

(3) *Distribution in kind of specifically identifiable securities.* If any securities of a customer would have been specifically identifiable under §190.01(kk)(6) if that customer had had no open commodity contracts, the customer may request that the trustee purchase or otherwise obtain the largest whole number of like-kind securities, with a fair market value (inclusive of transaction costs) which does not exceed that portion of such customer's allowed net equity claim that constitutes a claim for securities, if like-kind securities can be purchased in a fair and orderly manner.

(4) *Proof of customer claim.* No distribution shall be made pursuant to paragraphs (d)(1) and (d)(3) of this section prior to receipt of a completed proof of customer claim as described in §190.02(d).

(5) *No differential distributions.* No further disbursements may be made to customers for whom transfers have been made pursuant to §190.06 and paragraph (d)(2) of this section, until a percentage of each net equity claim equivalent to the percentage distributed to such customers is distributed to all public customers. Partial distributions, other than the transfers referred to in §190.06 and paragraph (d)(2) of this section, made prior to the final net equity determination date must be made pursuant to a preliminary plan of distribution approved by the court, upon notice to the parties and to all customers, which plan requires adequate security to the debtor's estate for the nonrecovery of any overpayments by the trustee and distributes an equal percentage of net equity to all public customers.

(6) *Margin payments.* The trustee may make margin payments on behalf of any account which do not exceed the funded balance of that account.

[48 FR 8739, Mar. 1, 1983; 48 FR 15122, Apr. 1, 1983, as amended at 59 FR 17471, Apr. 13, 1994; 67 FR 58298, Sept. 13, 2002]

§ 190.09 Member property.

(a) *Member property.* "Member property" means, in connection with a clearing organization bankruptcy, the property which may be used to pay that portion of the net equity claim of

a member which is based on its house account.

(b) *Scope of member property.* Member property shall include all money, securities and property received, acquired, or held by a clearing organization to margin, guarantee or secure the proprietary account, as defined in §1.3(y) of this chapter, of a clearing member: *Provided, however,* That any guaranty deposit or similar payment or deposit made by such member and any capital stock, or membership of such member in the clearing organization shall also be included in member property after payment in full of that portion of the net equity claim of the member based on its customer account and of any obligations due the clearing organization which may be paid therefrom in accordance with the by-laws or rules of the clearing organization, including obligations due from the clearing organization to customers or other members.

§ 190.10 General.

(a) *Notices.* Unless instructed otherwise, all mandatory or discretionary notices to be given to the Commission under this part shall be directed to the Washington, DC headquarters of the Commission (Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581) and addressed to the Secretariat, for the attention of the Director of the Division of Clearing and Intermediary Oversight. All such notices shall be in writing and shall be given by telegram or other similarly rapid means of communication. For purposes of this part, notice to the Commission shall be deemed to be given only upon actual receipt.

(b) *Request for exemption from time limit.* (1) A trustee or any other person charged with the management of a commodity broker which has filed a petition in bankruptcy, or against which such a petition has been filed, may for good cause shown request from the Commission an exemption from, or extension of, any time limit prescribed by this part 190: *Provided,* That no such exemption or extension will be granted for any time period established by the Bankruptcy Code, as amended, 11 U.S.C. 101 *et seq.*

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(2) Such a request shall be made *ex parte* and by any means of communication, written or oral: *Provided*, That an oral request shall be confirmed in writing within one business day and such confirmation shall contain all the information required by paragraph (b)(3) of this section. Any such request shall be directed to the person as provided in paragraph (a) of this section, and at the address provided therein.

(3) Such a request shall state the particular provision of the part 190 rules with respect to which the exemption or extension is sought, the reason for the requested exemption or extension, the amount of time sought if the request is for an extension, and the reason why such exemption or extension would not be contrary to the purposes of the Bankruptcy Code and the Commission's part 190 regulations promulgated thereunder.

(4) The Director of the Division of Clearing and Intermediary Oversight, or such members of the Commission's staff acting under his direction as he may designate, on the basis of the information provided in any such request, shall determine, in his sole discretion, whether to grant, deny or otherwise respond to a request, and shall communicate that determination by the most appropriate means to the person making the request and to the bankruptcy court with jurisdiction over the case.

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in §1.65 of this chapter, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in §1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under §1.55(c) of this chapter and set forth in appendix A to §1.55 which the Commission finds satisfies this requirement.

(2) The disclosure statement required by paragraph (c)(1) of this section is as follows:

THIS STATEMENT IS FURNISHED TO YOU BECAUSE RULE 190.10 (c) OF THE COMMODITY FUTURES TRADING COMMISSION REQUIRES IT FOR REASONS OF FAIR NOTICE UNRELATED TO THIS COMPANY'S CURRENT FINANCIAL CONDITION.

1. YOU SHOULD KNOW THAT IN THE UNLIKELY EVENT OF THIS COMPANY'S BANKRUPTCY, PROPERTY, INCLUDING PROPERTY SPECIFICALLY TRACEABLE TO YOU, WILL BE RETURNED, TRANSFERRED OR DISTRIBUTED TO YOU, OR ON YOUR BEHALF, ONLY TO THE EXTENT OF YOUR PRO RATA SHARE OF ALL PROPERTY AVAILABLE FOR DISTRIBUTION TO CUSTOMERS.

2. NOTICE CONCERNING THE TERMS FOR THE RETURN OF SPECIFICALLY IDENTIFIABLE PROPERTY WILL BE BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.

3. THE COMMISSION'S REGULATIONS CONCERNING BANKRUPTCIES OF COMMODITY BROKERS CAN BE FOUND AT 17 CODE OF FEDERAL REGULATIONS PART 190.

(3) The statement contained in paragraph (c)(2) of this section need be furnished only once to each customer to whom it is required to be furnished by this section.

(d) *Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.* (1) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Clearing and Intermediary Oversight, and to such members of the Commission's staff acting under his direction as he may designate, all the functions of the Commission set forth in this part except the authority to approve or disapprove a withdrawal or settlement of a commodity account by a public customer pursuant to §190.06(g)(3).

(2) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated to him pursuant to paragraph (d)(1) of this section.

