**Section 130.270 Definition of Certain Persons Not Considered to Be Dealers Under Section 2.7 of the Act**

a) A futures commission merchant registered with the CFTC is not a dealer solely because the futures commission merchant effects transactions in government securities that are defined in subsection (b) as incidental to that person's futures-related business.

b) Transactions that Qualify as Incidental under Subsection (a)

1) The futures commission merchant:

A) maintains in a regulated account as set forth in 17 CFR 1.20 (May 31, 2011) all funds and securities associated with the government securities transactions (except funds and securities associated with transactions under subsection (b)(2)(A)(i)); and

B) does not advertise that it is in the business of effecting transactions in government securities otherwise than in connection with futures or options on futures trading or the investment of margin or excess funds related to trading or the trading of any other instrument subject to CFTC jurisdiction.

2) The following transactions in government securities are incidental to the futures-related business of a futures commission merchant:

A) Transactions as agent for a customer:

i) to effect delivery pursuant to a futures contract; or

ii) for risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures;

B) Transactions as agent for a customer for investment of margin and excess funds related to futures or options on futures trading or the trading of other instruments subject to CFTC jurisdiction, provided further that:

i) the transactions involve Treasury securities with a maturity of less than 93 days at the time of the transaction;

ii) the transactions generate no monetary profit for the futures commission merchant in excess of the costs of executing the transactions; or

iii) the transactions are unsolicited, and commissions and other income generated on transactions pursuant to this subsection (b)(2)(B)(iii) (including transactional fees paid by the futures commission merchant and charged to its customer) do not exceed 2% of the futures commission merchant's total commission revenues;

C) Exchange of futures for physicals transactions as agent for or as principal with a customer; and

D) Any transaction or transactions that the SEC exempts, either unconditionally or on specified terms and conditions, as incidental to the futures-related business of a specified futures commission merchant, a specified category of futures commission merchants, or futures commission merchants generally.

c) A person registered with the CFTC, a contract market designated by the CFTC under section 5 of the Federal 1936 Act, as defined in Section 130.200, the a contract market's affiliated clearing organization, or any floor trader on the a contract market (hereinafter referred to collectively as a "CFTC-regulated person") is not a dealer solely because the person effects transactions for its own account in government securities that are defined in subsection (d) as incidental to that person's futures-related business.

d) Provided that a CFTC-regulated person does not advertise or otherwise hold itself out as a dealer except as permitted by 17 CFR 240.3a43-1 (May 31, 2011), the following transactions in government securities for its own account are incidental to the futures-related business of a CFTC-regulated person:

1) Transactions to effect delivery of a government security pursuant to a futures contract;

2) Exchange of futures for transactions with:

A) a dealer that has registered with the SEC or filed notice pursuant to section 15C(a) of the Federal 1934 Act, as defined in Section 130.200 of this Part; or

B) a CFTC-regulated person.

3) Transactions (including repurchase agreements and reverse repurchase agreements) involving segregated customer funds and securities or funds and securities held by a clearing organization with:

A) a dealer that has registered with the SEC or filed notice pursuant to section 15C(a) of the Federal 1934 Act, as defined in Section 130.200 of this Part; or

B) a bank.

4) Transactions for risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures with:

A) a dealer that has registered with the SEC or filed notice pursuant to section 15C(a) of the Federal 1934 Act, as defined in Section 130.200 of this Part; or

B) a CFTC-regulated person.

5) Repurchase and reverse repurchase agreement transactions between a futures commission merchant acting in a proprietary capacity and another CFTC-regulated person action in a proprietary capacity and contemporaneous offsetting transactions between such a futures commission merchant with:

A) a dealer that has registered with the SEC or filed notice pursuant to section 15C(a) of the Federal 1934 Act, as defined in Section 130.200 of this Part;

B) a bank; or

C) a CFTC-regulated person.

6) Any transaction or transactions that the SEC exempts, either unconditionally or on specified terms and conditions, as incidental to the futures related business of a specified CFTC-regulated person, a specified category of CFTC-regulated persons, or CFTC-regulated persons generally.

(Source: Amended at 36 Ill. Reg. 2852, effective February 8, 2012)