



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 12-28
Interpretation
October 17, 2012
Division of Clearing and Risk

Seth Grosshandler, Esq.
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006

Dear Mr. Grosshandler:

This letter responds to your request for an interpretation regarding the rights of cleared swaps customers to grant security interests in, rights of setoff against, or other rights in cleared swaps collateral under Part 22 of the Commission's rules. In this regard, by letter dated July 31, 2012, you asked for

clarification as to the effect of the 'legal segregation with operational comingling', or 'LSOC', regime on the ability of a Cleared Swaps Customer to grant security interests in, rights of setoff against, or other rights in its right, title and interest – whatever that right, title and interest may be – in (i) money, securities and other property margining its Cleared Swaps, including, without limitation, Cleared Swaps Customer Collateral, (ii) its Cleared Swaps and its receivables thereunder, and (iii) any account in or to which the foregoing assets are carried, deposited or credited (collectively the 'Cleared Swaps Assets').

In other words, you asked us to confirm that while Rule 22.2(d) prohibits an FCM from permitting a lien on Cleared Swaps Customer Collateral that it holds, Rule 22.2(d) does not prohibit a Cleared Swaps Customer from granting a lien on his or her own account at the FCM, nor does the rule prohibit the FCM from taking action to foster the Cleared Swaps Customer's grant of such a lien.

Background

The Commission's LSOC rules became effective on April 9, 2012.¹ Paragraph 22.2(d) of Part 22 of the Commission's rules sets forth limitations on a futures commission merchant ("FCM")'s use of Cleared Swaps Customer Collateral. In particular, 22.2(d)(2) provides that an

¹ 77 FR 6336 (Feb. 7, 2012)

FCM “may not impose or permit the imposition of a lien on Cleared Swaps Customer Collateral, including any residual financial interest of the [FCM] in such collateral...” The preamble to the release of the final rule explains that “an FCM may not, under any circumstances, grant a lien to any person (other than to a [derivatives clearing organization (“DCO”)]) on its Cleared Swaps Customer Account, or on the FCM’s residual interest in its Cleared Swaps Customer Account.”² In contrast, the preamble provides that “a Cleared Swaps Customer may grant a lien on the Cleared Swaps Customer’s individual cleared swaps account ... that is held and maintained at the Cleared Swaps Customer’s FCM.”³ The preamble further clarifies “that by permitting a Cleared Swaps Customer to grant a lien on that Cleared Swaps Customer’s FCM customer account, an FCM is not permitting the grant of a lien on Cleared Swaps Customer Collateral.”⁴ The Commission further explained that that regulation 22.2(d) permits FCMs (and other entities) to take a security interest in a Cleared Swaps Customer’s FCM customer account in support of financing the Cleared Swaps Customer’s margin obligations, including margining other positions of the Cleared Swaps Customer.

Discussion

Regulation 22.2(d) of the Commission’s rules clearly restricts an FCM from encumbering Cleared Swaps Customer Collateral with a lien or other security interest. However, as noted in your letter, neither regulation 22.2(d) nor the preamble address the scope of the liens, rights of setoff, and other security interests, whatever interest that may be, that a Cleared Swaps Customer may grant, regardless of whether those assets are in the FCM customer account.

Regulation 22.2(d) does not prohibit a Cleared Swaps Customer from granting security interests in, rights of setoff against, or other rights in its own Cleared Swaps Customer Collateral, regardless of whether those assets are held in the Cleared Swaps Customer’s FCM customer account. Furthermore, nothing in the rule is intended to inhibit this right of the Cleared Swaps Customer. The discussion in the preamble regarding liens that may be imposed at the behest of the Cleared Swaps Customer should be read as examples of rights that the Cleared Swaps Customer may grant to others; it should not be read as limiting the rights of a Cleared Swaps Customer to grant security rights in, rights of setoff against, or any other rights in its own Cleared Swaps Customer Collateral (which rights are subject to the exercise by the DCO and the FCM of their own rights), and subject to any other limitations on the Cleared Swaps Customer’s ownership interest arising from its relationship with the DCO and the FCM.

² *Id.* at 6352.

³ *Id.* (emphasis added).

⁴ *Id.* (emphasis in original).

This letter represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission. Should you have questions regarding this matter, please contact Robert Wasserman, Chief Counsel (rwasserman@cftc.gov, 202-418-5092), Laura Astrada, Associate Chief Counsel (lastrada@cftc.gov, 202-418-7622) or Kirsten Robbins, Attorney-Advisor (krobbins@cftc.gov, 202-418-5313).

Sincerely,

Ananda Radhakrishnan
Director

cc: Robert Wasserman
Laura Astrada
Kirsten Robbins