(3) Nothing in this section shall prohibit the Commission, at its election, from exercising its authority delegated

to the Director of the Division of Clearing and Intermediary Oversight under paragraph (d)(1) of this section.

(e) *Forward contracts.* For purposes of this part, an entity for or with whom the debtor deals who holds a claim against the debtor solely on account of a forward contract will not be deemed to be a customer.

(f) *Notice of court papers pertaining to the operation of the estate.* The trustee shall promptly provide the Commission with copies of any complaint, motion, or petition filed in a commodity broker bankruptcy which concerns the disposition of customer property. Court papers shall be directed to the Washington, DC headquarters of the Commission addressed as provided in paragraph (a) of this section.

(g) *Other.* The Bankruptcy Code will not be construed by the Commission to prohibit a commodity broker from doing business as any combination of the following: futures commission merchant, commodity option dealer, foreign futures commission merchant or leverage transaction merchant, nor will the Commission construe the Bankruptcy Code to permit any operation, trade or business, or any combination of the foregoing, otherwise prohibited by the Act or by any rule, regulation or order of the Commission thereunder.

(h) *Rule of construction.* Contracts in security futures products held in a securities account shall not be considered to be “from or for the commodity futures account” or “from or for the commodity options account” of such customers, as such terms are used in section 761(9) of the Bankruptcy Code.

(Secs. 2(a), 4c, 4d, 4g, 5, 5a, 8a, 15, 19 and 20 of the Commodity Exchange Act, as amended by the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294 (1983), 7 U.S.C. 2 and 4a, 6c, 6d, 6g, 7, 7a, 12a, 19, 23 and 24 (1976 & Supp. V. 1981 and Pub. L. 97-444); secs. 761-766 of the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Act Amendments, Pub. L. 97-222, 96 Stat. 235 (1982), 11 U.S.C. 761-766 (Supp. V. 1981 as amended by Pub. L. 97-222))

[48 FR 8739, Mar. 1, 1983, as amended at 48 FR 28980, June 24, 1983; 58 FR 17505, Apr. 5, 1993; 59 FR 34382, July 5, 1994; 60 FR 49336, Sept. 25, 1995; 63 FR 8571, Feb. 20, 1998; 67 FR 58298, Sept. 13, 2002; 67 FR 62353, Oct. 7, 2002]

APPENDIX A TO PART 190—BANKRUPTCY FORMS

BANKRUPTCY APPENDIX FORM 1—OPERATION OF THE DEBTOR'S ESTATE—SCHEDULE OF TRUSTEE'S DUTIES

For the convenience of a prospective trustee, the Commission has constructed an approximate schedule of important duties which the trustee should perform during the early stages of a commodity broker bankruptcy proceeding. The schedule includes duties required by this part, subchapter IV of chapter 7 of the Bankruptcy Code as well as certain practical suggestions, but it is only intended to highlight the more significant duties and is not an exhaustive description of all the trustee's responsibilities. It also assumes that the commodity broker being liquidated is an FCM. Moreover, it is important to note that the operating facts in a particular bankruptcy proceeding may vary the schedule or obviate the need for any of the particular activities.

ALL CASES

Date of Order for Relief

1. Assure that the commodity broker has notified the Commission and its designated self-regulatory organization (“DSRO”) that a petition or order for relief has been filed (§190.02(a)(1)).

2. Attempt to estimate short-fall in customer segregated funds.

a. If there is a substantial short-fall of customer segregated funds, the trustee should:

i. Contact the DSRO and attempt to effectuate a transfer under section 764(b) of the Code (hereinafter “bulk transfer”); notify the Commission for assistance (§§190.02(a)(2) and (e)(1), §190.06(b)(2), (e), (f)(3), (g)(2), and (h)) but recognize that a bulk transfer is highly unlikely.

ii. If a bulk transfer cannot be effectuated, liquidate all customer commodity contracts, except dealer options and specifically identifiable commodity contracts which are bona fide hedging positions (as defined in §190.01(kk)(2)) with instructions not to be liquidated. (See §§190.02(f) and 190.06(d)(1)). (In this connection, depending upon the size of the debtor and other complications of liquidation, the trustee should be aware of special liquidation rules, and in particular the availability under certain circumstances of book-entry liquidation (§190.04(d)(1)(ii)).

b. If there is a small short-fall of customer segregated funds, negotiate with the clearing organization to effect a bulk transfer; notify the Commission (§§190.02(a)(2) and (e)(1), 190.06(b)(2), (e), (f)(3), (g)(2), and (h)).

3. Whether or not a transfer has occurred, liquidate or offset open commodity contracts

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not eligible for transfer (*i.e.*, deficit accounts, accounts with no open positions) (§190.06(e)(1)).

4. Offset all futures contracts which would otherwise remain open beyond the last day of trading or first day on which notice of intent to deliver may be tendered; offset long options on a physical commodity which cannot be settled in cash, have value and would be automatically exercised or would remain open beyond the last day of exercise; and offset all short options on a physical commodity which cannot be settled in cash (§190.02(f)(1)).

5. Compute estimated funded balance for each customer commodity account containing open commodity contracts (§190.04(b)) (daily thereafter).

6. Make margin calls if necessary (§190.02(g)(1)) (daily thereafter).

7. Liquidate or offset any open commodity account for which a customer has failed to meet a margin call (§190.02(f)(1)) (daily thereafter).

8. Commence liquidation or offset of specifically identifiable property described in §190.02(f)(2)(i) (property which has lost 10% or more of value) (and as appropriate thereafter).

9. Commence liquidation or offset of property described in §190.02(f)(3) ("all other property").

10. Be aware of any contracts in delivery position and rules pertaining to such contracts (§190.05).

First Business Day After the Entry of an Order for Relief

1. If a bulk transfer occurred on the date of entry of the order for relief:

a. Liquidate any remaining open commodity contracts, except any dealer option or specifically identifiable commodity contract [hedge] (*See* §190.01(kk)(2) and §190.02(f)(1)), and not otherwise transferred in the bulk transfer.

b. Primary liquidation date for transferred or liquidated commodity contracts (§190.01(ff)).

2. If no bulk transfer has yet been effected, continue attempt to negotiate bulk transfer of open commodity positions and dealer options (§190.02(c)(1)).

