

- (1) The manner in which Applicant's clearing rules and procedures pertaining to customer funds ("FCM Clearing Rules") segregate such funds, in accordance with section 4d of the Act and the Commission's regulations ("ring-fence");
- (2) The basis for the conclusion that the arrangements to ring-fence customer funds set forth in the FCM Clearing Rules would be effective, under any relevant non-U.S. law or regulation, in the insolvency of a futures commission merchant ("FCM") clearing member or of the Applicant itself, including how such customer funds would not, therefore, form part of the general estate for distribution to the unsecured creditors of an insolvent FCM clearing member or of the Applicant;
- (3) The basis for the conclusion that the laws of the jurisdiction in which Applicant is domiciled and the laws of any other relevant jurisdiction (*e.g.*, other jurisdictions in which customer funds may be held) support the enforceability of the FCM Clearing Rules;
- (4) The basis for the conclusion that a local court or insolvency official in the jurisdiction in which Applicant is domiciled (and any other relevant jurisdiction) respect the choice of U.S. law in governing specific aspects of the FCM Clearing Rules to determine the extent of rights that Applicant has with respect to customer funds and be bound to follow the FCM Clearing Rules with respect to customer funds. The memorandum should explain whether the application of U.S. law to customer funds would contravene any public policy in the jurisdiction in which Applicant is domiciled (or any other relevant jurisdiction);
- (5) The basis for the conclusion that the FCM Clearing Rules are enforceable (*i.e.*, the conclusion that the Applicant may take default action, pursuant to the FCM Clearing Rules, discretely against each FCM clearing member in respect of FCM customer accounts without interference from the law of insolvency applicable to the FCM clearing member or to Applicant); and
- (6) The basis for the conclusion that following the default of an FCM clearing member or of the Applicant, Applicant will be able to comply with the provisions of the U.S. Bankruptcy Code and Commission regulations with respect to the pro rata distribution requirements set forth therein, as well as comply with any relevant order or direction by a U.S. court (including a bankruptcy court) regarding the distribution of customer funds.

In all cases, the memorandum must include separate discussions of the legal analysis and conclusions with respect to: (a) the default of the Applicant, and (b) the default of an FCM clearing member.