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By Electronic Mail

July 20, 2009

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

COMMENT

Re: Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 74 Fed.Reg. 23962 (May 22, 2009)

Dear Mr. Stawick:

The Futures Industry Association ("FIA") welcomes the opportunity to submit this letter in response to the Commodity Futures Trading Commission's ("Commission's) request for comment on possible revisions to Commission Rule 1.25, Investment of Customer Funds, and Rule 30.7, Treatment of Foreign Futures or Foreign Options Secured Amount.[1] FIA shares the Commission's interest in assuring that the investment of customer assets be "consistent with the objectives of preserving principal and maintaining liquidity." 74 Fed.Reg. 23962, 23963.

As the Commission is aware, FIA actively participated in the Commission's consideration of the amendments to rule 1.25 adopted in 2000 and again in 2004-2005. Indeed, several provisions of the current rule were suggested by FIA in its written comments on the proposed amendments. FIA is particularly pleased, therefore, that the investment guidelines set out in Rule 1.25 generally weathered the financial turmoil of the past year.[2]

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1 FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants ("FCMs") in the United States. Among FIA's associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

2 For example, as reflected in the enclosed Excel spreadsheets prepared from publicly available data, from December 2007 through May 2009, firms experienced ample liquidity in the secondary markets for US Treasury securities and general obligations of government sponsored agencies. Although the markets experienced higher volatility levels in the fall of 2008, bid to offer spreads were always available.

To prepare this comment letter, FIA formed a committee comprised of individuals responsible for financial management at a significant number of member firms, who carefully reviewed the issues raised in the Federal Register release, as well as the provisions of Rule 1.25 and 30.7. The committee did not identify any changes to Rule 1.25 that it believes are essential to preserve the rule's primary objectives. Nonetheless, the committee has identified and set out below several modifications to the rule that should further reduce the exposure of customer funds to potential credit, liquidity and market risks. We encourage the Commission to include these recommendations in any proposal to amend Rules 1.25 and 30.7 that may hereafter be published for comment.

Permitted Investments

FIA believes that all of the permitted investments described in Rule 1.25(a) are compatible with the Commission's objectives of preserving principal and maintaining liquidity.[3] In addition, we recommend that the Commission add to the list of permitted investments securities that are guaranteed as to principal and interest by an agency of the United States, such as securities issued by a bank and guaranteed by the Federal Deposit Insurance Corporation ("FDIC") in accordance with the FDIC's Temporary Liquidity Guarantee Program and any similar programs that may be created.[4] Further, we recommend that the Commission consider adding securities issued by foreign banks and guaranteed as to principal and interest by the relevant foreign government. These securities are highly liquid and trade in a manner similar to sovereign debt.[5]

We recognize that the Commission may want to require that, in order to be a permitted investment under Rule 1.25, securities issued by a particular bank, domestic or foreign, and guaranteed as to principal and interest as noted above, must be of sufficient size to assure liquidity, and suggest $1 billion as an appropriate minimum size. For purposes of complying with the concentration limits discussed below, these securities would be included with all other securities issued by the relevant bank.

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3 However, we understand there is some confusion regarding the ability of FCMs to invest customer segregated funds in securities offered in reliance on Securities and Exchange Commission ("SEC") Rule 144A under the Securities Act of 1933. We ask the Commission to clarify whether or under what circumstances FCMs may purchase Rule 144A securities.

4 Under the Temporary Liquidity Guarantee Program, the FDIC guarantees the payment of all unpaid principal and contract interest on newly-issued senior unsecured debt of an insured depository institution, if the depository fails or if a bankruptcy petition is filed by the depository's parent holding company. The guarantee applies to debt issued on or before October 31, 2009 and extends to December 31, 2012. Enclosed with this letter is a presentation prepared by Bank of America Merrill Lynch earlier this year that provides support that the securities issued under the Temporary Liquidity Guarantee Program have a liquidity profile comparable to the profile for government sponsored agencies.

5 Securities issued by foreign banks and guaranteed as to principal and interest by the relevant foreign government should be required to have the same ratings as sovereign debt, discussed below.

Limitations and Safeguards

1. Marketability

We have not identified any reason to alter the requirement that investments purchased with customer funds be "readily marketable" as defined in SEC Regulation 15c3-1.

