§ 190.06 Transfers.

(a) Transfer rules. No self-regulatory organization or clearing organization may adopt, maintain in effect or enforce rules which:

(1) Are inconsistent with the provisions of this part;

(2) Interfere with the acceptance by its members of open commodity contracts and the equity margining or securing such contracts from futures commission merchants, or persons which are required to be registered as

(2) Recognize that the equity of a customer of the debtor in a commodity contract upon which delivery is made or taken must be included in the net equity claim of that customer and, as such, can only be distributed pro rata at the time of, and as part of, any distributions to customers made by the trustee.

(c) Delivery made or taken within the debtor's estate. (1) Any property in a delivery account which is part of the debtor's estate on the date of the order for relief may be returned under the terms set forth in § 190.06(d)(1)(ii).

(2) If the property to be delivered is part of the debtor's estate on the date of the order for relief and a customer of the debtor is required to make delivery, the trustee must make delivery in the same manner as if no bankruptcy had occurred and the party by whom delivery is taken must pay the full notice price or strike price for delivery.

(3) If delivery is to be made or taken on behalf of a house account the trustee must either make or take delivery, as the case may be, on behalf of the debtor's estate: Provided, That if the trustee, at any time, takes delivery of a physical commodity, the trustee must convert that physical commodity to cash as promptly as possible.

(2) Delivery account shall mean any account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in § 190.01(kk) (3), (4), and (5), except that with respect to § 190.01(kk) (4) and (5), delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account.

(3) The portion of the price or the proceeds of a commodity contract upon delivery which is not specifically identifiable property under § 190.01(kk) (4) and (5) must be distributed pro rata under section 766(h) of the Code.

(b) Contract market rules for deliveries on behalf of a customer of a debtor. Except in the case of a commodity futures or option contract which is settled in cash, each contract market shall adopt, maintain in effect and enforce rules which have been approved by the Commission in accordance with section 5a(a)(12) of the Act and § 1.41 of this chapter which:

(1) Permit the making and taking of delivery to fulfill a commodity futures contract for a physical commodity or an option on a physical commodity, which has not become part of the debtor's estate on the date of the entry of the order for relief but with respect to which commodity contract:

(i) Trading has ceased on the date of the order for relief;

(ii) Notice of delivery has been tendered on or before the date of the entry of the order for relief; or,

(iii) Trading ceases before it can be liquidated by the trustee, to be effected directly between the customer of the debtor and the person identified by the clearing organization as the party to whom delivery should be made or from whom delivery should be taken by such customer of the debtor without intervention of the trustee and without including such physical commodity or the equivalent for such physical commodity in any bankruptcy distribution: Provided, however, That a customer shall not be relieved of his obligation to make or take delivery for the sole reason that delivery must be made or taken from a commodity broker which is a debtor; and
futures commission merchants, which are required to transfer accounts pursuant to §1.17(a)(4) of this chapter; or
(3) Prevent the acceptance by its members of transfers of open commodity contracts and the equity margining or securing such contracts from futures commission merchants with respect to which a petition in bankruptcy has been filed, if such transfers have been approved by the Commission.
Provided, however, That this paragraph shall not limit the exercise of any contractual right of a self-regulatory organization or clearing organization to liquidate open commodity contracts.
(b) Notice. Unless notice has been filed pursuant to §1.65(b) of this chapter, if a futures commission merchant, or a person required to be registered as a futures commission merchant, intends to transfer commodity contracts held by or for a commodity broker from or for the account of a customer to another person registered as a futures commission merchant after a petition in bankruptcy has been filed by or against such commodity broker, the transferor must notify the Commission no later than is required under §190.02(a)(2).
(c) Financial requirements for transferees. (1) No transfer may be made which would cause the transferee to be in violation of the minimum financial requirements set forth in this chapter.
(2) A transferee may accept a transfer of open commodity contracts even though the money, securities and other property eligible for transfer under the regulations contained in this part is insufficient to fully margin such positions, if the transferee agrees to accept the transfer subject to any loss due to the failure to recover such deficiency from the customers whose contracts it has accepted or from the estate of the debtor.
(3) The transferee of a commodity contract for which notice is given under §190.06(b)(2) must keep that contract open one business day after its receipt, unless the customer for whom the transfer is made fails to respond within a reasonable time to a margin call for the difference between the margin transferred with such contract and the margin which such transferee would require with respect to a similar commodity contract held for the account of a customer in the ordinary course of business.
(4) No commission may be collected by the transferor with respect to the transfer of an open commodity contract for which notice is given under §190.06(b)(2).
(d) Customer instructions—(1) Customer instructions. A commodity broker must provide an opportunity for each customer to specify when undertaking its first hedging contract whether, in the event of bankruptcy, such customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee without seeking customer instructions. Such commodity broker may obtain evidence of the customer instructions as provided in §1.55(d) of this chapter.
(2) Record of customer instructions. Each futures commission merchant must indicate prominently in the accounting records in which it maintains open trade balances any customer accounts which are hedging accounts for which the customer has not specified that it prefers open contracts to be liquidated in bankruptcy by the trustee without instruction.
(e) Eligibility for transfer under section 764(b) of the Bankruptcy Code—(1) Accounts eligible for transfer. Subject to the requirements of paragraph (e)(2) of this section, all accounts are eligible for transfer after the filing date pursuant to section 764(b) of the Bankruptcy Code, except:
(i) House accounts or the accounts of general partners of the debtor if the debtor is a partnership;
(ii) Leverage accounts, if the debtor is the leverage transaction merchant with respect to such accounts;
(iii) Dealer option accounts, if the debtor is the dealer option grantor with respect to such accounts;
(iv) Accounts which contain no open commodity contracts;
(v) Accounts which are in deficit.
(2) Amount of equity which may be transferred. In no case may money, securities or property be transferred in respect of any eligible account if the value of such money, securities or property would exceed the funded balance of such account based on available
information as of the close of business on the business day immediately preceding transfer less the value on the date of return or transfer of any property previously returned or transferred with respect thereto.