3. Provide the clearing house or carrying broker with assurances to prevent liquidation of open accounts available for transfer at the customer's instruction or liquidate all open contracts except those available for transfer at a customer's instruction and dealer options.

Second Business Day After the Entry of an Order for Relief

If no bulk transfer has yet been effected, request directly customer instructions regarding transfer of open commodity con-

tracts and publish notice for customer instructions regarding the return of specifically identifiable property other than commodity contracts (§§190.02(b)(1) and (2)).

Third Business Day After the Entry of an Order for Relief

1. Last day on which to notify the Commission with regard to whether a bulk transfer in accordance with section 764(b) of the Bankruptcy Code will take place (§190.02(a)(2) and §190.06(e)).

2. Second publication date for customer instructions (§190.02(b)(1)) (publication is to be made on two consecutive days, whether or not the second day is a business day).

Fourth Business Day After the Entry of an Order for Relief

If not previously concluded, conclude transfers under §190.06(e) and (f). (*See* §190.02(e)(1) and §190.06(g)(2)(i)(A)).

Fifth Business Day After the Entry of an Order for Relief

Last day for customers to instruct the trustee concerning open commodity contracts (§190.02(b)(2)).

Sixth Business Day After the Entry of an Order for Relief

Commence liquidation of open commodity contracts for which no customer instructions have been received (§190.02(b)(2)).

Seventh Business Day After the Entry of an Order for Relief

1. Customer instructions due to trustee concerning specifically identifiable property (§190.02(b)(1)).

2. Primary liquidation date (§190.01(ff)) (assuming no bulk transfers and liquidation effected for all open commodity contracts for which no customer instructions were received by the close of business on the sixth business day).

3. Establishment of transfer accounts (§190.03(a)(1)) (assuming this is the primary liquidation date); mark such accounts to market (§190.03(a)(2)) (daily thereafter until closed).

Eighth Business Day After the Entry of an Order for Relief

Commence liquidation of specifically identifiable property for which no customer instructions have been received (§190.02(b)(1)).

Ninth Business Day After the Entry of an Order for Relief

Complete liquidation to the extent reasonably possible of specifically identifiable property which has yet to be liquidated and for which no customer instructions have been received (§190.03(c)).

Tenth Business Day After the Entry of an Order for Relief

1. Liquidate or offset all remaining open commodity contracts (§190.02(b)(2)).

2. Transfer all open dealer option contracts which have not previously been transferred (§190.06(f)(3)(i)).

Eleventh Business Day After the Entry of an Order for Relief

If not done previously, notify customers of bankruptcy and request customer proof of claim (§190.02(b)(4)).

Thirteenth Business Day After the Entry of an Order for Relief

Commence liquidation of specifically identifiable property for which no arrangements for return have been made in accordance with customer instructions (§§190.02(b)(1), 190.03(c)).

Separate Procedures for Involuntary Petitions for Bankruptcy

1. Within one business day after notice of receipt of filing of the petition in bankruptcy, the trustee should assure that proper notification has been given to the Commission and the commodity broker's designated self-regulatory organization (§190.02(a)(1)); margin calls should be issued if necessary (§190.02(g)(2)).

2. On or before the fourth business day after the filing of a petition in bankruptcy, the trustee should use his best efforts to effect a transfer in accordance with §§190.06 (e) and (f) of all open commodity contracts and equity held for or on behalf of customers of the commodity broker (§190.02(e)(2)) unless the debtor can provide certain assurances to the trustee.

BANKRUPTCY APPENDIX FORM 2—REQUEST FOR INSTRUCTIONS CONCERNING NON-CASH PROPERTY DEPOSITED WITH (COMMODITY BROKER)

Please take notice: On (date), a petition in bankruptcy was filed by [against] (commodity broker). Those commodity customers of (commodity broker) who deposited certain kinds of non-cash property (see below) with (commodity broker) may instruct the trustee of the estate to return their property to them as provided below.

As no customer may obtain more than his proportionate share of the property available to satisfy customer claims, if you instruct the trustee to return your property to you, you will be required to pay the estate, as a condition to the return of your property, an amount determined by the trustee. If your property is not margining an open contract, this amount will approximate the difference between the market value of your property and your pro rata share of the estate, as estimated by the trustee. If your property is

margining an open contract, this amount will be approximately the full fair market value of the property on the date of its return.

Kinds of Property to Which This Notice Applies

1. Any security deposited as margin which, as of (date petition was filed), was securing an open commodity contract and is:

- registered in your name,
- not transferable by delivery, and
- not a short-term obligation.

2. Any fully-paid, non-exempt security held for your account in which there were no open contracts as of (date petition was filed). (Rather than the return, at this time, of the specific securities you deposited with (commodity broker), you may instead request now, or at any later time, that the trustee purchase “like-kind” securities of a fair market value which does not exceed your proportionate share of the estate).

3. Any warehouse receipt, bill of lading or other document of title deposited as margin which, as of (date petition was filed), was securing an open commodity contract and:—can be identified in (commodity broker)'s records as being held for your account, and— is neither in bearer form nor otherwise transferable by delivery.

4. Any warehouse receipt bill of lading or other document of title, or any commodity received, acquired or held by (commodity broker) to make or take delivery or exercise from or for your account and which:—can be identified in (commodity broker)'s records as received from or for your account as held specifically for the purpose of delivery or exercise.

5. Any cash or other property deposited to make or take delivery on a futures or options contract may be eligible to be returned. The trustee should be contacted directly for further information if you have deposited such property with (commodity broker) and desire its return.

Instructions must be received by (close of business on 4th business day after 2d publication date) or the trustee will liquidate your property. (If you own such property but fail to provide the trustee with instructions, you will still have a claim against (commodity broker) but you will not be able to have your specific property returned to you).

NOTE— Prior to receipt of your instructions, circumstances may require the trustee to liquidate your property, or transfer your property to another broker if it is margining open contracts. If your property is transferred and your instructions were received within the required time, your instructions will be forwarded to the new broker.

Instructions should be directed to: (Trustee's name, address, telephone and/or telex number).

