

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Withdrawal**

Accordingly, pursuant to the authority delegated to me, the FAA withdraws the NPRM published in the **Federal Register** June 8, 2010, (75 FR 32317) [2010–13609].

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, July 28, 2010.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. 2010–19489 Filed 8–6–10; 8:45 am]

**BILLING CODE 4910–13–P**

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**COMMODITY FUTURES TRADING COMMISSION**
**17 CFR Parts 1, 30, and 140**

**RIN 3038–AC72**

**Acknowledgment Letters for Customer Funds and Secured Amount Funds**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its regulations regarding the required content of the acknowledgment letter that a registrant must obtain from any depository holding its segregated customer funds or funds of foreign futures or foreign options customers, and certain technical changes.

**DATES:** Submit comments on or before September 8, 2010.

**ADDRESSES:** You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web Site:* <http://www.cftc.gov>. Follow the instructions for submitting comments on the Web site.

- *E-mail:* [acknowledgmentletter@cftc.gov](mailto:acknowledgmentletter@cftc.gov). Include the RIN number in the subject line of the message.

- *Fax:* 202–418–5521.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

- *Hand Delivery/Courier:* Same as mail above.

**FOR FURTHER INFORMATION CONTACT:**

Phyllis P. Dietz, Associate Director, 202–418–5449, [pdietz@cftc.gov](mailto:pdietz@cftc.gov), or Eileen A. Donovan, Special Counsel, 202–418–5096, [edonovan@cftc.gov](mailto:edonovan@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:****I. Background**

Regulation 1.20 (17 CFR 1.20) requires futures commission merchants (FCMs) that accept customer funds and derivatives clearing organizations (DCOs) that accept customer funds from FCMs to segregate and separately account for those funds.<sup>1</sup> Currently, Regulation 1.20 requires such FCMs and DCOs to obtain from the bank, trust company, FCM or DCO<sup>2</sup> holding customer funds in the capacity of a depository (each, a “Depository”) a written acknowledgment that the Depository was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Commodity Exchange Act (Act)<sup>3</sup> and CFTC regulations.<sup>4</sup> Regulation 1.26 (17 CFR 1.26), which requires FCMs and DCOs to segregate and separately account for instruments purchased with customer funds, repeats the requirement to obtain an acknowledgment letter. FCMs also must obtain a similar written acknowledgment from Depositories holding “secured amount” funds<sup>5</sup> required under Regulation 30.7 (17 CFR 30.7), which governs the treatment of money, securities, and property held for or on behalf of the FCM’s foreign futures and foreign options customers.

On February 20, 2009, the Commission published proposed amendments to Regulations 1.20, 1.26, and 30.7 for public comment.<sup>6</sup> The proposed amendments set out specific representations that would be required in the acknowledgment letters in order to reaffirm and clarify the obligations that Depositories incur when accepting

customer funds or secured amount funds. The Commission also proposed several technical changes.

In response, the Commission received comment letters from the Futures Industry Association (“FIA”), Joint Audit Committee (“JAC”), National Futures Association (“NFA”), Managed Funds Association (“MFA”), and Katten Muchin Rosenman LLP (“Katten”), which are discussed below. In light of the comments received, the Commission has determined to re-propose the amendments to Regulations 1.20, 1.26, and 30.7, with several changes made in response to the comments. In addition, the Commission is proposing standard template acknowledgment letters that would be required to be used. These are proposed for inclusion in a new Appendix A to each of Regulations 1.20, 1.26, and 30.7. The Commission invites public comment on all aspects of the proposed regulations and the proposed letters.

**II. Comments Received**

FIA generally supported the proposed regulations but requested that the effective date of the final rule be extended beyond the proposed date of 180 days from the date of publication in the **Federal Register** to allow FCMs, DCOs, and Depositories sufficient time to negotiate and put in place acknowledgment letters satisfying the proposed Commission regulations and also to allow them an opportunity to work together to develop a standard template acknowledgment letter that would satisfy the proposed regulations. In addition, FIA expressed interest in having its member Depositories work with the Commission on a standardized notice, authentication, and instruction protocol and encouraged the Commission to develop a system for electronic filing of the new acknowledgment letters.

