§ 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
of this paragraph (b)(1), the open trade balance of a customer’s account shall be computed by subtracting the unrealized loss in value of the open commodity contracts held by or for such account from the unrealized gain in value of the open commodity contracts held by or for such account. In calculating the ledger balance or open trade balance of any customer, exclude any security futures products, any gains or losses realized on trades in such products, any property received to margin, guarantee or secure such products (including interest thereon or the proceeds thereof), to the extent any of the foregoing are held in a securities account, and any disbursements to or on behalf of such customer in connection with such products or such property held in a securities account.

(2) Step 2—Customer determination (aggregation). Aggregate the credit and debit equity balances of all accounts of the same class held by a customer in the same capacity. Paragraphs (b)(2)(i) through (b)(2)(xiii) of this section prescribe which accounts must be treated as being held in the same capacity and which accounts must be treated as being held in a separate capacity.

(i) Except as otherwise provided in this paragraph (b)(2), all accounts which are maintained with a debtor in a person’s name and which, under this paragraph (b)(2), are deemed to be held by that person in its individual capacity shall be deemed to be held in the same capacity.

(ii) An account maintained with a debtor by a guardian, custodian, or conservator for the benefit of a ward, or for the benefit of a minor under the Uniform Gift to Minors Act, shall be deemed to be held in a separate capacity from accounts held by such guardian, custodian or conservator in its individual capacity.

(iii) An account maintained with a debtor in the name of an executor or administrator of an estate shall be deemed to be held in a separate capacity from accounts held by such executor or administrator in its individual capacity.

(iv) Subject to paragraph (b)(2)(iii) of this section, an account maintained with a debtor in the name of a decedent, in the name of the executor or administrator of such estate shall be deemed to be accounts held in the same capacity.

(v) An account maintained with a debtor by a trustee shall be deemed to be held in the individual capacity of the grantor of the trust unless the trust is created by a valid written instrument for a purpose other than avoidance of an offset under the regulations contained in this part. A trust account which is not deemed to be held in the individual capacity of its grantor under paragraph (b)(2)(v) of this section shall be deemed to be held in a separate capacity from accounts held in an individual capacity by the trustee, by the grantor or any successor in interest of the grantor, or by any trust beneficiary, and from accounts held by any other trust.

(vi) An account maintained with a debtor by a corporation, partnership, or unincorporated association shall be deemed to be held in a separate capacity from accounts held by the shareholders, partners or members of such corporation, partnership or unincorporated association, if such entity was created for purposes other than avoidance of an offset under the regulations contained in this part.

(vii) A hedging account of a person shall be deemed to be held in the same capacity as a speculative account of such person.

(viii) Subject to paragraph (b)(2)(ix) of this section, the futures accounts, leverage accounts, options accounts, foreign futures accounts, and cleared OTC derivatives accounts of the same person shall not be deemed to be held in separate capacities: Provided, however, that such accounts may be aggregated only in accordance with paragraph (b)(3) of this section.

(ix) An omnibus customer account of a futures commission merchant maintained with a debtor shall be deemed to constitute one account and to be held in a separate capacity from the house account and any other omnibus customer account of such futures commission merchant.

(x) A joint account maintained with the debtor shall be deemed to be held in a separate capacity from any account held in an individual capacity by
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the participants in such account, from any account held in an individual capacity by a commodity pool operator or commodity trading advisor for such account, and from any other joint account: Provided, however, That if such account is not transferred in accordance with §190.06, it shall be deemed to be held in the same capacity as any other joint account held by identical participants and a participant’s percentage interest therein shall be deemed to be held in the same capacity as any account held in an individual capacity by such participant.

(xi) An account maintained with a debtor in the name of a plan which, on the filing date, has in effect a registration statement in accordance with the requirements of section 1031 of the Employee Retirement Income Security Act of 1974 and the regulations thereunder shall be deemed to be held in a separate capacity from an account held in an individual capacity by the plan administrator, any employer, employee, participant, or beneficiary with respect to such plan.

