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CLEARED DERIVATIVES MARKETS — CUSTOMER PROTECTION AND RESOLUTION TOOLS

The CFTC has made a number of rule changes during the past decade in response to lessons learned from significant commodity broker bankruptcy cases, and to implement the Dodd-Frank Act. The authors review these rules and Dodd-Frank Act changes, and discuss their impacts on market protection and the resolution of failed commodity brokers.

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The Dodd-Frank Act¹ mandated that the U.S. Commodity Futures Trading Commission implement a broad swath of rule changes applicable to the cleared derivatives markets to improve market stability in the event of another financial crisis. Of equal importance, for the past decade, the Commission also has modified rules in response to market protection and resolution issues highlighted by the *Sentinel Management*,² *MF Global*³ and *Peregrine*⁴ commodity broker bankruptcy cases. Although many of these new Commission rules are unrelated to Dodd-Frank, they nonetheless have significantly contributed to the perception of improved market stability and customer protection in the U.S. cleared derivatives markets.

This article describes major Commission rule changes during the past decade applicable to the cleared derivatives markets, as well as changes made directly to the Commodity Exchange Act (“CEA”) by the Dodd-Frank Act, and their impact on market stability, customer protection, and the resolution of market participants in the event of an insolvency. It also identifies areas where additional work may be needed.

CUSTOMER ACCOUNT PROTECTIONS

In the cleared derivatives marketplace, futures commission merchants (“FCMs”), which are market intermediaries analogous to broker-dealers in the securities industry, are required to segregate most customer property related to cleared derivatives trading. In most cases, an FCM can deposit customer funds only at certain banks, clearing organizations, or another FCM, and those accounts must be clearly identified as customer accounts.⁵ The depositing FCM also is required to obtain and retain an acknowledgment to that

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

² *In re Sentinel Management Group, Inc.*, No. 07-14987 (Bankr. N.D. Ill. 2007).

³ *In re MF Global Inc.*, No. 11-2790 (Bankr. S.D.N.Y. 2011).

⁴ *In re Peregrine Financial Group, Inc.*, No. 12-27488 (Bankr. N.D. Ill. 2012).

⁵ 17 C.F.R. §§ 1.20, 22.3-22.5, 30.7.

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