The JAC supported the proposed regulations but requested guidance regarding the circumstances that would necessitate updating acknowledgment letters (e.g., name change of FCM or depository, merger of FCM or depository, addition or deletion of account number) as well as acceptable timeframes for such updating. In addition, the JAC questioned the benefit of requiring submission of acknowledgment letters to the Commission without also requiring documentation necessary for verification. Finally, the JAC requested that the Commission amend Regulation 30.7 to provide relief, similar to that provided under Regulations 1.20 and 1.26, that would exempt DCOs from having to provide acknowledgment

<sup>1</sup> See 17 CFR 1.3(gg) (defining the term “customer funds”).

<sup>2</sup> Regulation 1.20(a) does not require a written acknowledgment to be obtained from “a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers.”

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> 17 CFR parts 1–199.

<sup>5</sup> See 17 CFR 1.3(rr) (defining the term “foreign futures or foreign options secured amount”).

<sup>6</sup> 74 FR 7838 (February 20, 2009).

letters if they follow the requirements of the CEA.

NFA supported the proposed regulations but recommended that the Commission require that acknowledgment letters be filed with NFA as well as the Commission when NFA is the firm's designated self-regulatory organization ("DSRO"), so that NFA has ready access to the same information that the Commission does. NFA also asked that the Commission clarify when acknowledgment letters should be amended for changes made after the effective date of the proposed regulations.

Katten supported the purpose of the proposed regulations but suggested several revisions. First, Katten recommended that the Commission require an FCM, in opening an account with a Depository, to include in the account opening agreement an obligation on the Depository to release customer funds "immediately upon proper notice and instruction" from the FCM or the Commission (the same language that would be required in the acknowledgment letter under the proposed regulations). Katten expressed concern that a Depository would be exposed to potential liability to the FCM if the Depository were to honor an instruction from the Commission without the FCM's express consent. Second, Katten noted that the proposed regulations set no guidelines to be followed or conditions to be met before the Commission could issue an instruction to release customer funds. Third, Katten recommended that the Commission establish a reasonable means for a Depository to authenticate an instruction from the Commission. Fourth, Katten asked the Commission to confirm that, in the event that an FCM files for bankruptcy, a Depository will have no obligation to release customer funds except upon instruction from the bankruptcy trustee or pursuant to a court order. Fifth, Katten requested that the Commission provide additional guidance on a Depository's obligation to release customer funds "immediately" upon instruction from the Commission and suggested the use of the term "promptly" instead. Finally, Katten noted that Depositories frequently contract with an FCM depositor to advance monies to the FCM intraday, with the understanding that the FCM will deposit in the customer segregated account prior to the end of the business day (or by the start of the next business day), sums sufficient to repay the advance. Katten requested that the Commission confirm that, in the event that the FCM fails to repay the advance in a timely manner, or in the event of

the FCM's bankruptcy, a Depository is entitled to recourse against the customer funds account for the amount of such funds advanced.

MFA commended the Commission for the proposed rulemaking and stated that it believes the proposed rules would provide customers with greater clarity with respect to their deposited funds.

The Commission's response to the comments received is discussed below.

### III. Discussion of the Proposed Regulations

#### A. Regulation 1.20

In its original proposal, the Commission set out specific representations that Depositories would have to include in the acknowledgment letter required under Regulation 1.20. The proposed changes to Regulation 1.20 would have required the Depository to acknowledge in the letter that: (1) The FCM or DCO has established the account for the purpose of depositing customer funds; (2) the customer funds deposited therein are those of commodity or option customers of the FCM, or clearing members of the DCO, and that those funds are to be segregated in accordance with the provisions of the Act and Part 1 of the CFTC regulations; (3) the customer funds shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM or DCO; (4) the Depository must treat the customer funds in accordance with the Act and CFTC regulations; and (5) the Depository must immediately release the customer funds upon proper notice and instruction from the FCM or DCO or from the Commission.

As noted above, FIA recommended the development of a standard template acknowledgment letter that would satisfy the proposed regulations. The Commission agrees with this recommendation, and the specific representations that the Commission originally proposed for the letter have been incorporated into a standard template acknowledgment letter that would be adopted as Appendix A to Regulation 1.20. An FCM or DCO would be required to use this letter to satisfy the requirements of Regulation 1.20.

