

## Commodity Futures Trading Commission

## § 1.22

us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

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

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

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

[Name of Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank or Trust Company]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

[78 FR 68627, Nov. 14, 2013, as amended at 79 FR 26832, May 12, 2014; 81 FR 53267, Aug. 12, 2016]

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

All money received directly or indirectly by, and all money and equities accruing to, a futures commission merchant from any derivatives clearing organization or from any clearing mem-

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

[77 FR 66321, Nov. 2, 2012]

### § 1.22 Use of futures customer funds restricted.

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

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

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

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

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

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

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

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

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

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

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

(5) *Residual Interest Deadline defined.*

(i) Except as provided in paragraph (c)(5)(ii) of this section, the Residual Interest Deadline shall be the time of the settlement referenced in paragraph

(c)(2)(i) or, as appropriate, (c)(4), of this section.

(ii) Starting on November 14, 2014 and during the phase-in period described in paragraph (c)(5)(iii) of this section, the Residual Interest Deadline shall be 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4), of this section.

(iii)(A) No later than May 16, 2016, the staff of the Commission shall complete and publish for public comment a report addressing, to the extent information is practically available, the practicability (for both futures commission merchants and customers) of moving that deadline from 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4), of this section to the time of that settlement (or to some other time of day), including whether and on what schedule it would be feasible to do so, and the costs and benefits of such potential requirements. Staff shall, using the Commission's Web site, solicit public comment and shall conduct a public roundtable regarding specific issues to be covered by such report.

(B) Nine months after publication of the report required by paragraph (c)(5)(iii)(A) of this section, the Commission may (but shall not be required to) do either of the following:

(1) Terminate the phase-in period through rulemaking, in which case the phase-in period shall end as of a date established by a final rule published in the FEDERAL REGISTER, which date shall be no less than one year after the date such rule is published; or

(2) Determine that it is necessary or appropriate in the public interest to propose through rulemaking a different Residual Interest Deadline. In that event, the Commission shall establish, if necessary, a phase-in schedule in the final rule published in the FEDERAL REGISTER.

(C) If the phase-in schedule has not been terminated or revised pursuant to paragraph (c)(5)(iii)(B) of this section, then the Residual Interest Deadline shall remain 6:00 p.m. Eastern Time on the date of the settlement referenced in paragraph (c)(2)(i) or, as appropriate, (c)(4) of this section until such time

## Commodity Futures Trading Commission

## § 1.23

that the Commission takes further action through rulemaking.

[78 FR 68631, Nov. 14, 2013, as amended at 80 FR 15509, Mar. 24, 2015]

### **§ 1.23 Interest of futures commission merchant in segregated futures customer funds; additions and withdrawals.**

(a)(1) The provision in sections 4d(a)(2) and 4d(b) of the Act and the provision in §1.20 that prohibit the commingling of futures customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the futures customer funds segregated as required by the Act and the regulations in this part and set apart for the benefit of futures customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated futures customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in §1.25 of this part, as it may deem necessary to ensure any and all futures customers' accounts from becoming undersegregated at any time.

(2) If a futures commission merchant discovers at any time that it is holding insufficient funds in segregated accounts to meet its obligations under §§1.20 and 1.22, the futures commission merchant shall immediately deposit sufficient funds into segregation to bring the account into compliance.

(b) A futures commission merchant may not withdraw funds, except withdrawals that are made to or for the benefit of futures customers, from an account or accounts holding futures customer funds unless the futures commission merchant has prepared the daily segregation calculation required by §1.32 as of the close of business on the previous business day. A futures commission merchant that has completed its daily segregation calculation may make withdrawals, in addition to withdrawals that are made to or for the benefit of futures customers, to the extent of its actual residual financial interest in funds held in segregated futures accounts, adjusted to reflect market activity and other events that may

have decreased the amount of the firm's residual financial interest since the close of business on the previous business day, including the withdrawal of securities held in segregated safe-keeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s), *however*, shall not result in the funds of one futures customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other futures customer or other person.

(c) Notwithstanding paragraphs (a) and (b) of this section, each futures commission merchant shall establish a targeted residual interest (*i.e.*, excess funds) that is in an amount that, when maintained as its residual interest in the segregated funds accounts, reasonably ensures that the futures commission merchant shall remain in compliance with the segregated funds requirements at all times. Each futures commission merchant shall establish policies and procedures designed to reasonably ensure that the futures commission merchant maintains the targeted residual amounts in segregated funds at all times. The futures commission merchant shall maintain sufficient capital and liquidity, and take such other appropriate steps as are necessary, to reasonably ensure that such amount of targeted residual interest is maintained as the futures commission merchant's residual interest in the segregated funds accounts at all times. In determining the amount of the targeted residual interest, the futures commission merchant shall analyze all relevant factors affecting the amounts in segregated funds from time to time, including without limitation various factors, as applicable, relating to the nature of the futures commission merchant's business including, but not limited to, the composition of the futures commission merchant's customer base, the general creditworthiness of the customer base, the general trading activity of the customers, the types of markets and products traded by the customers, the proprietary trading of the futures commission merchant, the general volatility and liquidity of the