

# Joint Audit Committee

## Regulatory Update

To: Chief Financial Officers  
Chief Compliance Officers

9604

Date: August 9, 1996

Re: CFTC Advisory on Third Party Custodial Accounts

The CFTC recently released the attached [advisory](#) pertaining to third party custodial accounts maintained by FCMs for customers. The advisory is intended to serve as a clarification to FCMs and their depositories regarding the requirements of [CFTC Interpretation #10 - Treatment of Funds Deposited in Safekeeping Accounts](#). The advisory focuses on three areas of common problems associated with third party custodial accounts.

### Access to Funds

Third party custodial accounts are accounts of the FCM and not the customer. Only the FCM can authorize the release of funds from the custodial account. Depositories are to obtain the consent of the FCM to release funds if a customer makes such a request to the depository. A number of instances have been noted over the years where the depository released funds to the customer without obtaining the FCM's consent. The FCM may not become aware of the disbursement until a reconciliation of the account is made. As such, FCMs may have capital exposure for any margin shortfall resulting from the unauthorized disbursements from third party custodial accounts.

### Margin Call Agreement

Many custodial agreements stipulate a customer's responsibility to post margin within a specific time frame depending on when in the course of the day the FCM notifies the customer of the margin call. While the CFTC does not object to such procedures in the course of ordinary business in which immediate access to funds is unnecessary, the CFTC emphasizes in its advisory notice that the FCMs can not be prevented from calling for funds to be deposited more timely or having immediate access to the funds in the account when conditions warrant.

### 4d Segregated and 30.7 Secured Commingling

Initially, third party custodial accounts were only being used as margin collateral for domestic futures products (4d segregated). In recent years, third party custodial accounts have also been utilized for customers trading on foreign markets (30.7 secured). The CFTC's advisory stipulates that separate third party custodial accounts must be maintained for a customer who is providing margin funds for both 4d segregated and 30.7 secured positions.

FCMs may wish to review their third party custodial agreements to ensure the above items are appropriately addressed.

If you have any questions, please contact your DSRO.