The Commission also has accepted the recommendation to develop a system for electronic filing of the acknowledgment letters. As initially proposed, paragraphs (d)(2) and (e)(2) of Regulation 1.20 would have required that a copy of the acknowledgment letter be filed with the regional office of the Commission with jurisdiction over the state in which the FCM or DCO's

principal place of business is located; to reflect the change to electronic filing, paragraphs (d)(2) and (e)(2) now require that a copy of the letter be filed "with the Commission in the manner specified by the Commission." The Commission will offer guidance on electronic filing procedures for the acknowledgment letters before a final rule takes effect but expects that filing will be done through "WinJammer™," an application currently used by FCMs to file their financial reports with the Commission. The use of WinJammer™ will ensure that only those individuals authorized by an FCM to submit an acknowledgment letter on its behalf will be able to do so, and it also will allow NFA and other DSROs to have access to the acknowledgment letters.

Regulation 1.20 currently does not address the circumstances under which an FCM or a DCO must amend an existing acknowledgment letter or the amount of time allowed for doing so. Proposed paragraphs (d)(3) and (e)(3) require the acknowledgment letter to be amended within 60 days of any changes in the following: the name of the FCM or DCO depositing the customer funds; the name of the bank, trust company, DCO or FCM receiving the customer funds; or the account number(s) under which the customer funds are held.

The proposed standard template acknowledgment letter includes language that requires the Depository to acknowledge that it must "immediately" release customer funds upon "proper notice and instruction" from the FCM or DCO or from the Commission. The Commission recognizes that the release of customer funds may be delayed by practical considerations (e.g., Fedwire is unavailable), but the Depository must make every effort to execute the transfer as soon as possible. The transfer of customer funds from a segregated account cannot be delayed due to concerns about the financial status of the FCM or DCO that deposited the funds.

The Commission is not proposing specific standards for what constitutes "proper notice" from the Commission to the Depository. This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. However, the Commission would confirm the instruction in writing as soon as practicable.

As noted above, the Commission received a comment letter expressing concern that a Depository would be exposed to potential liability to the FCM

if the Depository were to honor an instruction from the Commission without the FCM's express consent. The Commission believes that the acknowledgment letter and Regulation 1.20, as proposed, would provide sufficient legal basis for the Depository to act on any such instruction from the Commission. The letter, which must be agreed to and signed by both the FCM (or DCO) and the Depository, states: "We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC." The Commission would issue such an instruction only when, in the judgment of the Commission, it is necessary to do so for the protection of customer funds. For example, the prospective insolvency of the FCM could prompt an instruction from the Commission to release the customer funds. However, the standard template acknowledgment letter does include language confirming that, in the event that the FCM becomes subject to a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, the Depository will have no obligation to release the customer funds except upon instruction from the bankruptcy trustee or pursuant to a court order.

One of the comment letters also noted that Depositories frequently contract with an FCM depositor to advance monies to the FCM intraday, with the understanding that the FCM will deposit in the customer segregated account prior to the end of the business day (or by the start of the next business day), sums sufficient to repay the advance. The Commission was asked to confirm that, in the event that the FCM fails to repay the advance in a timely manner, or in the event of the FCM's bankruptcy, a Depository is entitled to recourse against the customer funds account for the amount of such funds advanced. The Commission believes that Section 4d of the Act<sup>7</sup> does not permit such an arrangement because the advance is made to the FCM account holder and Section 4d expressly prohibits "any person, including\* \* \*any depository, that has received any money, securities, or property for deposit in a [customer segregated account], to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any

person other than the customers of such futures commission merchant."<sup>8</sup>

#### B. Regulation 1.26

The proposed changes to Regulation 1.26 would affirm that the written acknowledgment required for instruments in which customer funds are invested is identical to the written acknowledgment required under Regulation 1.20 and therefore must meet the requirements set out in Regulation 1.20. The Commission also is proposing a standard template acknowledgment letter to be used when customer funds are invested in money market mutual funds, which would be adopted as Appendix A to Regulation 1.26.<sup>9</sup>

