



# Commodity Futures Trading Commission

## Office of Public Affairs

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## Proposed Rule on the Protection of Cleared Swaps Customer Contracts and Collateral and Conforming Amendments to the Commodity Broker Bankruptcy Provisions

The Commodity Futures Trading Commission (CFTC or Commission) is proposing rules concerning the protection of the cleared swaps and associated collateral belonging to customers of futures commission merchants (FCM), and other matters.

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

Section 724(a) of the Dodd-Frank Act amends the Commodity Exchange Act (CEA) by inserting a new section 4d(f), which requires, among other things, the segregation of cleared swaps pertaining to customers, as well as associated collateral. The proposal would establish rules concerning protection for the cleared swaps and associated collateral of FCM customers.

### **Complete Legal Segregation Model**

On November 19, 2010, the Commission issued an advanced notice of proposed rulemaking, which sought public comment on four models of protection for the cleared swaps and associated collateral of FCM customers (the ANPR). After considering comments that it received, the Commission is proposing the Complete Legal Segregation Model (referred to in the ANPR as the “Legal Segregation with Commingling” model). The Complete Legal Segregation Model would allow an FCM to keep the cleared swaps collateral of all cleared swaps customers together pre-bankruptcy. In the event of a default of both an FCM member and one or more of its cleared swaps customers, a DCO would have recourse against the collateral of defaulting customers, but not against the collateral of non-defaulting customers.

Because the Commission is still evaluating the costs and benefits of the Complete Legal Segregation Model, the Commission is also considering the Legal Segregation with Recourse Model (referred to in the ANPR as the “Moving Customers to the Back of the Waterfall” model). In addition, the Commission is seeking additional comment on the Futures Model (referred to in the ANPR as the “Baseline Model”) and an Optional Approach (namely, permitting clearing organizations to choose between models).

### **Segregated Account Pre-Bankruptcy**

As mentioned above, the Complete Legal Segregation Model permits the cleared swaps collateral of all FCM customers to be kept together pre-bankruptcy in one account. The proposed rules, to the extent applicable, parallel (in updated language) the regulations governing the account in which FCMs currently hold futures customer collateral pre-bankruptcy.

### **Costs and Benefits**

The proposed rule contains an analysis of the costs and benefits of each model described in the ANPR. This analysis incorporates estimates and observations regarding costs and benefits found in the comments that the

Commission received to the ANPR. Because the Commission is still considering these costs and benefits, the proposal requests additional information on the costs and benefits of the Complete Legal Segregation Model, the Legal Segregation with Recourse Model, the Futures Model, and the Optional Approach.

### **Investment of Customer Collateral**

The proposed rules provide that cleared swaps customer collateral may only be invested pursuant to Commission Regulation 1.25 (as it may be amended from time to time), which governs the investment of customer property of futures customers. The proposed regulations do not, however, limit the types of collateral that a customer may post.

### **Other Matters**

The Commission is proposing amendments to Commission Regulation Part 190 to implement changes wrought by the Dodd-Frank Act, including the inclusion of swaps cleared with a DCO as customer contracts for all commodity brokers, the inclusion of swaps execution facilities as a category of trading venue, and additional conforming changes to time periods. In addition, the Commission is proposing amendments to Commission Regulation Part 190 to conform certain provisions to current swaps market practices.