

CFTC Letter No. 00-106**November 22, 2000****Interpretation****Division of Trading & Markets**Re: Obligations of FCM

Dear :

This is in response to your letter of November 21, 2000. You have inquired concerning the obligations, under the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.* (the "CEA") and the Commission's regulations, of a futures commission merchant ("FCM") that is unable to meet its obligations to commodity customers and that receives funds after certain of the FCM's commodity customers have assigned their commodity interest claims against the FCM to a third party.

Section 4d(2) of the CEA requires an FCM to "treat and deal with all money, securities, and property received by [the FCM] to margin, guarantee or secure the trades or contracts of any customer . . . as belonging to such customer." Section 4d(2) also provides that the funds of multiple customers "may, for convenience, be commingled and deposited in the same account or accounts." It further provides, however, that an FCM shall not use the property of one customer "to margin or guarantee the trades or contracts, or to secure or extend the credit of any customer or person other than the one for whom the same are held." In furtherance of this provision, Commission Regulation 1.22 (17 C.F.R. §1.22) provides, in pertinent part, that "[n]o futures commission merchant shall use, or permit the use of, the customer funds of one commodity and/or option customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or option customer."

Thus, each FCM must segregate sufficient funds to cover any amounts it owes to its customers in connection with commodity interest transactions. The funds of multiple customers may be commingled in a single account for the benefit of the customers as a group. If, however, the balance of any one of those customers falls into a deficit, the FCM is obligated to restore the amount of such deficit out of its own funds or property in order to avoid the use of the funds or property or any other customer to meet the obligations of the customer in deficit. The Commission requires FCMs to maintain minimum levels of capital to help assure that, among other things, they are able to meet such obligations.

There may be circumstances where an FCM simply lacks the resources to fulfill its obligation to restore a deficit in its segregated accounts from its own funds. For example, an uncollected

customer loss may exceed the firm's capital. If, however, such an FCM later receives funds from any source, it must immediately apply such funds toward its obligation to replenish its segregated accounts until that obligation is satisfied.

The CEA does not preclude the assignment by a customer to a third party of an FCM's financial obligations to that customer. Rather, the validity of assignments would be governed by applicable state law. An assignment changes the person to whom the FCM's customer obligations are payable, not the nature of or the total amount of such obligations. Thus, the valid assignment of customer claims to a third party would have no effect upon these obligations, and no effect upon the total amount of funds which must be maintained by the FCM in segregated accounts.

Very truly yours,

John C. Lawton
Acting Director