2. Ratings

Rules 1.25(b)(2)(B) and (E) currently provide that the instruments described must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO. FIA recommends that these provisions of the rule be revised to require that the listed instruments must have the highest short-term rating or one of the two highest long-term rating of at least two NRSROs. Similarly, Rule 1.25(b)(2)(D) should be amended to require that foreign sovereign debt also have the highest rating of at least two NRSROs.

3. Concentration

FIA believes that the concentration limits set out in Rule 1.25(b)(4) are generally appropriate insofar as they set limits on the amount of securities of any one issuer that an FCM may purchase. One exception would be money market mutual funds. The rule currently sets no limit on the amount of customer funds that may be used to purchase interests in any money market mutual funds. We recommend that the rule be amended to provide (i) that an FCM's investment in any one money market mutual fund may not exceed 5 percent of assets under management in that fund and (ii) that no more than 25 percent of invested customer funds may be invested in any one money market mutual fund.[6]

Separately, FIA believes it would be appropriate to adopt concentration limits for different product types in addition to issuer limits. That is, the Commission should amend Rule 1.25 to provide that no more than a fixed percentage of customer funds could be invested in any one product type. Thus, for example, although 100 percent of customer funds could be invested in US government securities or money market funds, FIA recommends that no more than 75 percent of customer funds be invested in securities of government sponsored enterprises, and no more than 25 percent of customer funds be invested in each of (i) securities issued pursuant to the Temporary Liquidity Guaranteed Program and similar government programs, (ii) municipal securities, (iii) certificates of deposit, (iv) commercial paper, and (v) corporate securities.[7]

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[6] As the Commission is aware, the SEC recently proposed for comment certain amendments to its rules governing money market mutual funds. 74 Fed.Reg. 32688 (July 8, 2009). Any amendments that the SEC may adopt may cause us to take a different position with respect to the use of money market funds under Rule 1.25.

[7] For purposes of Rule 1.25, foreign sovereign debt would continue to be limited to the amount of the balances in that country's currency held in the FCM's customer segregated account. As discussed below, however, the ability of an FCM to invest in foreign sovereign debt should not be so limited in the foreign futures and foreign options secured amount.

FIA believes it is appropriate to exempt from both the issuer concentration limits currently in the rule and the sector concentration limits proposed above those securities held either in connection with reverse repurchase transactions or in accordance with the procedures set out in Rule 1.25(e).[8] The risk of holding such securities, therefore, is significantly less than holding those same securities as a result of a direct investment. These transactions are generally over-collateralized, subject to daily mark-to-market margin requirements, and must be reversed within one business day or on demand. As such, they are comparable to the programs offered by derivatives clearing organizations and referenced in Rule 1.25(b)(5).

4. Liquidity

FIA recommends that the Commission consider requiring FCMs to hold a certain percentage of total invested customer funds, *e.g.*, 10 percent, in more highly liquid investments. Such highly liquid investments would include US Treasury securities, bank deposits,[9] money market funds, reverse repurchase agreements and transactions permitted under Rule 1.25(e).

5. Weighted Average Maturity

Rule 1.25(b)(5) provides that, except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the investment portfolio may not exceed 24 months. The Commission imposed this requirement to minimize credit risk, volatility risk, and liquidity risk in the FCM's investment portfolio. To further protect against these risks, FIA believes that the dollar-weighted average of the time-to-maturity of the investment portfolio should be reduced to not to exceed 18 months. In calculating the weighted average of the time to maturity, however, FIA recommends that securities held in a reverse repurchase agreement or in accordance with the procedures of Rule 1.25(e) be deemed to have a maturity of one day. As noted above, securities held pursuant to reverse repurchase agreements are generally over-collateralized, subject to daily mark-to-market margin requirements, held under a tri-party agreement with a permitted depository, and must be reversed within one business day or on demand. Therefore, we believe it is more appropriate to treat securities held through such transactions as having a one day maturity.