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Even if you request the return of your property, you must also pay the trustee the amount he specifies and provide the trustee with proof of your claim before (close of business on the 10th business day after 2d publication date) or your property will be liquidated. (Upon receipt of customer instructions to return property, the trustee will mail the sender a form which describes the information he must provide to substantiate his claim).

NOTE— The trustee is required to liquidate your property despite the timely receipt of your instructions, money, and proof of claim if, for any reason, your property cannot be returned by (close of business on the 10th business day after 2d publication date).

BANKRUPTCY APPENDIX FORM 3—REQUEST FOR INSTRUCTIONS CONCERNING TRANSFER OF YOUR HEDGE CONTRACTS HELD BY (COMMODITY BROKER)

United States Bankruptcy Court ___ District of ___ In re ___, Debtor, No. ___.

Please take notice: On (date), a petition in bankruptcy was filed by [against] (commodity broker).

You indicated when your hedge account was opened that the contracts (futures and/or options) in your hedge account should not be liquidated automatically in the event of the bankruptcy of (commodity broker), and that you wished to provide instructions at this time concerning their disposition.

Instructions to transfer your positions and a cash deposit (as described below) must be received by the trustee by (close of business on 5th business day after entry of order for relief) or your positions will be liquidated.

If you request the transfer of your contracts, prior to their transfer, you must pay the trustee in cash an amount determined by the trustee which will approximate the difference between the value of the equity margining your positions and your pro rata share of the estate plus an amount constituting security for the nonrecovery of any overpayments. In your instructions, you should specify the broker to which you wish your contracts transferred.

Be further advised that prior to receipt of your instructions, circumstances may, in any event, require the trustee to liquidate or transfer your contracts. If your contracts are so transferred and your instructions are received, your instructions will be forwarded to the new broker.

Note also that the trustee is required to liquidate your positions despite the timely receipt of your instructions and money if, for any reason, you have not made arrangements to transfer and/or your contracts are not transferred by (10 business days after entry of order for relief).

Instructions should be sent to: (Trustee's or designee's name, address, telephone and/or

telex number). [Instructions may also be provided by phone].

BANKRUPTCY APPENDIX FORM 4—PROOF OF CLAIM

[Note to trustee: As indicated in §190.02(d), this form is provided as a guide to the trustee and should be modified as necessary depending upon the information which the trustee needs at the time a proof of claim is requested and the time provided for a response.]

PROOF OF CLAIM

United States Bankruptcy Court ___ District of ___ in re ___, Debtor, No. ___.

Return this form by ___ or your claim will be barred (unless extended, for good cause only).

I. [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at ___.

[If claimant is a partnership claiming through a member] The undersigned, who resides at ___, is a member of ___, a partnership, composed of the undersigned and ___, of ___, and doing business at ___, and is duly authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through a duly authorized officer] The undersigned, who resides at ___ is the ___ of ___, a corporation organized under the laws of ___ and doing business at ___, and is duly authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at ___, is the agent of ___, and is duly authorized to make this proof of claim on behalf of the claimant.

II. The debtor was, at the time of the filing of the petition initiating this case, and still is, indebted to this claimant for the total sum of \$___.

III. List EACH account on behalf of which a claim is being made by number and name of account holder[s], and for EACH account, specify the following information:

a. Whether the account is a futures, foreign futures, leverage, option (if an option account, specify whether exchange-traded or dealer), or "delivery" account (a "delivery" account is one which contains only documents of title, commodities, cash or other property identified to the claimant and deposited for the purpose of making or taking delivery on a commodity underlying a commodity contract or for payment of the strike price upon exercise of an option).

b. The capacity in which the account is held, as follows (and if more than one is applicable, so state):

- 1. [The account is held in the name of the undersigned in his individual capacity];
- 2. [The account is held by the undersigned as guardian, custodian, or conservator for

the benefit of a ward or a minor under the Uniform Gift to Minors Act];

3. [The account is held by the undersigned as executor or administrator of an estate];

4. [The account is held by the undersigned as trustee for the trust beneficiary];

5. [The account is held by the undersigned in the name of a corporation, partnership, or unincorporated association];

6. [The account is held as an omnibus customer account of the undersigned futures commission merchant];

7. [The account is held by the undersigned as part owner of a joint account];

8. [The account is held by the undersigned in the name of a plan which, on the date the petition in bankruptcy was filed, had in effect a registration statement in accordance with the requirements of §1031 of the Employee Retirement Income Security Act of 1974 and the regulations thereunder]; or

9. [The account is held by the undersigned as agent or nominee for a principal or beneficial owner (and not described above in items 1-8 of this II, b)].

10. [The account is held in any other capacity not described above in items 1-9 of this II, b. Specify the capacity].

c. The equity, as of the date the petition in bankruptcy was filed, based on the commodity transactions in the account.

d. Whether the person[s] (including a general partnership, limited partnership, corporation, or other type of association) on whose behalf the account is held is one of the following persons OR whether one of the following persons, alone or jointly, owns 10% or more of the account:

1. [If the debtor is an individual—

A. Such individual;

B. Relative (as defined below in item 8 of this III,d) of the debtor or of a general partner of the debtor;

C. Partnership in which the debtor is a general partner;

D. General partner of the debtor; or

E. Corporation of which the debtor is a director, officer, or person in control];

2. [If the debtor is a partnership—

A. Such partnership;

B. General partner in the debtor;

C. Relative (as defined in item 8 of this III,d) of a general partner in, general partner of, or person in control of the debtor;

D. Partnership in which the debtor is a general partner;

E. General partner of the debtor; or

F. Person in control of the debtor];

3. [If the debtor is a limited partnership—

A. Such limited partnership;

B. A limited or special partner in such partnership whose duties include:

i. The management of the partnership business or any part thereof;

ii. The handling of the trades or customer funds of customers of such partnership;

iii. The keeping of records pertaining to the trades or customer funds of customers of such partnership; or

iv. The signing or co-signing of checks or drafts on behalf of such partnership];

4. [If the debtor is a corporation or association (except a debtor which is a futures commission merchant and is also a cooperative association of producers)—

A. Such corporation or association;

B. Director of the debtor;

C. Officer of the debtor;

D. Person in control of the debtor;

E. Partnership in which the debtor is a general partner;

F. General partner of the debtor;

G. Relative (as defined in item 8 of this III,d) of a general partner, director, officer, or person in control of the debtor;