#### C. Regulation 30.7

In its original proposal, the Commission proposed to amend Regulation 30.7 to set out specific representations that Depositories holding secured amount funds would have to include in the acknowledgment letter required by the regulation.<sup>10</sup> The proposed changes to Regulation 30.7 would have required the Depository to acknowledge in the letter that: (1) It meets the requirement set out in Regulation 30.7(c)(1), which lists the types of depositories that may accept secured amount funds; (2) the FCM has established the account for the purpose of depositing money, securities, or property for or on behalf of customers that include, but are not limited to,

<sup>8</sup> See Section 4d(b) of the Act, 7 U.S.C. 6d(b). The arrangement outlined in the comment letter is distinguishable from other arrangements involving segregated funds that the Commission has previously allowed. For example, CFTC Interpretative Letter No. 86-9 confirmed that, when there is sufficient aggregate value in the form of cash and securities, but insufficient cash, in the customer segregated account to meet a customer margin or variation call, a bank may allow an overdraft in the account in order to meet the call and may settle the overdraft by offsetting securities held in the customer segregated account. The letter allowed such offsetting only to meet the obligations of customers, not obligations of the FCM. Similarly, CFTC No-Action Letter No. 04-26 confirmed that an FCM that holds excess funds in segregation and has a residual interest in such funds may pay account service charges directly out of a customer segregated account as a reduction of such residual interest, subject to additional conditions set forth in the letter. Although the letter allowed the charges to be paid from the customer segregated account, the funds being used had to belong to the FCM and not to its customers.

<sup>9</sup> Regulation 1.25(c) sets forth the requirements for investment of customer funds in money market mutual funds. Among them is the requirement that if the FCM or DCO "holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgement letter required by § 1.26." See 17 CFR 1.25(c)(3).

<sup>10</sup> The Commission has issued an interpretative statement with respect to the secured amount requirement set forth in Regulation 30.7. See 17 CFR part 30, App. B.

foreign futures and foreign options customers; (3) the money, securities, or property deposited therein are held on behalf of foreign futures and foreign options customers of the FCM and may not be commingled with the FCM's own funds or any other funds that the Depository may hold, in accordance with the provisions of the Act and Part 30 of the CFTC regulations; (4) the money, securities, or property shall not be subject to any right of offset, or lien, for or on account of any indebtedness, obligations or liabilities owed by the FCM; (5) the Depository must treat the money, securities, or property in accordance with the provisions of the Act and CFTC regulations; and (6) the Depository must release immediately, subject to requirements of applicable foreign law, the money, securities, or property upon proper notice and instruction from the FCM or the Commission.

As noted above, the Commission now is proposing a standard template acknowledgment letter under Regulations 1.20 and 1.26, and the Commission is doing the same for Regulation 30.7. The specific representations that the Commission originally proposed for the letter required under Regulation 30.7 have been incorporated into a standard template acknowledgment letter that would be adopted as Appendix A to Regulation 30.7.

Also as noted above, the Commission has decided to develop a system for electronic filing of the acknowledgment letters. As initially proposed, paragraph (c)(2)(iii) of Regulation 30.7 would have required the FCM to file a copy of the written acknowledgment with the regional office of the Commission with jurisdiction over the state in which the FCM's principal place of business is located; to reflect the change to electronic filing, paragraph (c)(2)(ii) now requires that a copy of the letter be filed "with the Commission in the manner specified by the Commission." The Commission will offer guidance on electronic filing procedures for the acknowledgment letters before a final rule takes effect but expects that filing will be done through "WinJammer™," an application currently used by FCMs to file their financial reports with the Commission. The use of WinJammer™ will ensure that only those individuals authorized by an FCM to submit an acknowledgment letter on its behalf will be able to do so, and it also will allow NFA and other DSROs to have access to the acknowledgment letters.

Regulation 30.7 currently does not address the circumstances under which an FCM must amend an existing

<sup>7</sup> 7 U.S.C. 6d.

acknowledgment letter or the amount of time allowed for doing so. Proposed paragraph (c)(2)(iii) requires the acknowledgment letter to be amended within 60 days of any changes in the following: the name of the FCM; the name of the Depository;<sup>11</sup> or the account number(s) under which the secured amount funds are held.