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[8] Rule 1.25(e) authorizes an FCM that is also registered with the Securities and Exchange Commission as a broker-dealer, in connection with its activities as a broker-dealer, to exchange securities to which it has an unqualified right to pledge for customer money or securities held in the customer segregated account. Among other requirements, in addition to those noted above, the rule provides that the securities transferred into the customer segregated account must be held in a safekeeping account, *i.e.*, through a tri-party agreement, with a bank, a derivatives clearing organization or the Depository Trust Company in an account that complies with Commission Rule 1.26.

[9] Bank deposits include those customer funds held in bank trust accounts, as described in CFTC Letter No. 03-31, [2003-2004 transfer Binder] Comm.Fut.L.Rep. (CCH) ¶29,576 (August 25, 2003).

Foreign Futures and Foreign Options Secured Amount

As a general matter, FIA would support an amendment to Commission Rule 30.7, which would require FCMs to follow Rule 1.25 in investing the foreign futures and foreign options secured amount. Our member firms generally follow the Rule 1.25 investment guidelines in any event. However, FCMs should have greater latitude in investing the secured amount in relevant sovereign debt and should not be subject to the provisions of Rule 1.25, which limit the amount an FCM may invest in sovereign debt to the extent of its liabilities to its clients in that country's currency. Often, FCMs have customers that use a single currency margining arrangement and the FCM may still have an obligation to margin the clients' positions with their clearing organizations in multiple currencies.

In addition, we reiterate our recommendation that Commission consider adding securities issued by foreign banks and guaranteed as to principal and interest by the relevant foreign government. As noted, these securities are highly liquid and trade in a manner similar to sovereign debt.

Conclusion

We trust the Commission will find these comments in response to the advance notice of proposed rulemaking with respect to Commission Rules 1.25 and 30.7 helpful. We would be pleased to meet with the staff to discuss these issues in greater detail. If the Commission has any questions concerning the matters discussed in this letter, please contact Barbara Wierzynski, FIA's Executive Vice President and General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Division of Clearing and Intermediary Oversight
    Ananda Radhakrishnan, Director
    Phyllis P. Dietz, Associate Director
    Sarah E. Josephson, Special Counsel

Liquidity in the Agency & TLGP Markets

Liquidity in the Agency & TLGP Markets

Agency and TLGP Market Profiles

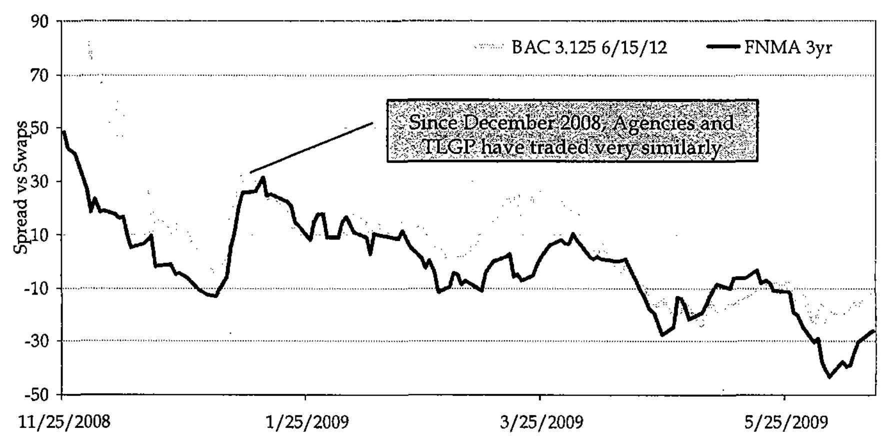
Agency Market

- Overall, the Agency market is an extremely deep and liquid market, with $2,019bn in term debt outstanding from the main four issuers as of April, 2009
  - Billions are issued each day by the four major players in the market: Fannie Mae, Freddie Mac, Federal Home Loan Banks, and Federal Farm Credit Banks
  - On top of the regular daily issuance of floating rate notes, discount notes, callables, and bullets, the issuers typically sell 1-2 large benchmark bonds each month which draw the deepest and broadest interest
- The four major issuers are perceived with very little differentiation in credit quality and liquidity
- Major market players are money market funds, large money managers, bank portfolios, central banks, insurance companies, and state & local governments