H. An officer, director or owner of ten percent or more of the capital stock of such organization];

5. [If the debtor is a futures commission merchant which is a cooperative association of producers—

Shareholder or member of the debtor which is an officer, director or manager];

6. [An employee of such individual, partnership, limited partnership, corporation or association whose duties include:

A. The management of the business of such individual, partnership, limited partnership, corporation or association or any part thereof;

B. The handling of the trades or customer funds of customers of such individual, partnership, limited partnership, corporation or association;

C. The keeping of records pertaining to the trades or funds of customers of such individual, partnership, limited partnership, corporation or association; or

D. The signing or co-signing of checks or drafts on behalf of such individual, partnership, limited partnership, corporation or association];

7. [Managing agent of the debtor];

8. [A spouse or minor dependent living in the same household of ANY OF THE FOREGOING PERSONS, or any other relative, regardless of residency, (unless previously described in items 1-B, 2-C, or 4-G of this III,d) defined as an individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such degree];

9. [“Affiliate” of the debtor, defined as:

A. Entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

i. In a fiduciary or agency capacity without sole discretionary power to vote such securities; or

ii. Solely to secure a debt, if such entity has not in fact exercised such power to vote;

B. Corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

i. In a fiduciary or agency capacity without sole discretionary power to vote such securities; or

ii. Solely to secure a debt, if such entity has not in fact exercised such power to vote;

C. Person whose business is operated under a lease or operating agreement by the debtor, or person substantially all of whose property is operated under an operating agreement with the debtor;

D. Entity that otherwise, directly or indirectly, is controlled by or is under common control with the debtor];

E. Entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement; or

F. Entity that otherwise, directly or indirectly, controls the debtor; or

10. [Any of the persons listed in items 1–7 above of this III.d if such person is associated with an affiliate (see item 9 above) of the debtor as if the affiliate were the debtor].

e. Whether the account is a discretionary account. (If it is, the name in which the “attorney in fact” is held).

f. If the account is a joint account, the amount of the claimant’s percentage interest in the account. (Also specify whether participants in a joint account are claiming separately or jointly).

g. Whether the claimant’s positions in security futures products are held in a futures account or a securities account, as these terms are defined in §§1.3(vv) and (ww) of this chapter, respectively.

IV. Describe all claims against the debtor not based upon a commodity account of the claimant (*e.g.*, if landlord, for rent; if customer, for misrepresentation or fraud).

V. Describe all claims of the DEBTOR against the CLAIMANT not already included in the equity of a commodity account[s] of the claimant (see III,c above).

VI. Describe any deposits of money, securities or other property held by or for the debtor from or for the claimant, and indicate if any of this property was included in your answer to III,c above.

VII. Of the money, securities, or other property described in VI above, identify any which consists of the following:

a. With respect to property received, acquired, or held by or for the account of the debtor from or for the account of the claim-

ant to margin, guarantee or secure an open commodity contract, the following:

1. Any security which as of the filing date is:

- A. Held for the claimant’s account;
- B. Registered in the claimant’s name;
- C. Not transferable by delivery; and
- D. Not a short term obligation; or

2. Any warehouse receipt, bill of lading or other document of title which as of the filing date:

A. Can be identified on the books and records of the debtor as held for the account of the claimant; and

B. Is not in bearer form and is not otherwise transferable by delivery.

b. With respect to open commodity contracts, and except as otherwise provided below in item g of this VII, any such contract which:

1. As of the date the petition in bankruptcy was filed, is identified on the books and records of the debtor as held for the account of the claimant;

2. Is a bona fide hedging position or transaction as defined in Rule 1.3(z) of the Commodity Futures Trading Commission (“CFTC”) or is a commodity option transaction which has been determined by the exchange to be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise pursuant to rules which have been adopted in accordance with Rule 1.61(b) of the CFTC and approved by the CFTC; and

3. Is in an account designated in the accounting records of the debtor as a hedging account.

c. With respect to warehouse receipts, bills of lading or other documents of title, or physical commodities received, acquired, or held by or for the account of the debtor for the purpose of making or taking delivery or exercise from or for the claimant’s account, any such document of title or commodity which as of the filing date can be identified on the books and records of the debtor as received from or for the account of the claimant specifically for the purpose of delivery or exercise.

d. Any cash or other property deposited prior to bankruptcy to pay for the taking of physical delivery on a long futures contract or for payment of the strike price upon exercise of a short put or a long call option contract on a physical commodity, which cannot be settled in cash, in excess of the amount necessary to margin such commodity contract prior to the notice date or exercise date which cash or other property is identified on the books and records of the debtor as received from or for the account of the claimant within three or less days of the notice date or three or less days of the exercise date specifically for the purpose of payment of the notice price upon taking delivery or the strike price upon exercise.

e. The cash price tendered for any property deposited prior to bankruptcy to make physical delivery on a short futures contract or for exercise of a long put or a short call option contract on a physical commodity, which cannot be settled in cash, to the extent it exceeds the amount necessary to margin such contract prior to the notice exercise date which property is identified on the books and records of the debtor as received from or for the account of the claimant within three or less days of the notice date or of the exercise date specifically for the purpose of a delivery or exercise.

f. Fully paid, non-exempt securities identified on the books and records of the debtor as held by the debtor for or on behalf of the commodity account of the claimant for which, according to such books and records as of the filing date, no open commodity contracts were held in the same capacity.

g. Open commodity contracts transferred to another futures commission merchant by the trustee.

VIII. Specify whether the claimant wishes to receive payment in kind, to the extent possible, for any claim for securities.

IX. Attach copies of any documents which support the information provided in this proof of claim, including but not limited to customer confirmations, account statements, and statements of purchase or sale.

This proof of claim must be filed with the trustee no later than ____, or your claim will be barred unless an extension has been granted, available only for good cause.

Return this form to:
(Trustee's name (or designee's)
and address)

Dated: _____
(Signed) _____

Penalty for Presenting Fraudulent Claim. Fine of not more than \$5,000 or imprisonment for not more than five years or both—Title 18, U.S.C. 152.