(xii) Except as otherwise provided in this section, an account maintained with a debtor by an agent or nominee for a principal or a beneficial owner shall be deemed to be an account held in the individual capacity of such principal or beneficial owner.

(xiii) Accounts held by a customer in separate capacities shall be deemed to be accounts of different customers. The burden of proving that an account is held in a separate capacity shall be upon the customer.

(3) Step 3—Setoffs. (i) The net equity of one customer account may not be offset against the net equity of any other customer account.

(ii) Any obligation which is not required to be included in computing the equity of a customer under paragraph (b)(1) of this section, but which is owed by such customer to the debtor must be deducted from any obligation not required to be included in computing the equity of a customer which is owed by such debtor to the customer. If the former amount exceeds the latter, the excess must be deducted from the equity balance of the customer obtained after performing the preceding calculations required by paragraph (b) of this section: Provided, That if the customer owns more than two classes of accounts the excess must be offset against each positive equity balance in the same proportion as that positive equity balance bears to the total of all positive equity balances of accounts of different classes held by such customer.

(iii) A negative equity balance obtained with respect to one customer account class must be set off against a positive equity balance in any other account class of such customer held in the same capacity: Provided, That if a customer owns more than two classes of accounts such balance must be offset against each positive equity balance in the same proportion as that positive equity balance bears to the total of all positive equity balances in accounts of different classes held by such customer.

(iv) To the extent any indebtedness of the debtor to the customer which is not required to be included in computing the equity of such customer under paragraph (b)(1) of this section exceeds such indebtedness of the customer to the debtor, the customer claim therefor will constitute a general creditor’s claim rather than a customer property claim, and the net equity therefor shall be separately calculated.

(v) The rules pertaining to separate capacities and permitted setoffs contained in this section must be applied subsequent to the entry of an order for relief; prior to the filing date the provisions of §1.22 of this chapter and of section 4d(a)(2) of the Act shall govern what setoffs are permitted.

(4) Step 4—Correction for distributions. The value on the date of transfer or distribution of any property transferred or distributed subsequent to the filing date and prior to the primary liquidation data with respect to each class of account held by a customer must be added to the equity obtained for that customer for accounts of that class after performing the steps contained in paragraphs (b)(1)–(3) of this section: Provided, however, That if all accounts for which there are customer claims of record and 100% of the equity pertaining thereto are transferred in accordance with §190.06 and section
764(b) of the Bankruptcy Code, net equity shall be computed based solely upon those customer claims, if any, filed subsequent to bankruptcy which are not claims of record on the filing date.

5) Step 5—Correction for subsequent events. Compute any adjustments to Steps 1 through 4 of this paragraph (b) required to correct misestimates or errors including, without limitation, corrections for subsequent events such as the liquidation of unliquidated claims at a value different from the estimated value previously used in computing net equity.

6) Step 6—Net equity of accounts which remain open subsequent to the primary liquidation date. If the accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the trustee must adjust the net equity obtained for that customer pursuant to the steps contained in paragraphs (b) (1) through (5) of this section as provided in paragraphs (d)(1) and (d)(2) of this section.

(c) Calculation of funded balance. "Funded balance" means a customer’s pro rata share of the customer estate with respect to each account class available as of the primary liquidation date for distribution to customers of the same class.

(1) The funded balance of any customer claim shall be computed by:

(i) Multiplying the ratio of the amount the net equity claim less the amounts referred to in (1)(ii) of this section of such customer for any account class bears to the sum of the net equity claims less the amounts referred to in (1)(ii) of this section of all customers for accounts of that class by the sum of:

(A) The value of the money, securities or property segregated on behalf of all accounts of the same class less the amounts referred to in (1)(ii) of this section;

(B) The value of any money, securities or property which must be allocated under § 190.08 to customer accounts of the same class; and

(C) The amount of any add-back required under paragraph (b)(4) of this section; and

(ii) Then adding 100% of any margin payment made between the entry of the order for relief and the primary liquidation date.

