

## Commodity Futures Trading Commission

## § 1.26

account by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as “customer property.”

(13) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or derivatives clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or derivatives clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant may deposit unencumbered securities of the type specified in this section, which it owns for its own account, into a customer account. A futures commission merchant must include such securities, transfers of securities, and disposition of proceeds from the sale or maturity of such securities in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant in accordance with the provisions of § 1.20 part. For purposes of this section and §§ 1.27, 1.28, 1.29, and 1.32, securities of the type specified by this section that are owned by the futures commission merchant and deposited into a customer account shall be considered customer funds until such investments are withdrawn from segregation in accordance with the provisions of § 1.23. Investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into a futures customer account pursuant to § 1.26 shall be considered futures customer funds until such investments are withdrawn from segregation in accordance with § 1.23. Investments permitted

by § 1.25 that are owned by the futures commission merchant and deposited into a Cleared Swaps Customer Account, as defined in § 22.1 of this chapter, shall be considered Cleared Swaps Customer Collateral, as defined in § 22.1 of this chapter, until such investments are withdrawn from segregation in accordance with § 22.17 of this chapter.

### APPENDIX TO § 1.25—MONEY MARKET MUTUAL FUND PROSPECTUS PROVISIONS ACCEPTABLE FOR COMPLIANCE WITH SECTION 1.25(c)(5)

Upon receipt of a proper redemption request submitted in a timely manner and otherwise in accordance with the redemption procedures set forth in this prospectus, the [Name of Fund] will redeem the requested shares and make a payment to you in satisfaction thereof no later than the business day following the redemption request. The [Name of Fund] may postpone and/or suspend redemption and payment beyond one business day only as follows:

- a. For any period during which there is a non-routine closure of the Fedwire or applicable Federal Reserve Banks;
- b. For any period (1) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (2) during which trading on the New York Stock Exchange is restricted;
- c. For any period during which an emergency exists as a result of which (1) disposal of securities owned by the [Name of Fund] is not reasonably practicable or (2) it is not reasonably practicable for the [Name of Fund] to fairly determine the net asset value of shares of the [Name of Fund];
- d. For any period during which the Securities and Exchange Commission has, by rule or regulation, deemed that (1) trading shall be restricted or (2) an emergency exists;
- e. For any period that the Securities and Exchange Commission, may by order permit for your protection; or
- f. For any period during which the [Name of Fund] as part of a necessary liquidation of the fund, has properly postponed and/or suspended redemption of shares and payment in accordance with federal securities laws.

[76 FR 78798, Dec. 19, 2011, as amended at 77 FR 66322, Nov. 2, 2012; 78 FR 68633, Nov. 14, 2013]

### § 1.26 Deposit of instruments purchased with futures customer funds.

(a) Each futures commission merchant who invests futures customer funds in instruments described in § 1.25,

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except for investments in money market mutual funds, shall separately account for such instruments as futures customer funds and segregate such instruments as funds belonging to such futures customers in accordance with the requirements of § 1.20. Each derivatives clearing organization which invests money belonging or accruing to futures customers of its clearing members in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments as customer funds and segregate such instruments as customer funds belonging to such futures customers in accordance with § 1.20.

(b) Each futures commission merchant or derivatives clearing organization which invests futures customer funds in money market mutual funds, as permitted by § 1.25, shall separately account for such funds and segregate such funds as belonging to such futures customers. Such funds shall be deposited under an account name that clearly shows that they belong to futures customers and are segregated as required by sections 4d(a) and 4d(b) of the Act and by this part. Each futures commission merchant or derivatives clearing organization, upon opening such an account, shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment and shall file such acknowledgment in accordance with the requirements of § 1.20. In the event such funds are held directly with the money market mutual fund or its affiliate, the written acknowledgment shall be in the form as set out in Appendix A or B to this section. In the event such funds are held with a depository, the written acknowledgment shall be in the form as set out in Appendix A or B to § 1.20. In either case, the written acknowledgment shall be obtained, provided to the Commission and designated self-regulatory organizations, and retained as required under § 1.20.

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### APPENDIX A TO § 1.26—FUTURES COMMISSION MERCHANT ACKNOWLEDGMENT LETTER FOR CFTC REGULATION 1.26 CUSTOMER SEGREGATED MONEY MARKET MUTUAL FUND ACCOUNT

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant] (“we” or “our”) on behalf of our customers in shares of [Name of Money Market Mutual Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant] [if applicable, add “FCM Customer Omnibus Account”] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, “, Abbreviated as [short title reflected in the depository’s electronic system]”]

Account Number(s): [ ]  
(collectively, the “Account(s)”).

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the “Shares”), for the benefit of customers who trade commodities, options, swaps and other products (“Commodity Customers”), as required by Commodity Futures Trading Commission (“CFTC”) Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and part 1 of the CFTC’s regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions,

or such directors' designees, or an appropriate officer, agent or employee of our designated self-regulatory organization ("DSRO"), [Name of DSRO], and this letter constitutes the authorization and direction of the undersigned on our behalf to permit any such examination to take place without further notice to or consent from us.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

You further acknowledge and agree that, pursuant to the authorization granted by us to you previously or herein, you have provided, or will provide following the opening of the Account(s), the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor division, or such director's designees, with technological connectivity, which may include provision of hardware, software, and related technology and protocol support, to facilitate direct, read-only electronic access to transaction and account balance information for the Account(s). This letter constitutes the authorization and direction of the undersigned on our behalf for you to establish this connectivity and access if not previously established, without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information and access requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information or access request, in order to provide for the secure transmission and delivery of the requested information or access to the appropriate recipient(s).