(Approved by the Office of Management and Budget under control number 3038-0021)

[48 FR 8739, Mar. 1, 1983; 48 FR 15122 and 15123, Apr. 7, 1983, as amended at 67 FR 58298, Sept. 13, 2002]

APPENDIX B TO PART 190—SPECIAL
BANKRUPTCY DISTRIBUTIONS

FRAMEWORK 1—SPECIAL DISTRIBUTION OF CUSTOMER FUNDS WHEN FCM PARTICIPATED IN CROSS-MARGINING

The Commission has established the following distributional convention with respect to customer funds held by a futures commission merchant (FCM) that participated in a cross-margining (XM) program which shall apply if participating market professionals sign an agreement that makes reference to this distributional rule and the

form of such agreement has been approved by the Commission by rule, regulation or order:

All customer funds held in respect of XM accounts, regardless of the product that customers holding such accounts are trading, are required by Commission order to be segregated separately from all other customer segregated funds. For purposes of this distributional rule, XM accounts will be deemed to be commodity interest accounts and securities held in XM accounts will be deemed to be received by the FCM to margin, guarantee or secure commodity interest contracts. The maintenance of property in an XM account will result in subordination of the claim for such property to certain non-XM customer claims and thereby will operate to cause such XM claim not to be treated as a customer claim for purposes of the Securities Investors Protection Act and the XM securities to be excluded from the securities estate. This creates subclasses of customer accounts, an XM account and a non-XM account (a person could hold each type of account), and results in two pools of customer segregated funds: An XM pool and a non-XM pool. In the event that there is a shortfall in the non-XM pool of customer class segregated funds and there is no shortfall in the XM pool of customer segregated funds, all customer net equity claims, whether or not they arise out of the XM subclass of accounts, will be combined and will be paid pro rata out of the total pool of available XM and non-XM customer funds. In the event that there is a shortfall in the XM pool of customer segregated funds and there is no shortfall in the non-XM pool of customer segregated funds, then customer net equity claims arising from the XM subclass of accounts shall be satisfied first from the XM pool of customer segregated funds, and customer net equity claims arising from the non-XM subclass of accounts shall be satisfied first from the non-XM customer segregated funds. Furthermore, in the event that there is a shortfall in both the non-XM and XM pools of customer segregated funds: (1) If the non-XM shortfall as a percentage of the segregation requirement in the non-XM pool is greater than or equal to the XM shortfall as a percentage of the segregation requirement in the XM pool, all customer net equity claims will be paid pro rata; and (2) if the XM shortfall as a percentage of the segregation requirement in the XM pool is greater than the non-XM shortfall as a percentage of the segregation requirement of the non-XM pool, non-XM customer net equity claims will be paid pro rata out of the available non-XM segregated funds, and XM customer net equity claims will be paid pro rata out of the available XM segregated funds. In this way, non-XM customers will never be adversely affected by an XM shortfall.

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The following examples illustrate the operation of this convention. The examples assume that the FCM has two customers, one with exclusively XM accounts and one with exclusively non-XM accounts. However, the examples would apply equally if there were only one customer, with both an XM account and a non-XM account.

1. Sufficient Funds to Meet Non-XM and XM Customer Claims:

	Non-XM	XM	Total
Funds in segregation	150	150	300
Segregation requirement	150	150	300
Shortfall (dollars)	0	0	.....
Shortfall (percent)	0	0	.....
Distribution	150	150	300

There are adequate funds available and both the non-XM and the XM customer claims will be paid in full.

2. Shortfall in Non-XM Only:

	Non-XM	XM	Total
Funds in segregation	100	150	250
Segregation requirement	150	150	300
Shortfall (dollars)	50	0	.....
Shortfall (percent)	50/150=33.3	0	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	125	125	.....
Distribution	125	125	250

Due to the non-XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Each customer will receive his pro rata share of the funds available, or 50% of the \$250 available, or \$125.

3. Shortfall in XM Only:

	Non-XM	XM	Total
Funds in segregation	150	100	250
Segregation requirement	150	150	300
Shortfall (dollars)	0	50	.....
Shortfall (percent)	0	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	125	125	.....
Distribution	150	100	250

Due to the XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Accordingly, the XM funds and non-XM funds are treated as separate pools, and the non-XM customer will be paid in full, receiving \$150 while the XM customer will receive the remaining \$100.

4. Shortfall in Both, With XM Shortfall Exceeding Non-XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	125	100	225
Segregation requirement	150	150	300
Shortfall (dollars)	25	50	.....

	Non-XM	XM	Total
Shortfall (percent)	25/150=16.7	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	112.50	112.50	.....
Distribution	125	100	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the XM shortfall exceeds the non-XM shortfall. The non-XM customer will receive the \$125 available with respect to non-XM claims while the XM customer will receive the \$100 available with respect to XM claims.

5. Shortfall in Both, With Non-XM Shortfall Exceeding XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	100	125	225
Segregation requirement	150	150	300
Shortfall (dollars)	50	25	.....
Shortfall (percent)	50/150=33.3	25/150=16.7	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	112.50	112.50	.....
Distribution	112.50	112.50	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall exceeds the XM shortfall. Each customer will receive 50% of the \$225 available, or \$112.50.

6. Shortfall in Both, Non-XM Shortfall = XM Shortfall:

	Non-XM	XM	Total
Funds in segregation	100	100	200
Segregation requirement	150	150	300
Shortfall (dollars)	50	50	.....
Shortfall (percent)	50/150=33.3	50/150=33.3	.....
Pro rata (percent)	150/300=50	150/300=50	.....
Pro rata (dollars)	100	100	.....
Distribution	100	100	200

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall equals the XM shortfall. Each customer will receive 50% of the \$200 available, or \$100.

These examples illustrate the principle that pro rata distribution across both accounts is the preferable approach except when a shortfall in the XM account could harm non-XM customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the XM and non-XM accounts occurs in Examples 3 and 4.