TLGP / Other USD Government Guaranteed

- Market established in November, 2008 and has grown quickly to over $360bn in total issued/outstanding
- 6 very large issuers in the market ($20bn+ issued thus far each) and very little perceived difference in credit quality and liquidity among all issues
- Major market players are money market funds, large money managers, bank portfolios, central banks, insurance companies, and state & local governments

Agencies vs TLGP, October 2009-Present[1]



(1) Source: MLX

Liquidity in the Agency & TLGP Markets

The Agency Market Remains Stable, With Increasing Transparency and Liquidity

- Following a difficult stretch across financial markets from September 2008 to January 2009, Agency spreads have returned to pre-conservatorship levels versus both Treasuries and Swaps. Reduced volatility from a spread and rate perspective has reduced investor anxiety dramatically since late 2008 and closed the gap in bid/ask spreads.

- Conservatorship and the following acts of support from the Treasury and Federal Reserve were clearly defined and executed such that the market became comfortable with the long term viability of the market.

- Agencies have had tremendous success in raising new funds in 2009, demonstrating the willingness of a broader subset of investors to increase focus on the market. As of May 2009, Fannie Mae and Freddie Mac were on pace to raise 75% and 143% more term debt respectively in 2009 versus 2008.

- Large, liquid deals have been a trademark of Agency syndicated new issues in 2009. Fannie Mae's average syndicated deal size thus far in 2009 is $7.5bn, and Freddie Mac's average size is $5.0bn.

- Though the Central Bank / Sovereign Wealth Fund community has less involvement in the Agency market at present time, the gap has quickly been filled by increased levels of involvement from the US domestic market. These investors are better known to the broker-dealer community, increasing the transparency of who the key market players are to a broader group of dealers.

- TRACE reporting projected to start in late 2009 will allow market participants to view market clearing levels for all trades, dramatically increasing the level of pricing transparency in the market.

Liquidity in the Agency & TLGP Markets

Understanding Regulatory Developments in the Agency Market[1]

1. Conservatorship: On September 7, 2008, Treasury announced that it has placed Fannie Mae and Freddie Mac in "conservatorship"
   - Defined by Treasury as a legal process transferring all oversight powers to the FHFA; Treasury's press release noted that obligations will continue to be met and the company will continue to operate as normal
   - Treasury defined their objective as, *"To conserve the Company's assets and property and to put the Company in a sound and solvent condition. The goals of the conservatorship are to help restore confidence in the Company, enhance its capacity to fulfill its mission, and mitigate the systemic risk that has contributed directly to the instability in the current market."*[1]

2. Capital Injection: Treasury entered into a Senior Preferred Stock Purchase Agreement, with each Agency receiving up to $100 billion (has since been upped to $200mm each)
   - In exchange for entering into these agreements, Treasury receives $2 billion of senior preferred stock in each GSE, and warrants representing 79.9% ownership in each GSE if exercised (at a nominal price); this action essentially erased the preferred and equity values of Fannie Mae and Freddie Mac
   - At this point approximately $50bn has been invested in both Agencies combined

3. **Federal Reserve Agency Coupon Purchase Program:** The Federal Reserve Bank of New York has begun open market purchases of Fannie Mae, Freddie Mac, and Federal Home Loan Bank syndicated non-callable debt
   - The original purchase limit of $100bn across the three Agencies has since been raised to $200bn
   - $88bn has been purchased thus far in 30 open market operations and the program has been very successful in lowering funding costs for the Agencies

4. **Support of the Agency MBS Market**: The Federal Reserve Bank of New York has begun open market purchases of Agency MBS.
   - FOMC announced the expansion of the Federal Reserve's program to purchase agency MBS to a total of $1.25 trillion by the end of the year.

