Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rule on Protection of Collateral of Counterparties to Uncleared Swaps

The Commodity Futures Trading Commission (Commission) is proposing rules establishing regulations concerning protection of collateral of counterparties to uncleared swaps, and other matters.

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)

Section 724(c) of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new section 4s(1), which requires that swap dealers (SDs) and major swap participants (MSPs) notify their counterparties that such counterparties have a right to require that any initial margin which they post to guarantee uncleared swaps be segregated at an independent custodian.

Requirements for a Segregated Account

If a counterparty elects segregation for its initial margin, the account must be held at a custodian that is independent of both the counterparty and the SD or MSP. There must be a written custody agreement between the counterparty posting the initial margin, the SD or MSP, and the custodian, which meets certain minimum standards of clarity.

Investment of Segregated Margin

The proposed regulations provide that segregated margin may only be invested pursuant to the Commission's Rule 1.25, which governs investment of customer property of futures customers. The proposed regulations do not, however, limit the types of margin collateral that a customer may post. Nor do they limit any commercial arrangements between the parties concerning allocation of gains and losses resulting from such investments.

Other Matters

Section 713(c) of the Dodd-Frank Act added Section 20(c) of the CEA, which specifies that the Commission "shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of" the commodity broker provisions of the Bankruptcy Code. The Commission proposes amendments to its Part 190 Regulations (concerning commodity broker bankruptcies) that clarify those points.

Public Law 111-16, the Statutory Time-Periods Technical Amendments Act of 2009, changed (among other things) the time period in the commodity broker provisions of the Bankruptcy Code during which the Commission could approve a transfer of customer funds in a commodity broker bankruptcy from five business days to seven calendar days. The Commission is proposing amendments to its Part 190 Regulations to conform to that statutory change.