(2) Corrections to funded balance. The funded balance must be adjusted, as of the primary liquidation date, to correct for subsequent events including, without limitation:

(i) Added claimants;

(ii) Disallowed claims;

(iii) Liquidation of unliquidated claims at a value other than their estimated value;

(iv) Recovery of property; and

(v) Deficits generated by the continued operation of accounts after the primary liquidation date which cannot be fully adjusted under paragraph (d) of this section.

(d) Adjustments to funded balance for operations subsequent to the primary liquidation date. If accounts of a customer contain commodity contracts which remain open subsequent to the primary liquidation date, the funded balance for each class must be adjusted until liquidation or transfer of all such open commodity contracts of that customer of the same class, as follows:

(1) Unrealized and realized gains and any receipts of margin with respect thereto must be added to the funded balance;

(2) Unrealized and realized losses, and the normal costs attributable to the payment of commissions, brokerage, interest, taxes, storage, transaction fees and other costs and charges lawfully incurred with respect to the maintenance or liquidation of such open commodity contracts, and any distributions must be subtracted from the funded balance; and

(3) Subject to claims against the trustee for failure to liquidate, any deficit which is not recovered from the customer on whose behalf it is incurred must be charged against the funded balance of each account which remained open on the date the deficit occurred in the same proportion as the funded balance of each account bears to all the funded balances of all accounts which remained open on that date.

(e) Valuation. In computing net equity, commodity contracts and other property held by or for a commodity broker must be valued as provided in this paragraph (e): Provided, however,
That if identical commodity contracts, securities, or other property are liqui-
dated on the same date, but cannot be liquidated at the same price, the 
trustee may use the weighted average of the liquidation prices in computing 
the net equity of each customer holding such contracts, securities or prop-
erty.

(1) **Exchange-traded contracts.** The value of an open commodity contract 
which is traded on a board of trade shall be equal to the settlement price 
as of the close of business on the board of trade upon which it is traded: Pro-
vided, That if such contract is trans-
ferred its value shall be determined at 
the time of its transfer: and Provided 
further, That if such contract is liq-
uidated, its value shall be equal to the 
net proceeds of liquidation.

(2) **Principal contracts.** The valuation 
date of principal contracts which are 
not transferred shall be the date of the 
order for relief unless there is specific 
property which constitutes cover by 
the principal for the principal contract 
in which case it shall be the date of liq-
uidation of the cover. For purposes of 
valuating contracts for which there is no 
established secondary market:

(i) **Cash price series approved by Com-
m ission.** The market value of the phys-
ical commodity which is the subject of 
a principal contract shall be computed 
using a cash price series approved by 
the Commission for use by the dealer 
option grantor, in the case of dealer op-
tions, and by the leverage transaction 
merchant, in the case of leverage con-
tracts.

(ii) **No cash price series approved by Com-
m ission.** If no applicable cash price 
series has been submitted to the Com-
m ission, or if such a cash price series 
has been submitted, but has not been 
approved by the Commission, the mar-
ket value of the physical commodity which is the subject of a principal con-
tact shall be equal to the lesser of:

(A) The market value of the physical commodity as of the close of business 
on the local cash market most prox-
imate to the debtor’s principal place of 
business; or

(B) The spot month settlement price 
on a contract market which trades con-
tacts in that physical commodity most proximate to the debtor’s prin-
cipal place of business: Provided, That 
where there is more than one local 
market as described in paragraphs 
(e)(2)(ii) (A) or (B) of this section, the 
trustee should use the most active 
market.

(iii) **Special rule for valuing dealer op-
tions.** A dealer option which is in-the-
money will be deemed to have been ex-
ercised for purposes of determining its 
value which shall be equal to the great-
er of:

(A) The in-the-money amount; or 
(B) The premium paid for such option 
divided by the number of days con-
tained in the option period and multi-
plied by the number of days remaining 
in such period on the liquidation date: 
Provided, That in the trustee’s sole dis-
cretion, the trustee may reduce such 
value to an amount which does not ex-
ceed the average of the premiums re-
cently paid for similar options granted 
by the same grantor.

