

§ 30.7 Treatment of foreign futures or foreign options secured amount.

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(c)(1) The separate account or accounts referred to in paragraph (a) of this section must be maintained under an account name that clearly identifies them as such, with any of the following depositories:

(i) A bank or trust company located in the United States;

(ii) A bank or trust company located outside the United States:

(A) That has in excess of \$1 billion of regulatory capital; or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; or

(C) As designated;

(iii) A futures commission merchant registered as such with the Commission;

(iv) A derivatives clearing organization;

(v) A member of any foreign board of trade; or

(vi) Such member or clearing organization's designated depositories.

(2) Each futures commission merchant must obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such depository that it was informed that

such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

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PART 190—BANKRUPTCY

6. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

7. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

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Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds 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 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 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 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 customer.

I. Reduction in Claims for General Shortfall

A. Determination of losses not attributable to sovereign action

1. Convert each customer's claim 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 customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets 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:

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

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim 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 a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim 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 customer's claim is not exposed to Sovereign Loss.

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

3. If any portion of a customer's claim 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

customer's claim is not exposed to Sovereign Loss.

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

4. If any portion of a customer's claim 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 customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's 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 customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim 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

customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's 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 customer's 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 deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to 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 funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.