The proposed standard template acknowledgment letter includes language that requires the Depository to acknowledge that it must “immediately” release, subject to the requirements of U.S. or non-U.S. law as applicable,<sup>12</sup> secured amount funds upon “proper notice and instruction” from the FCM or from the Commission. The Commission recognizes that the release of secured amount funds may be delayed by practical considerations (e.g., Fedwire is unavailable), but the Depository must make every effort to execute the transfer as soon as possible. The transfer cannot be delayed due to concerns about the financial status of the FCM that deposited the funds.

The Commission is not proposing specific standards for what constitutes “proper notice” from the Commission to the Depository. This is because reasonable actions could vary, depending on the situation. For example, in certain circumstances, it may not be possible to expeditiously provide written notice, and a telephone call would be sufficient and even preferable. However, the Commission would confirm the instruction in writing as soon as practicable.

#### D. Technical Amendments

Regulation 1.20(a) imposes upon “[e]ach registrant” the requirement to obtain and retain a written acknowledgment when customer funds are deposited with “any bank, trust

company, clearing organization, or another futures commission merchant.” Regulation 1.20(a) applies to FCMs, as distinguished from Regulation 1.20(b), which applies to DCOs. Therefore, the Commission proposes to substitute the term “futures commission merchant” for the term “registrant” to more accurately reflect the intent and meaning of Regulation 1.20(a). In connection with this, the Commission further proposes to insert the word “other” before the term “futures commission merchant” that appears subsequently in the same sentence, to distinguish between the FCM holding the funds of its own customers and an FCM holding customer funds of another FCM.

Regulations 1.20, 1.26, and 30.7 currently require that acknowledgment letters be retained for the period specified in Regulation 1.31, which applies to all recordkeeping required by the Act and CFTC regulations. Regulation 1.31 requires records to be kept for five years and to be readily accessible for the first two years of that five-year period. The proposed revisions would make clear that an acknowledgment letter is to be kept readily accessible for as long as the account remains open and that the retention requirements that would otherwise apply under Regulation 1.31 would only take effect once the account has been closed. For example, if the account remains open for ten years, the letter must be kept readily accessible for twelve years (the ten years during which the account is open plus the two years required by Regulation 1.31) and then for an additional three years, also as required by Regulation 1.31.

Regulations 1.20 and 1.26 use the term “clearing organization” to describe an entity that performs clearing functions. The Act, as amended by the Commodity Futures Modernization Act of 2000,<sup>13</sup> now provides that a clearing organization for a contract market must register as a “derivatives clearing organization.”<sup>14</sup> To be consistent with the Act and other CFTC regulations, the Commission proposes to replace the term “clearing organization,” wherever it appears in Regulations 1.20 and 1.26, with the term “derivatives clearing organization.”

Finally, the Commission also is proposing technical amendments to Regulation 140.91 to explicitly delegate to the Director of the Division of Clearing and Intermediary Oversight the

authority to perform certain functions that are reserved to the Commission under the proposed changes to Regulations 1.20, 1.26, and 30.7. Thus, for example, the Director of the Division of Clearing and Intermediary Oversight would have delegated authority to instruct a Depository to release customer funds or secured amount funds.

#### E. Proposed Effective Date

FCMs and DCOs will need to obtain new acknowledgment letters that comply with the proposed regulations before the final regulations take effect. The Commission recognizes the need for time to obtain the letters. However, the adoption of a standard template acknowledgment letter would eliminate the need for FCMs and Depositories to negotiate new acknowledgment letters that satisfy the proposed regulations. Therefore, the proposed effective date of the amendments to Regulations 1.20, 1.26, and 30.7 is 90 days from the date of publication of the final regulations in the **Federal Register**.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) <sup>15</sup> requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. The amendments adopted herein will affect FCMs and DCOs. The Commission has previously established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.<sup>16</sup> The Commission has previously determined that FCMs <sup>17</sup> and DCOs <sup>18</sup> are not small entities for the purpose of the RFA. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”) <sup>19</sup> imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The regulations to be amended under this proposal are part of an approved collection of information (OMB Control No. 3038-0024). The proposed amendments would not result

<sup>11</sup> Regulation 30.7(c)(1) (17 CFR 30.7(c)(1)) sets out certain requirements that an entity must meet to qualify as a depository that may accept from an FCM the money, securities, and property representing the foreign futures or foreign options secured amount.