Any time value not reflected in this 
computation claimed by a customer 
must be treated as a general creditor’s 
claim.

(iv) **Special rule for valuing leverage con-
tracts.** Notwithstanding paragraphs 
(e)(2) (i) and (ii) of this section, if the 
records of the debtor are not sufficient 
to substantiate customer claims for 
profits and to identify the owners of 
contracts with losses, the liquidation 
value of a leverage contract shall be 
deemed to be an amount equal to the 
total deposit made by a customer in re-
spect to such contract.

(3) **Bucketed contracts.** The value of a 
commodity contract which has not 
been established in fact shall be 
deemed to be equal to the value of the 
total deposit made by a customer in re-
spect to such contract.

(4) **Securities.** The value of a listed se-
curity shall be equal to the closing 
price for such security on the exchange 
upon which it is traded. The value of 
over-the-counter securities traded pur-
suant to the National Association of 
Securities Dealers Automated 
Quotation system shall be equal, in the 
case of a long position, to the closing 
bid price and, in the case of a short po-
sition, to the closing asking price. The 
value of all other over-the-counter se-
curities shall be equal in the case of a 
long position, to the average of the bid
prices for long positions, and in the case of a short position, to the average of the asking prices for the short positions. If liquidated prior to the primary liquidation date, the value of such security shall be equal to the net proceeds of its liquidation. Securities which are not publicly traded shall be valued by the trustee subject to approval of the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances.

(5) **Property.** Cash commodities held in inventory, as collateral or otherwise, shall be valued at their fair market value. Subject to the other provisions of this paragraph (e), all other property shall be valued by the trustee subject to approval by the court, using such professional assistance as the trustee deems necessary in its sole discretion under the circumstances: Provided, however, That if such property is sold, its value for purposes of the calculations required by this part shall be the net proceeds of such sale: Provided further, That the sale is made in compliance with all applicable statutes, rules and orders of any court or governmental entity with jurisdiction thereover.


§ 190.08 Allocation of property and allowance of claims.

The property of the debtor’s estate must be allocated among account classes and between customer classes as provided in this section, except for special distributions required under appendix B to this part. The property so allocated will constitute a separate estate of the customer class and the account class to which it is allocated, and will be designated by reference to such customer class and account class.

(a) **Scope of customer property.** (1) Customer property includes the following:

(i) All cash, securities, or other property or the proceeds of such cash, securities or other property received, acquired, or held by or for the account of the debtor, from or for the account of a customer, including a non-public customer, which is:

(A) Property received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(B) Open commodity contracts;

(C) Warehouse receipts, bills of lading, or other documents of title or property held or acquired by the debtor to fulfill a commodity contract;

(D) Profits or contractual rights accruing to a customer as the result of a commodity contract;

(E) The full proceeds of a letter of credit if such letter of credit was received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract;

(F) Property hypothecated under §1.30 of this chapter to the extent that the value of such property exceeds the proceeds of any loan of margin made with respect thereto, and

(ii) All cash, securities, or other property which:

(A) Is segregated on the filing date;

(B) Is a security owned by the debtor to the extent there are customer claims for securities of the same class and series of an issuer;

(C) Is specifically identifiable to a customer;

(D) Is property of a type described in paragraph (a)(1)(i)(A) of this section which has been withdrawn and subsequently is recovered by the avoidance powers of the trustee;

(E) Represents recovery of any debit balance, margin deficit, or other claim of the debtor against a customer account;

(F) Was unlawfully converted but is part of the debtor’s estate;

(G) Is property of the debtor that any applicable law, rule, regulation, or order requires to be set aside for the benefit of customers, unless including such property in the customer estate would not significantly increase the customer estate;

(H) Is property of the debtor’s estate recovered by the Commission in any proceeding brought against the principals, agents, or employees of the debtor;

(I) Is proceeds from the investment of customer property by the trustee pending final distribution; or

(J) Is cash, securities or other property of the debtor’s estate, including...