

David A. Stawick, Secretary
Commodity Futures Trading Commission
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- **17 CFR Parts 22 and 190**
- **RIN Number 3038-AC99**
- **Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions.

You are proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Specifically, the proposed rules would impose requirements on both futures commission merchants (FCMs) and derivatives clearing organizations (DCOs) regarding the treatment of cleared swaps customer contracts (and related collateral), and make conforming amendments to bankruptcy provisions applicable to commodity brokers under the Commodity Exchange Act (CEA).

I support the intent of the proposed changes as prudent, reasonable and practicable. I agree that FCMs and DCO should account for customer collateral separately from own funds, and also should not use the collateral of one customer to cover other customers' or the FCO's or DCO's own obligations.

Section 724(a) of Dodd-Frank adds a new section 4d(f) to the CEA. The wording here clearly prioritises effective customer protection above other considerations. This tends to support implementing the Physical Segregation Model as described in the proposals. However, the wording under section 4d(f) certainly also supports alternative models, including the Legal Segregation Model (Complete or with Recourse) and the Futures Model. In comparing the

Physical Segregation Model with alternative models one needs to consider trade-offs, particularly between customer protection, and implementation and ongoing costs. From the four models proposed here, the two extremes are: Physical Segregation Model (100% safe within current legal arrangements and most expensive to implement and operate) and the Futures Model (least safe and least expensive to implement and operate). Other factors to consider include the ability to portfolio margin and the portability¹ of the cleared swaps of non-defaulting customers.

Given the wide range of possible judgements and opinions on these issues, we have to give most credence to the concerns of the buy-side, and the FCMs and DCOs, within the context of the intent of the legislation. From these, the most important point is that the buy-side overwhelmingly favours customer protection over increased costs, and would support the Physical Segregation Model or the Legal Segregation Model (Complete or with Recourse) over the Futures Model. Given the weight of the arguments put forward within the intent of the legislation, I support your analysis. Therefore I agree with the proposed Complete Legal Segregation Model, and that this is optimal in terms of reducing fellow-customer risk and investment risk and systemic risk to tolerable levels, maintaining high portability, enabling portfolio margining and providing cost-effectiveness compared with the other models outlined in the commentary.

Yours sincerely

Chris Barnard

¹ E.g. see principle 14 in the CPSS-IOSCO consultative report on Principles for Financial Market Infrastructures (March 2011), <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf>, which states that: "A CCP should have rules and procedures that enable the segregation and portability of positions and collateral belonging to customers of a participant".