<sup>12</sup> The Commission notes that under the laws of some foreign countries, immediate release of customer funds may not always be possible. Regulation 30.6(a) (17 CFR 30.6(a)) requires FCMs to furnish customers with a separate written disclosure statement containing the language set forth in Regulation 1.55(b) (17 CFR 1.55(b)). Regulation 1.55(b)(7) states in relevant part:

No domestic organization regulates the activities of a foreign exchange \* \* \* and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. \* \* \* [F]unds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges.

<sup>13</sup> Appendix E of Public Law 106-554, 114 Stat. 2763 (2000).

<sup>14</sup> See Section 5b of the Act, 7 U.S.C. 7a-1. See also Section 1a(9) of the Act, 7 U.S.C. 1a(9) (defining the term “derivatives clearing organization”).

<sup>15</sup> 5 U.S.C. 601 *et seq.*

<sup>16</sup> 47 FR 18618 (Apr. 30, 1982).

<sup>17</sup> *Id.* at 18619.

<sup>18</sup> 66 FR 45604, 45609 (Aug. 29, 2001).

<sup>19</sup> 44 U.S.C. 3501 *et seq.*

in any material modification to this approved collection. Accordingly, for purposes of the PRA, the Commission certifies that these proposed amendments, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

### C. Cost-Benefit Analysis

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the proposed regulations in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed regulations would benefit FCMs and DCOs, as well as customers of the futures and options markets, by reaffirming the legal obligation of Depositories holding customer funds or secured amount funds to treat those funds in accordance with the requirements of the Act and CFTC regulations.

2. *Efficiency and competition.* The proposed regulations are not expected to have an effect on efficiency or competition.

3. *Financial integrity of futures markets and price discovery.* The proposed regulations would enhance and strengthen the protection of customer funds and secured amount funds, thus contributing to the financial integrity of the futures and options

markets as a whole. This, in turn, would further support the price discovery and risk transfer functions of such markets.

4. *Sound risk management practices.* The proposed regulations would reinforce the sound risk management practices already required of FCMs and DCOs holding customer funds or secured amount funds.

5. *Other public considerations.* Requiring specific representations in a Depository's written acknowledgment would reduce the likelihood that the Depository would misinterpret its obligations in connection with the safekeeping and administration of customer funds and secured amount funds. The Commission recognizes that there are certain administrative costs associated with obtaining new acknowledgment letters. However, the Commission believes those costs are minimal and are outweighed by the benefits. For example, because a template letter is required, FCMs and DCOs will not have to expend resources to negotiate new letters with their Depositories.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

### List of Subjects in 17 CFR Parts 1, 30, and 140

Commodity futures, Consumer protection.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 1, 30, and 140 as follows:

### PART 1—GENERAL REGULATIONS

1. The authority citation for part 1 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Revise § 1.20 to read as follows:

#### § 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, derivatives clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each futures commission merchant shall

obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization, or other futures commission merchant, in accordance with the requirements of paragraph (d) of this section: *Provided, however*, that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a derivatives clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any derivatives clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

(b) All customer funds received by a derivatives clearing organization from a member of the derivatives clearing organization to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's commodity or option customers and all money accruing to such commodity or option customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such commodity or option customers, and a derivatives clearing organization shall not hold, use or dispose of such customer funds except as belonging to such commodity or option customers. Such customer funds when deposited in a bank or trust company shall be deposited under an account name which clearly shows that they are the customer funds of the commodity or option customers of clearing members, segregated as required by the Act and these regulations. The derivatives clearing organization shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and

thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of this section.

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however*, That customer funds treated as belonging to the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a derivatives clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the derivatives clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further*, That customer funds may be invested in instruments described in § 1.25.

(d)(1) The written acknowledgment required by paragraph (a) of this section is set out in Appendix A to this section.

(2) The futures commission merchant shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(3) The written acknowledgment shall be amended within 60 days of any changes in the following:

(i) The name of the futures commission merchant depositing customer funds;

(ii) The name of the bank, trust company, derivatives clearing organization or futures commission merchant receiving customer funds; or

(iii) The account number(s) under which customer funds are held.