We will not hold you responsible for acting pursuant to any information or access request from the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or an appropriate officer, agent, or employee of [Name of DSRO], acting in its capacity as our DSRO, upon which you have relied after having taken measures in accordance with

your applicable policies and procedures to assure that such request was provided to you by an individual authorized to make such a request.

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

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

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

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

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets

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forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

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

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

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and that you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) and to [Name of DSRO], acting in its capacity as our DSRO, in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Futures Commission Merchant]

By:  
Print Name:  
Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:  
Print Name:  
Title:

Contact Information: [Insert phone number and email address]

Date:

**APPENDIX B TO § 1.26—DERIVATIVES CLEARING ORGANIZATION ACKNOWLEDGMENT LETTER FOR CFTC REGULATION 1.26 CUSTOMER SEGREGATED MONEY MARKET MUTUAL FUND ACCOUNT**

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Derivatives Clearing Organization] ("we" or "our") on behalf of customers in shares of [Name of Money Market Mutual Fund] ("you" or "your") under account(s) entitled (or shares issued to):

[Name of Derivatives Clearing Organization] Futures Customer Omnibus Account, CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account under Sections 4d(a) and 4d(b) of the Commodity Exchange Act [and, if applicable, "Abbreviated as [short title reflected in the depository's electronic system]"]

Account Number(s): [ ]  
(collectively, the "Account(s)").

You acknowledge that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the "Shares"), for the benefit of customers who trade commodities, options, swaps and other products, as required by Commodity Futures Trading Commission ("CFTC") Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Account(s), will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the "Act"), and part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of Section 4d of the Act and CFTC regulations thereunder.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, and they may not be used by us to secure or obtain credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

You agree to reply promptly and directly to any request for confirmation of account balances or provision of any other account information regarding or related to the Account(s) from the director of the Division of

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Clearing and Risk of the CFTC or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, and this letter constitutes the authorization and direction of the undersigned on our behalf to release the requested information without further notice to or consent from us.

The parties agree that all actions on your part to respond to the above information requests will be made in accordance with, and subject to, such usual and customary authorization verification and authentication policies and procedures as may be employed by you to verify the authority of, and authenticate the identity of, the individual making any such information request, in order to provide for the secure transmission and delivery of the requested information to the appropriate recipient(s).

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

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

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

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without

any further inquiry, provided that, in the ordinary course of your business as a depository, you have no notice of or actual knowledge of a potential violation by us of any provision of the Act or the CFTC regulations that relates to the segregation of customer funds; and you shall not in any manner not expressly agreed to herein be responsible to us for ensuring compliance by us with such provisions of the Act and CFTC regulations; however, the aforementioned presumption does not affect any obligation you may otherwise have under the Act or CFTC regulations.

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

We are permitted to invest customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

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

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

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning to us the enclosed copy of this letter agreement, and you further agree to provide a copy of this fully executed letter agreement directly to the CFTC (via electronic means in a format and manner determined by the CFTC) in accordance with CFTC Regulation 1.20. We hereby authorize and direct you to provide such copies without further notice to or consent from us, no later than three business days after opening the Account(s) or revising this letter agreement, as applicable.

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

[78 FR 68634, Nov. 14, 2013]

### § 1.27 Record of investments.

(a) Each futures commission merchant which invests customer funds, and each derivatives clearing organization which invests customer funds of its clearing members' customers, shall keep a record showing the following:

(1) The date on which such investments were made;

(2) The name of the person through whom such investments were made;

(3) The amount of money or current market value of securities so invested;

(4) A description of the instruments in which such investments were made, including the CUSIP or ISIN numbers;

(5) The identity of the depositories or other places where such instruments are segregated;

(6) The date on which such investments were liquidated or otherwise disposed of and the amount of money or current market value of securities received on such disposition, if any; and

(7) The name of the person to or through whom such investments were disposed of; and

(8) Daily valuation for each instrument and readily available documentation supporting the daily valuation for

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each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.

(b) Each derivatives clearing organization which receives documents from its clearing members representing investment of customer funds shall keep a record showing separately for each clearing member the following:

(1) The date on which such documents were received from the clearing member;

(2) A description of such documents, including the CUSIP or ISIN numbers; and

(3) The date on which such documents were returned to the clearing member or the details of disposition by other means.

(c) Such records shall be retained in accordance with § 1.31. No such investments shall be made except in instruments described in § 1.25.

(Approved by the Office of Management and Budget under control numbers 3038-0007 and 3038-0024)

[46 FR 54520, Nov. 3, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 62 FR 42401, Aug. 7, 1997; 65 FR 78013, Dec. 13, 2000; 70 FR 28204, May 17, 2005; 77 FR 66322, Nov. 2, 2012]

### § 1.28 Appraisal of instruments purchased with customer funds.

Futures commission merchants who invest customer funds in instruments described in § 1.25 of this part shall include such instruments in segregated account records and reports at values which at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

[58 FR 10953, Feb. 23, 1993, as amended at 65 FR 78013, Dec. 13, 2000]

### § 1.29 Gains and losses resulting from investment of customer funds.

(a) The investment of customer funds in instruments described in § 1.25 shall not prevent the futures commission merchant or derivatives clearing organization so investing such funds from receiving and retaining as its own any incremental income or interest income resulting therefrom.