



# Designated Contract Markets and Retail Market Participants

# Retail Market Participants: Defined

- **CEA Section 2(c)(2)(D) Retail Commodity Transactions:**(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is— (I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and (II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.
- **§1.3 Retail Forex Customer:** This term means a person, other than an eligible contract participant as defined in section 1a(18) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

# Retail Market Participants: Defined

- **RMPs are non-eligible contract participants.**
- **Eligible Contract Participant:** An entity, such as a financial institution, insurance company, or commodity pool, that is classified by the Commodity Exchange Act as an eligible contract participant based upon its regulated status or amount of assets. This classification permits these persons to engage in transactions not generally available to non-eligible contract participants.
- The specific guidelines for ECPs are spelled out in Section 1a(18) of the Commodity Exchange Act and Commission Regulation 1.3.

# Regulation of Intermediaries

- RMPs generally use intermediaries like introducing brokers to access markets and futures commission merchants to access derivatives clearing organizations.
- These intermediaries are governed by CFTC regulations that are overseen by the Market Participants Division.

# Retail Market Participant Trading

- RMPs cannot trade on swap execution facilities and, in the U.S., trade on designated contract markets.
- Designated contract markets must comply with a number of core principles and CFTC regulations that assist retail market trading and protect retail market participants.

# Assistance to RMP Trading: Open Access

**Core Principle 2:** (a) *In general.* The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including: (1) Access requirements ...

## **§38.151 Access requirements:**

(a) *Jurisdiction.* Prior to granting any member or market participant access to its markets, a designated contract market must require that the member or market participant consent to its jurisdiction.

(b) *Impartial access by members, persons with trading privileges and independent software vendors.* A designated contract market must provide its members, persons with trading privileges, and independent software vendors with impartial access to its markets and services, including:

(1) Access criteria that are impartial, transparent, and applied in a non-discriminatory manner; and

(2) Comparable fee structures for members, persons with trading privileges and independent software vendors receiving equal access to, or services from, the designated contract market.

(c) *Limitations on access.* A designated contract market must establish and impartially enforce rules governing denials, suspensions, and revocations of a member's and a person with trading privileges' access privileges to the designated contract market, including when such actions are part of a disciplinary or emergency action by the designated contract market.

# Assistance to RMP Trading: Pricing Information

**Core Principle 8:** The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

## **§16.01 Publication of market data on futures, swaps and options thereon: trading volume, open contracts, prices, and critical dates:**

(e) *Publication of recorded information.* (1) Reporting markets must make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. The information in paragraphs (a)(2)(iv) through (vi) of this section shall be made readily available in a format that presents the information together.

(2) Reporting markets must make the information in paragraphs (b)(2) and (3) of this section readily available to the news media and the general public, and the information in paragraph (b)(4)(ii) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. Information in paragraph (b)(4)(i) of this section must be made available in the registered entity's rulebook, which is publicly accessible on its Web site.

# Assistance to RMP Trading: Competitive Markets

**Core Principle 9:** The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade. The rules of the board of trade may authorize, for bona fide business purposes:

- (a) Transfer trades or office trades;
- (b) An exchange of:
  - (1) Futures in connection with a cash commodity transaction;
  - (2) Futures for cash commodities; or
  - (3) Futures for swaps; or
- (c) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

# Protections of RMPs: Prohibiting Abusive Trading

**Core Principle 2:** (a) *In general.* The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including: ... (3) Rules prohibiting abusive trade practices on the contract market.

**§38.152 Abusive trading practices prohibited:** Designated contract markets that permit intermediation must prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that must be prohibited by all designated contract markets include front-running, wash trading, pre-arranged trading (except for certain transactions specifically permitted under part 38 of this chapter), fraudulent trading, money passes, and any other trading practices that a designated contract market deems to be abusive. In addition, a designated contract market also must prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation.

# Protections of RMPs: Prohibiting Abusive Trading

**Core Principle 12:** The board of trade shall establish and enforce rules:

- (a) To protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and
- (b) To promote fair and equitable trading on the contract market.

**§38.651 Protection of markets and market participants:** A designated contract market must have and enforce rules that are designed to promote fair and equitable trading and to protect the market and market participants from abusive practices including fraudulent, noncompetitive or unfair actions, committed by any party. The designated contract market must have methods and resources appropriate to the nature of the trading system and the structure of the market to detect trade practice and market abuses and to discipline such behavior, in accordance with Core Principles 2 and 4, and the associated regulations in subparts C and E of this part, respectively. The designated contract market also must provide a competitive, open and efficient market and mechanism for executing transactions in accordance with Core Principle 9 and the associated regulations under subpart J of this part.

# Protections of RMPs: Financial Integrity of Intermediaries & Protection of Customer Funds

**Core Principle 11:** The board of trade shall establish and enforce:

(a) Rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

(b) Rules to ensure:

(1) The financial integrity of any:

(i) Futures commission merchant, and

(ii) Introducing broker; and

(2) The protection of customer funds.

# Protections of RMPs: Financial Integrity of Intermediaries & Protection of Customer Funds

**§38.603 Protection of customer funds:** A designated contract market must have rules concerning the protection of customer funds. These rules shall address appropriate minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping. A designated contract market must review the default rules and procedures of the derivatives clearing organization that clears for such designated contract market to wind down operations, transfer customers, or otherwise protect customers in the event of a default of a clearing member or the derivatives clearing organization.

**§38.604 Financial surveillance:** A designated contract market must monitor members' compliance with the designated contract market's minimum financial standards and, therefore, must routinely receive and promptly review financial and related information from its members, as well as continuously monitor the positions of members and their customers. A designated contract market must have rules that prescribe minimum capital requirements for member futures commission merchants and introducing brokers. A designated contract market must:

(a) Continually survey the obligations of each futures commission merchant created by the positions of its customers; (b) As appropriate, compare those obligations to the financial resources of the futures commission merchant; and (c) Take appropriate steps to use this information to protect customer funds.

# Protections of RMPs: Financial Integrity of Intermediaries & Protection of Customer Funds

**§38.605 Requirements for financial surveillance program:** A designated contract market's financial surveillance program for futures commission merchants, retail foreign exchange dealers, and introducing brokers must comply with the requirements of §1.52 of this chapter to assess the compliance of such entities with applicable contract market rules and Commission regulations.

**§38.607 Direct access:** A designated contract market that permits direct electronic access by customers (*i.e.*, allowing customers of futures commission merchants to enter orders directly into a designated contract market's trade matching system for execution) must have in place effective systems and controls reasonably designed to facilitate the FCM's management of financial risk, such as automated pre-trade controls that enable member futures commission merchants to implement appropriate financial risk limits. A designated contract market must implement and enforce rules requiring the member futures commission merchants to use the provided systems and controls.