Commodity Futures Trading Commission
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Final Rule on Segregation for Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy

The Commodity Futures Trading Commission (Commission) is finalizing rules concerning the segregation of margin in uncleared swaps transactions and the treatment of securities in a portfolio margining account in a commodity broker bankruptcy.

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.

Section 713(c) of the Dodd-Frank Act added section 20(c) to the CEA, and specifies that the Commission "shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account is customer property and the owners of those accounts are customers for the purposes of" the commodity broker provisions of the Bankruptcy Code.

Requirements for a Segregated Account

If a counterparty elects segregation pursuant to the regulation 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 regulations provide that margin that is segregated pursuant to an election under regulation 23.701 that is invested may only be invested pursuant to regulation 1.25, which governs investment of customer property of futures customers. These 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

The Commission amendments to its Part 190 Regulations (concerning commodity broker bankruptcies) implement section 713(c) of the Dodd-Frank Act and clarify that securities held in a portfolio margining account carried as a futures account or a cleared swaps customer account is customer property and the owners of those accounts are customers for the purposes of the commodity broker provisions of the Bankruptcy Code.