(e)(1) The language set forth in the written acknowledgment required under paragraph (b) of this section shall be as set out in Appendix A to this section.

(2) The derivatives clearing organization shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(3) The written acknowledgment shall be amended within 60 days of any changes in the following:

(i) The name of the derivatives clearing organization depositing customer funds;

(ii) The name of the bank or trust company receiving customer funds; or

(iii) The account number(s) under which customer funds are held.

#### **Appendix § 1.20—Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account**

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant or Derivatives Clearing Organization] (“we” or “our”) have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] (“you” or “your”) entitled:

[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.20 Customer Segregated Account

Account Number(s):  
(collectively, the “Account(s)”).

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the “Funds”) of our customers who trade commodities, options, cleared OTC derivatives products and other products, as required by Commodity Futures Trading Commission (“CFTC”) Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own Funds and all other accounts maintained by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and Part 1 of the CFTC’s regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we

may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating assets held in the Account(s) for purposes of variation settlement or posting original margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation

even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto. This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]

By:

Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

By:

Name:

Title:

DATE:

3. Revise § 1.26 to read as follows:

**§ 1.26 Deposit of instruments purchased with customer funds.**

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, derivatives clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank, trust company, derivatives clearing organization or other futures commission merchant, in accordance with the requirements of paragraph (d) of § 1.20: *Provided, however*, that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders

promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such bank, trust company, derivatives clearing organization or other futures commission merchant shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

(b) Each derivatives clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25, except for investments in money market mutual funds, shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each derivatives clearing organization upon opening such an account shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such bank or trust company, in accordance with the requirements of paragraph (e) of § 1.20. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

(c) Each futures commission merchant or derivatives clearing organization which invests customer funds in money market mutual funds, as permitted by § 1.25, shall separately account for such funds and segregate such funds as belonging to such commodity or option customers. Such funds shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant or derivatives clearing organization, upon opening such an account, shall obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from the money market mutual fund as set out in Appendix A to this section.

**Appendix A § 1.26—Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account**

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant or Derivatives Clearing Organization] (“we” or “our”) on behalf of our commodity futures and options customers in shares of [Name of Money Market Mutual Fund] (“you” or “your”) under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account Account Number(s): (collectively, the “Account(s)”).

You acknowledge and agree that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively the “Funds”), for the benefit of our customers who trade commodities, options, cleared OTC derivatives products and other products (“Commodity Customers”), as required by Commodity Futures Trading Commission (“CFTC”) Regulation 1.26, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own funds and from any other funds held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and Part 1 of the CFTC’s regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in



Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of setoff against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated. We are permitted to invest our Commodity Customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and

(3) The agreement under which we invest our Commodity Customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares to a third party permitted to receive the shares under the rules of the SEC.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.

This letter agreement shall be governed by and construed in accordance with the laws

of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]

By:

Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Name:

Title:

DATE:

## PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

4. The authority citation for part 30 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6c, and 12a, unless otherwise noted.

5. Revise paragraph (c)(2) of § 30.7 to read as follows:

### § 30.7 Treatment of foreign futures or foreign options secured amount.

\* \* \* \* \*

(c) \* \* \*

(2)(i) Each futures commission merchant must obtain and maintain readily accessible in its files in accordance with § 1.31, for as long as the account remains open, and thereafter for the period provided in § 1.31, a written acknowledgment from such depository as set out in Appendix E to this part.

(ii) The futures commission merchant shall file a copy of the written acknowledgment with the Commission in the manner specified by the Commission.

(iii) The written acknowledgment shall be amended within 60 days of any changes in the following:

(A) The name of the futures commission merchant;

(B) The name of the depository; or

(C) The account number(s) under which money, securities, and property representing the foreign futures or foreign options secured amount are held.

\* \* \* \* \*

6. Add appendix E to read as follows:

### Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Account

[Date]

[Name and Address of Depository]

We refer to the Secured Amount Account(s) which [Name of Futures Commission Merchant] (“we” or “our”) have opened or will open with [Name of Depository] (“you” or “your”) entitled:

[Name of Futures Commission Merchant]  
CFTC Regulation 30.7 Customer Secured Account  
Account Number(s):  
(collectively, the “Account(s)”).

