	100		100
Total	150.00	50.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $50	$16.67
D	$100/$150	66.7% of $50	33.33
Total			50.00

CLAIMS AFTER REDUCTIONS:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$50		$50
B	50		50
C	50	$16.67	33.33
D	200	33.33	166.67
Total	350.00	50.00	300.00

Example 5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	€50	U.K.
C	€150	Germany
D	$100	U.S.
D	£300	U.K.
D	€150	U.K. or Germany

Location	Actual asset balance
U.S.	$100
U.K.	£300
U.K.	€200
Germany	€150

Conversion Rates: €1=$1; £1=$1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each futures customer or Cleared Swaps Customer claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	€50	1.0	50
C	€150	1.0	150
D	$100	1.0	100
D	£300	1.5	450
D	€150	1.0	150
Total			1000.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$100	1.0	$100			$100
U.K.	£300	1.5	450			450
U.K.	€200	1.0	200			200
Germany	€150	1.0	150	100%	$150	0
Total			900.00		150.00	750.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1 − 900 / 1000) = (1 − 90%) = 10%.

Reduce each futures customer or Cleared Swaps Customer claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$10.00	$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	63.00
Total	1000.00	100.00	900.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$100		
B		$50	
C			$150
D	100	450	150
Total	200.00	500.00	300.00

Calculation of the allocation of the shortfall due to sovereign action Germany ($150 shortfall to be allocated):

Customer	Allocation share	Allocation Share of actual shortfall	Actual shortfall allocated
C	$150/$300	50% of $150	$75
D	150/$300	50% of $150	75
Total			150.00

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$90		$90
B	45		45
C	135	$75	60
D	630	75	555
Total	900.00	150.00	750.00

Example 6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	€50	U.K.
C	$20	U.S.
C	€50	Germany
D	$100.	U.S.
D	£300	U.K.
D	€100	U.K., Germany, or Japan
E	$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S.	$200
U.K.	£200
U.K.	€100
Germany	€50
Japan	¥10,000

Conversion Rates: £1 = $1; ¥1=$0.01, £1=$1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each futures customer or Cleared Swaps Customer claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	€50	1.0	50
C	$20	1.0	20
C	€50	1.0	50
D	$100.	1.0	100
D	€300	1.5	450
D	£100	1.0	100
E	$80	1.0	80
E	¥10,000	0.01	100
Total			1000.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$200	1.0	$200			$200
U.K.	£200	1.5	300			300
U.K.	€100	1.0	100			100
Germany	€50	1.0	50	100%	$50	0
Japan	¥10,000	0.01	100	50%	50	50
Total			750		100.00	650.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–750/1000) = (1–75%) = 25%.

Reduce each futures customer or Cleared Swaps Customer claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$12.50	$37.50
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000.00	250.00	750.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany and only1/2of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	$50			
B		$50		
C	20		$50	
D	100	450	50	$50
E	80			100
Total	250.00	500.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($50 shortfall to be allocated):

Customer allocation	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$100	50% of $50	$25
D	50/100	50% of 50	25
Total			50

Japan ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$50/$150	33.3% of $50	$16.67
E	100/150	66.6% of 50	33.33
Total			50.00

CLAIMS AFTER REDUCTIONS

Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
A	$37.50			37.50
B	37.50			37.50
C	52.50	$25		27.50
D	487.50	25	16.67	445.83
E	135.00		33.33	101.67
Total	750.00	50.00	50.00	650.00

Example 7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.S.
B	€50	U.K.
C	€50	Germany.
D	100.	U.S.
D	€100	U.K. or Germany.
E	50	U.S.
E	€50	U.K.

Location	Actual asset balance
U.S.	$250
U.K.	€50
Germany	€200

Conversion Rates: 1 = $1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each futures customer or Cleared Swaps Customer claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
B	€50	1.0	50
C	€50	1.0	50
D	€100.	1.0	100
D	€100	1.0	100
E	50	1.0	50
E	€50	1.0	50
Total			500.00

Determine assets available for distribution to futures customers or Cleared Swaps Customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	€50	1.0	50			50
Germany	€200	1.0	200	100%	200	0
Total			500.00		200	300.00

Determine the percentage of shortfall that is not attributable to sovereign

Shortfall Percentage = (1–500/500) = (1–100%) = 0%.

Reduce each futures customer or Cleared Swaps Customer claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500.00	0.00	500.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B	50	50	
C			50
D	100		100
E	50	50	
Total	250.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany ($200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $200	$66.67
D	$100/$150	66.7% of $200	$133.33
Total			$200.000

This would result in the claims of customers C and D being reduced below zero.

Accordingly, the claims of customer C and D will only be reduced to zero, or $50 for C and $100 for D. This results in a Total Excess Shortfall of $50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total excess shortfall
$200	$50	$100	$50

This shortfall will be divided among the remaining futures customers or Cleared Swaps Customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be in the U.S.	Allocation share (column B-C/column B Total—all customer claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	$100	$50	$50/$200	25% of $50	$12.50
C	50	0	(1)		0
D	200	100	$100/200	50% of $50	25
E	100	50	50/100	25% of $50	12.50
Total	450.00				50.00

[1]Claim already reduced to $0.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action Germany	Allocation of total excess shortfall	Claim after all reductions
A	$50			$50.00
B	100		12.50	87.50
C	50	50		0
D	200	100	25	75.00
E	100		12.50	87.50
Total	500.00	150.00	50.00	300.00

[77 FR 6386, Feb. 7, 2012]

PARTS 191–199 [RESERVED]