FRAMEWORK 2—SPECIAL ALLOCATION OF SHORTFALL TO CUSTOMER CLAIMS WHEN CUSTOMER FUNDS ARE HELD IN A DEPOSITORY OUTSIDE OF THE UNITED STATES OR IN A FOREIGN CURRENCY

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the

Act and Commission rules thereunder held by a futures commission merchant (“FCM”) or derivatives clearing organization (“DCO”) in a depository outside the United States (“U.S.”) or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

A. *Determination of losses not attributable to sovereign action*

1. Convert each customer’s claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in §190.01(s) (the “Exchange Rate”).
2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.
3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.
4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}} \right] \right)$$

B. *Allocation of Losses Not Attributable to Sovereign Action*

1. Reduce each customer’s claim by the Shortfall Percentage.

II. REDUCTION IN CLAIMS FOR SOVEREIGN LOSS

A. *Determination of Losses Attributable to Sovereign Action (“Sovereign Loss”)*

1. If any portion of a customer’s claim is required to be kept in U.S. dollars in the U.S., that portion of the customer’s claim is not exposed to Sovereign Loss.
2. If any portion of a customer’s claim is authorized to be kept in only one location and that location is:
 - a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer’s claim is not exposed to Sovereign Loss.
 - b. A location in which there is Sovereign Loss, then that entire portion of the customer’s claim is exposed to Sovereign Loss.
3. If any portion of a customer’s claim is authorized to be kept in only one currency and that currency is:
 - a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer’s claim is not exposed to Sovereign Loss.
 - b. A currency in which there is Sovereign Loss, then that entire portion of the customer’s claim is exposed to Sovereign Loss.

4. If any portion of a customer’s claim is authorized to be kept in more than one location and:
 - a. There is no Sovereign Loss in any of those locations, then that portion of the customer’s claim is not exposed to Sovereign Loss.
 - b. There is Sovereign Loss in one of those locations, then that entire portion of the customer’s claim is exposed to Sovereign Loss.
 - c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer’s claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer’s claim is authorized to be kept in more than one currency and:
 - a. There is no Sovereign Loss in any of those currencies, then that portion of the customer’s claim is not exposed to Sovereign Loss.
 - b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer’s claim is exposed to Sovereign Loss.
 - c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer’s claim will be exposed to Sovereign Loss.

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B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:
 - a. The total customer funds deposited in depositories in that location and
 - b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.
2. The total Sovereign Loss for each currency is the difference between:

- a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and
- b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claims exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)
4. Any amount of Sovereign Loss from a location or currency in excess of the total

amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) ("Total Excess Sovereign Loss") will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\left(\text{This customer's total claim} - \frac{\text{The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.}}{\text{Total customer claims} - \frac{\text{Total of all customer claims required to be kept in U.S. dollars, in the U.S.}}{\text{Total customer claims} - \frac{\text{Total of all customer claims required to be kept in U.S. dollars, in the U.S.}}{\dots}} \right)}{\dots} \right]$$

The following examples illustrate the operation of this convention.

Example 1. No shortfall in any location.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	50	U.K.
C	50	Germany
D	£300	U.K.

Location	Actual asset balance
U.S.	\$50
U.K.	£300
U.K.	50
Germany	50

Note: Conversion Rates: 1 = \$1; £1=\$1.5.

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in U.S. dollars
A	\$50	1.0	\$50
B	50	1.0	50
C	50	1.0	50
D	£300	1.5	450
Total			600.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$50	1.0	\$50			\$50
U.K.	£300	1.5	450			450
U.K.	50	1.0	50			50
Germany	50	1.0	50			50
Total			600.00		0	600.00

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

CLAIMS:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$50	\$0	\$50
B	50	0	50
C	50	0	50
D	450	0	450
Total	600.00	0.00	600.00

Example 2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$100	U.S.
B	50	U.K.
C	100	U.K., Germany, or Japan

Location	Actual asset balance
U.S.	\$50
U.K.	100
Germany	50

Note: Conversion Rates: 1=\$1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

There is a shortfall in the funds held in the U.S. such that only 1/2 of the funds are available. Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$100	1.0	\$100
B	50	1.0	50
C	100	1.0	100
Total			250.00

Determine assets available for distribution to customers, converting to U.S. dollars:

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Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$50	1.0	\$50.00	.....	.....	\$50
U.K.	100	1.0	100	.....	.....	100
Germany	50	1.0	50	.....	.....	\$50
Total			200.00			200.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 200/250) = (1 - 80\%) = 20\%$.
 Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$100	\$20.00	\$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250.00	50.00	200.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$80	.....	\$80.00
B	40	.....	40.00
C	80	.....	80.00
Total	200.00	0	200.00

Example 3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$150	U.S.
B	100	U.K.
C	50	Germany
D	\$100	U.S.
D	100	U.K. or Germany

Location	Actual asset balance
U.S.	\$250
U.K.	50
Germany	100

Note: Conversion Rates: 1=\$1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$150	1.0	\$150
B	100	1.0	100
C	50	1.0	50
D	\$100	1.0	100
D	100	1.0	100
Total			500.00

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Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$250	1.0	\$250	.....	.....	\$250
U.K.	50	1.0	50	.....	.....	50
Germany	100	1.0	100	.....	.....	100
Total			400.00		0	400.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 400/500) = (1 - 80\%) = 20\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$150	\$30.00	120.00
B	100	20.00	80.00
C	50	10.00	40.00
D	200	40.00	160.00
Total	500.00	100.00	400.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	\$120.00	.....	\$120
B	80.00	.....	80
C	40.00	.....	40
D	160.00	0	160
Total	400.00	0	400

Example 4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	\$50	U.S.
B	50	U.K.
C	50	Germany
D	\$100	U.S.
D	100	U.K. or Germany

Location	Actual asset balance
U.S.	\$150
U.K.	100
Germany	100

Notice: Conversion Rates: 1 = \$1; Y1= \$0.01, £1= \$1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$50	1.0	\$50
B	50	1.0	50
C	50	1.0	50
D	\$100	1.0	100
D	100	1.0	100

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Customer	Claim	Conversion rate	Claim in US\$
Total	350.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$150	1.0	\$150	.....	.....	\$150
U.K.	100	1.0	100	.....	.....	100
Germany	100	1.0	100	50%	50	50
Total .....	.....	.....	350.00	.....	50.00	300.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 350/350) = (1 - 100\%) = 0\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	0	\$50.00
B	50	0	50.00
C	50	0	50.00
D	200	0	200.00
Total	350.00	0.00	350.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$50	.....	.....
B .....	.....	\$50	.....
C .....	.....	.....	\$50
D	100	.....	100
Total	150.00	50.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$150	33.3% of \$50	\$16.67
D	100/\$150	66.7% of \$50	33.33
Total .....	.....	.....	50.00