(f) Special rules for transfers under section 764(b) of the Bankruptcy Code—(1) Dealer options—(i) Eligibility for transfer. Prior to exercise, any dealer option contract held by or for the account of a debtor which is a futures commission merchant from or for the account of a customer may be transferred even if the funded balance available for transfer which is attributable to such contract does not equal 100% of the portion of the purchase price required to be segregated with respect to such contract: Provided, That a dealer option contract will be eligible for transfer only if any deficiency in the funded balance of the customer account in which it is held is not due to amounts owed by such customer to the debtor; and, Provided further, That the transferee of any dealer option contract need not segregate more than an amount equal to that portion of the purchase price due the grantor which is transferred with the contract which should be equal to the grantor’s funded balance less any reasonable reserve established by the trustee for the nonrecovery of overpayments.

(ii) Obligation of the dealer option grantor. In the event of the transfer of a dealer option contract pursuant to this section, the failure of the debtor futures commission merchant to segregate 100% of the purchase price due the grantor which is transferred with the contract which should be equal to the grantor’s funded balance in the portion of the purchase price segregated less any reasonable reserve established by the trustee for the nonrecovery of overpayments.

(g) Prohibition on avoidance of transfers under section 764(b) of the Bankruptcy Code—(1) Pre-relief transfers. Notwithstanding the provisions of paragraph (e) of this section, the following transfers may not be avoided by a trustee:

(i) The transfer of commodity accounts prior to the entry of the order for relief in compliance with §1.17(a)(4) of this chapter unless such transfer is disapproved by the Commission; or

(ii) The transfer prior to the order for relief by a public customer, including a transfer by a public customer which is a commodity broker, of commodity accounts held from or for the account of such customer by or on behalf of the debtor unless:

(A) The customer acted in collusion with the debtor or its principals to obtain a greater share of the bankrupt estate than that to which it would be entitled in a bankruptcy distribution; or

(B) The transfer is disapproved by the Commission.
(2) Post-relief transfers. On or after the entry of the order for relief, the following transfers to one or more transferees may not be avoided by the trustee:

(i) The transfer of a customer account eligible to be transferred under paragraph (e) or (f) of this section made by the trustee of the commodity broker or by any self-regulatory organization or clearing organization of the commodity broker:

(A) On or before the close of business on the fourth business day after the entry of the order for relief; and

(B) The Commission is notified in accordance with §190.02(a)(2) prior to the transfer and does not disapprove the transfer; or

(ii) The transfer of a customer account at the direction of the Commission on or before the close of business on the fourth business day after the order for relief upon such terms and conditions as the Commission may deem appropriate and in the public interest.

(3) Withdrawals prior to bankruptcy. The withdrawal or settlement of a commodity account by a public customer including a public customer which is a commodity broker, prior to the filing date may not be avoided by a trustee unless:

(i) The customer making the withdrawal or settlement acted in collusion with the debtor or its principals to obtain a greater share of the bankruptcy estate than that to which such customer would be entitled in a bankruptcy distribution; or

(ii) The withdrawal or settlement is disapproved by the Commission.

(h) Commission action. Notwithstanding any other provision of this section, in appropriate cases and to protect the public interest, the Commission may:

(1) Prohibit the transfer of customer accounts; or

(2) Permit transfers of accounts which do not comply with the requirements of this section.

§ 190.07 Calculation of allowed net equity.

Allowed net equity shall be computed as follows:

(a) Allowed claim. The allowed net equity claim of a customer shall be equal to the aggregate of the funded balances of such customer’s net equity claim for each account class plus or minus the adjustments specified in paragraph (d) of this section.

(b) Net equity. Net equity means the total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor. Net equity shall be calculated as follows:

(1) Step 1—Equity determination. Determine the equity balance of each customer account by computing, with respect to such account, the sum of:

(i) The ledger balance;

(ii) The open trade balance; and

(iii) The current realizable market value, determined as of the close of the market on the last preceding market day, of any securities or other property held by or for the debtor from or for such account, plus accrued interest, if any.

(A) For the purposes of this paragraph (b)(1), the ledger balance of a customer account shall be calculated by adding:

(1) Cash deposited to purchase, margin, guarantee, secure, or settle a commodity contract;

(2) Except as is otherwise provided in this chapter, the cash proceeds of such cash, or of securities or other property referred to in paragraph (b)(1) of this section held from or for the customer by or for the account of the commodity broker; and

(3) Gains realized on trades, and

(B) Subtracting from the result:

(1) Losses realized on trades; and

(2) Disbursements to or on behalf of the customer; and

(3) The normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees, insurance and other costs and charges lawfully incurred in connection with the purchase, sale, exercise, or liquidation of any commodity contract in such account. For purposes