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively “Funds”) for or on behalf of our customers who trade commodities, options, cleared OTC derivatives products and other products, that include, but are not limited to, customers who are entering into foreign futures and/or foreign options transactions (as such terms are defined in U.S. Commodity Futures Trading Commission (“CFTC”) Regulation 30.1, as amended). The Funds deposited in the Account(s) or accruing to the credit of the Accounts will be kept separate and apart and separately accounted for on your books from our own funds in accordance with the provisions of the Commodity Exchange Act, as amended (the “Act”), and Part 30 of the CFTC’s regulations, as amended, and may not be commingled with our own Funds in any proprietary account we maintain with you and the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations we may have owing to you, nor used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you, and that you understand the nature of the Funds held or hereafter deposited in the Account(s) and that you will treat and maintain such Funds in accordance with the provisions of the Act and CFTC regulations. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating assets held in the Account(s) for purposes of variation settlement or posting original margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place.

You acknowledge and agree that you meet the requirements detailed for depositories in CFTC Regulation 30.7, as amended. You further acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of US or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or of the CFTC. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by a duly authorized officer or employee of the CFTC. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment.



In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s) nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter.

[Name of Futures Commission Merchant]

By:  
Name:  
Title:

ACKNOWLEDGED AND AGREED:  
[Name of Depository]

By:  
Name:  
Title:  
DATE:

## PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

7. The authority citation for part 140 continues to read as follows:

**Authority:** 7 U.S.C. 2 and 12a.

7. In § 140.91, redesignate paragraphs (a)(7) and (a)(8) as paragraphs (a)(8) and (a)(11) respectively; add new paragraphs (a)(7), (a)(9), and (a)(10); and revise newly designated paragraph (a)(11) to read as follows:

### § 140.91 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) \* \* \*

(7) All functions reserved to the Commission in § 1.20 of this chapter.

\* \* \* \* \*

(9) All functions reserved to the Commission in § 1.26 of this chapter.

(10) All functions reserved to the Commission in § 30.7 of this chapter.

(11) All functions reserved to the Commission in § 41.41 of this chapter. Any action taken pursuant to the delegation of authority under this paragraph (a)(11) shall be made with the concurrence of the General Counsel or, in his or her absence, a Deputy General Counsel.

\* \* \* \* \*

Issued in Washington, DC, on August 3, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2010-19553 Filed 8-6-10; 8:45 am]

**BILLING CODE P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA-R06-OAR-2010-0412; FRL-9186-1]

### Determination of Nonattainment and Reclassification of the Dallas/Fort Worth 1997 8-hour Ozone Nonattainment Area; TX

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Dallas/Fort Worth (DFW) moderate 8-hour ozone nonattainment area did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2010, the attainment deadline set forth in the Clean Air Act (CAA or Act) and Code of Federal Regulations (CFR) for moderate nonattainment areas. This proposal is

based on EPA's review of complete, quality assured and certified ambient air quality monitoring data for the 2007–2009 monitoring period that are available in the EPA Air Quality System (AQS) database. If EPA finalizes this determination, the DFW area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour standard. The serious area attainment date for the DFW area would be as expeditiously as practicable, but not later than June 15, 2013. Once reclassified, Texas must submit State Implementation Plan (SIP) revisions for the DFW area that meet the 1997 8-hour ozone nonattainment requirements for serious areas as required by the Act. In this action, EPA is also proposing that Texas submit the required SIP revisions for the serious area attainment demonstration, reasonable further progress (RFP), reasonably available control technology (RACT), contingency measures, and for all other serious area measures required under CAA section 182(c) to EPA no later than one year after the effective date of the final rulemaking for this reclassification; except that we propose that Texas submit the required SIP revision for the Stage II vapor recovery to EPA no later than two years after the effective date of the final rulemaking for this reclassification, pursuant to section 182(b)(3)(A) of the Act.

**DATES:** Comments must be received on or before September 8, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0412, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6comment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-6762.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such