CLAIMS AFTER REDUCTIONS:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	\$50	.....	\$50
B	50	.....	50
C	50	\$16.67	33.33
D	200	33.33	166.67
Total	350.00	50.00	300.00

Example 5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$100	U.S.
B	50	U.K.
C	150	Germany
D	\$100	U.S.
D	£300	U.K.
D	150	U.K. or Germany

Location	Actual asset balance
U.S.	\$100
U.K.	£300
U.K.	200
Germany	150

Conversion Rates: 1=£1; £1=\$1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$100	1.0	\$100
B	50	1.0	50
C	150	1.0	150
D	\$100	1.0	100
D	£300	1.5	450
D	150	1.0	150
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$100	1.0	\$100			\$100
U.K.	£300	1.5	450			450
U.K.	200	1.0	200			200
Germany	150	1.0	150	100%	\$150	0
Total			900.00		150.00	750.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = $(1 - 900 / 1000) = (1 - 90\%) = 10\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$100	\$10.00	\$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	63.00
Total	1000.00	100.00	900.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$100		
B		\$50	
C			\$150
D	100	450	150
Total	200.00	500.00	300.00

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Calculation of the allocation of the shortfall due to sovereign action Germany (\$150 shortfall to be allocated):

Customer	Allocation share	Allocation Share of actual shortfall	Actual shortfall allocated
C	\$150/\$300	50% of \$150	\$75
D	150/\$300	50% of \$150	75
Total			150.00

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	\$90		\$90
B	45		45
C	135	\$75	60
D	630	75	555
Total	900.00	150.00	750.00

Example 6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	50	U.K.
C	\$20	U.S.
C	50	Germany
D	\$100.	U.S.
D	£300	U.K.
D	100	U.K., Germany, or Japan
E	\$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S.	\$200
U.K.	£200
U.K.	100
Germany	50
Japan	¥10,000

Conversion Rates: £1 = \$1; ¥1=\$0.01, £1=\$1.5.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer s claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$50	1.0	\$50
B	50	1.0	50
C	\$20	1.0	20
C	50	1.0	50
D	\$100.	1.0	100
D	300	1.5	450
D	£ 100	1.0	100
E	\$80	1.0	80
E	¥10,000	0.01	100
Total			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$200	1.0	\$200	.....	.....	\$200
U.K.	£200	1.5	300	.....	.....	300
U.K.	100	1.0	100	.....	.....	100
Germany	50	1.0	50	100%	\$50	0
Japan	¥10,000	0.01	100	50%	50	50
Total			750		100.00	650.00

Determine the percentage of shortfall that is not attributable to sovereign action:
 Shortfall Percentage = $(1-750/1000) = (1-75\%) = 25\%$.
 Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	\$12.50	\$37.50
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000.00	250.00	750.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany and only 1/2 of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	\$50	.....	.....	.....
B .....	.....	\$50	.....	.....
C	20	.....	\$50	.....
D	100	450	50	\$50
E	80	.....	.....	100
Total	250.00	500.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$50 shortfall to be allocated):

Customer allocation	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$100	50% of \$50	\$25
D	50/100	50% of 50	25
Total			50

Japan (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	\$50/\$150	33.3% of \$50	\$16.67
E	100/150	66.6% of 50	33.33
Total			50.00

CLAIMS AFTER REDUCTIONS

Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
A	\$37.50	37.50
B	37.50	37.50

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Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
C	52.50	\$25	.....	27.50
D	487.50	25	16.67	445.83
E	135.00	.....	33.33	101.67
Total	750.00	50.00	50.00	650.00

Example 7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	\$50	U.S.
B	50	U.S.
B	50	U.K.
C	50	Germany.
D	100.	U.S.
D	100	U.K. or Germany.
E	50	U.S.
E	50	U.K.

Location	Actual asset balance
U.S.	\$250
U.K.	50
Germany	200

Conversion Rates: 1 = \$1.

REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A	\$50	1.0	\$50
B	50	1.0	50
B	50	1.0	50
C	50	1.0	50
D	100.	1.0	100
D	100	1.0	100
E	50	1.0	50
E	50	1.0	50
Total .....	.....	.....	500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	\$250	1.0	\$250	.....	.....	\$250
U.K.	50	1.0	50	.....	.....	50
Germany	200	1.0	200	100%	200	0
Total .....	.....	.....	500.00	.....	200	300.00

Determine the percentage of shortfall that is not attributable to sovereign

Shortfall Percentage = $(1 - 500/500) = (1 - 100\%) = 0\%$.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	\$50	\$0	\$50.00
B	100	0	100.00
C	50	0	50.00

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	0	200.00
E	100	0	100.00
Total	500.00	0.00	500.00

REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	\$50		
B	50	50	
C			50
D	100		100
E	50	50	
Total	250.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	\$50/\$150	33.3% of \$200	\$66.67
D	\$100/\$150	66.7% of \$200	\$133.33
Total			\$200.000

This would result in the claims of customers C and D being reduced below zero.

Accordingly, the claims of customer C and D will only be reduced to zero, or \$50 for C and \$100 for D. This results in a Total Excess Shortfall of \$50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total excess shortfall
\$200	\$50	\$100	\$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be int the U.S.	Allocation share (column B-C/column B Total—all customer claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	\$100	\$50	\$50/\$200	25% of \$50	\$12.50
C	50	0	(1)		0
D	200	100	\$100/200	50% of \$50	25
E	100	50	50/100	25% of \$50	12.50
Total	450.00				50.00

¹ Claim already reduced to \$0.

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CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action Germany	Allocation of total excess shortfall	Claim after all reductions
A	\$50			\$50.00
B	100		12.50	87.50
C	50	50		0
D	200	100	25	75.00
E	100		12.50	87.50
Total	500.00	150.00	50.00	300.00

[48 FR 8739, Mar. 1, 1983, as amended at 68 FR 5552, Feb. 4, 2003]

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