§ 240.3a43–1

Customer-related government securities activities incidental to the futures-related business of a futures commission merchant registered with the Commodity Futures Trading Commission.

(a) A futures commission merchant registered with the Commodity Futures Trading Commission (“CFTC”) is not a government securities broker or government securities dealer solely because such futures commission merchant effects transactions in government securities that are defined in paragraph (b) of this section as incidental to such person’s futures-related business.

(b) Provided that the futures commission merchant maintains in a regulated account all funds and securities associated with such government securities transactions (except funds and securities associated with transactions under paragraph (b)(1)(i) of this section and does not advertise that it is in the business of effecting transactions in government securities otherwise than in connection with futures or options on futures trading or the investment of margin or excess funds related to such trading or the trading of any other instrument subject to CFTC jurisdiction, the following transactions in government securities are incidental to the futures-related business of such a futures commission merchant:

(1) Transactions as agent for a customer—

   (i) To effect delivery pursuant to a futures contract; or
   
   (ii) For risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures;

(2) Transactions as agent for a customer for investment of margin and excess funds related to futures or options on futures trading or the trading of other instruments subject to CFTC jurisdiction, provided further that—

   (i) Such transactions involve Treasury securities with a maturity of less than 93 days at the time of the transaction.
   
   (ii) Such transactions generate no monetary profit for the futures commission merchant in excess of the costs of executing such transactions, or

(iii) Such transactions are unsolicited, and commissions and other income generated on transactions pursuant to this paragraph (b)(2)(iii) (including transactional fees paid by the futures commission merchant and charged to its customer) do not exceed 2% of such futures commission merchant’s total commission revenues;

(3) Exchange of futures for physicals transactions as agent for or as principal with a customer; and

(4) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures-related business of a specified futures commission merchant, a specified category of futures commission merchants, or futures commission merchants generally.

(c) Definitions.

(1) Customer means any person for whom the futures commission merchant effects or intends to effect transactions in futures, options on futures, or any other instruments subject to CFTC jurisdiction.

(2) Regulated account means a customer segregation account subject to the regulations of the CFTC; provided, however, that, where such regulations do not permit to be maintained in such an account or require to be maintained in a separate regulated account funds or securities in proprietary accounts or funds or securities used as margin for or excess funds related to futures contracts, options on futures or any other instruments subject to CFTC jurisdiction that trade outside the United States, its territories, or possessions, the term regulated account means such separate regulated account or any other account subject to record-keeping regulations of the CFTC.

(3) Unsolicited transaction means a transaction that is not effected in a discretionary account or recommended to a customer by the futures commission merchant, an associated person of a futures commission merchant, a business affiliate that is controlled by, controlling, or under common control with the futures commission merchant, or an introducing broker that is guaranteed by the futures commission merchant.
(4) Futures and futures contracts mean contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(5) Options on futures means puts or calls on a futures contract traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

§ 240.3a44–1 Proprietary government securities transactions incidental to the futures-related business of a CFTC-regulated person.

(a) A person registered with the Commodity Futures Trading Commission ("CFTC"), a contract market designated by the CFTC, such a contract market’s affiliated clearing organization, or any floor trader or such a contract market (hereinafter referred to collectively as a “CFTC-regulated person”) is not a government securities dealer solely because such person effects transactions for its own account in government securities that are defined in paragraph (b) of this section as incidental to such person’s futures-related business.

(b) Provided that a CFTC-regulated person does not advertise or otherwise hold itself out as a government securities dealer except as permitted under rule 3a43-1 (§240.3a43-1) the following transactions in government securities for its own account are incidental to the futures-related business of such a CFTC-regulated person:

(1) Transactions to effect delivery of a government security pursuant to a futures contract;

(2) Exchange of futures for physicals transactions with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a futures commission merchant acting in a proprietary capacity and contemporaneously created positions in futures or options on futures with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(3) Transactions for risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(4) Repurchase and reverse repurchase agreement transactions between a futures commission merchant acting in a proprietary capacity and another CFTC-regulated person acting in a proprietary capacity and contemporaneously offsetting transactions between such a futures commission merchant and (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act, (ii) a bank, or (iii) a CFTC-regulated person acting in a proprietary capacity; and

(5) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures related business of a specified CFTC-regulated person, a specified category of CFTC-regulated persons, or CFTC-regulated persons generally.

(c) Definitions. (1) Segregated customer funds means funds subject to CFTC segregation requirements.

(2) Futures and futures contracts means contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(3) Options on futures means puts or calls on a futures contract traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

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