5. Credit Facility: Treasury has agreed to create a back-stop short-term secured lending facility for each GSE available at LIBOR +50 bps.
   - Note that this facility has not been utilized up to this point

(1) Federal Housing Finance Agency Fact Sheet: "Questions and Answers on Conservatorship"

Liquidity in the Agency & TLGP Markets

Agency Debt Remains Liquid Across Maturities[1]

Tradeweb On The Run Agencies

Important Notice

Yield | Change | ASW

Issuer	Cpn	Mat	Yield	Spread
2 yr	0.875	511	99-13 /13+	1.183/175
FHLMC	1.625	411	1.358-342	17.5/ 15.9
FNMA	1.375	411	1.353-328	17.0/ 14.5
FHLB	1.625	711	1.483-461	30.0/ 27.8
3 yr	1.875	612	100-092/10	1.775/767
FNMA	1.875	412	1.905-860	13.0/ 8.5
FHLMC	1.750	612	2.005-985	23.0/ 21.0
FHLB	1.875	612	2.085-068	31.0/ 29.3
5 yr	2.250	514	98-02+/03	2.667/663
FHLB	4.000	913	2.770-722	10.3/ 5.5
FHLB	3.625	013	2.857-802	19.0/ 13.5
FHLMC	2.500	114	2.852-812	18.5/ 14.5
FNMA	2.750	314	2.927-885	26.0/ 21.8
FHLMC	2.500	414	3.017-980	35.0/ 31.3
FNMA	2.500	514	3.032-002	36.5/ 33.5

Issuer	Cpn	Mat	Yield	Spread
7 yr	3.250	516	99-22 /23	3.300/295
FNMA	5.000	217	3.860-808	56.0/ 50.8
FNMA	5.000	517	3.840-810	54.0/ 51.0
FHLB	4.875	517	3.948-925	64.8/ 62.5
FNMA	5.375	617	3.880-840	58.0/ 54.0
10 yr	3.125	519	95-21 /22	3.651/647
FHLB	5.000	N17	4.140-089	48.9/ 43.8
FHLMC	5.125	N17	3.933-889	28.2/ 23.8
FHLMC	4.875	618	4.015-969	36.4/ 31.8
FHLMC	3.750	319	4.116-076	46.5/ 42.5
30 yr	4.250	539	96-14 /16	4.467/463
FNMA	7.250	530	5.044-012	57.7/ 54.5
FNMA	6.625	N30	5.047-012	58.0/ 54.5
FHLMC	6.750	331	5.047-012	58.0/ 54.5
FHLMC	6.250	732	5.012-992	54.5/ 52.5

Pricing as of 4pm, June 17, 2009

Liquidity in the Agency & TLGP Markets

TLGP Remains Liquid Across Maturities(1)

Tradeweb TLGP

Important Notice

Yield | Change | ASW

Short | Long | Call

Issuer	Cpn	Mat	Yield	Spread
2 yr	0.875	511	99-15 /152	1.151/147
JPM	2.625	D10	0.991-921	-16.0/-23.0
MS	2.900	D10	0.981-911	-17.0/-24.0
RF	2.750	D10	0.984-928	-16.7/-22.3
BAC	1.700	D10	0.984-921	-16.7/-23.0
GE	1.625	111	1.091-029	-6.0/-12.2
JPM	1.650	211	1.153-101	0.2/ -5.0
GE	1.800	311	1.244-181	9.3/ 3.0
GS	1.700	311	1.201-151	5.0/ 0.0
STT	1.850	311	1.231-179	8.0/ 2.8
C	1.625	311	1.241-201	9.0/ 5.0
LLOYDS	2.300	411	1.723-573	57.2/ 42.2
C	1.375	511	1.321-299	17.0/ 14.8
C	1.250	611	1.357-349	20.6/ 19.8
GS	1.625	711	1.381-339	23.0/ 18.8
MS	2.000	911	1.486-451	33.5/ 30.0
STI	3.000	N11	1.701-628	55.0/ 47.7
JPM	3.125	D11	1.721-651	57.0/ 50.0

Issuer	Cpn	Mat	Yield	Spread
MS	3.250	D11	1.711-651	56.0/ 50.0
C	2.875	D11	1.734-661	58.3/ 51.0
GE	3.000	D11	1.733-687	58.2/ 53.6
WFC	3.000	D11	1.731-668	58.0/ 51.7
RBS	3.000	D11	2.161-028	101.0/ 87.7
AXP	3.150	D11	1.711-651	56.0/ 50.0
RF	3.250	D11	1.751-671	60.0/ 52.0
HSBC	3.125	D11	1.734-669	58.3/ 51.8
WSTP	3.250	D11	2.181-079	103.0/ 92.8

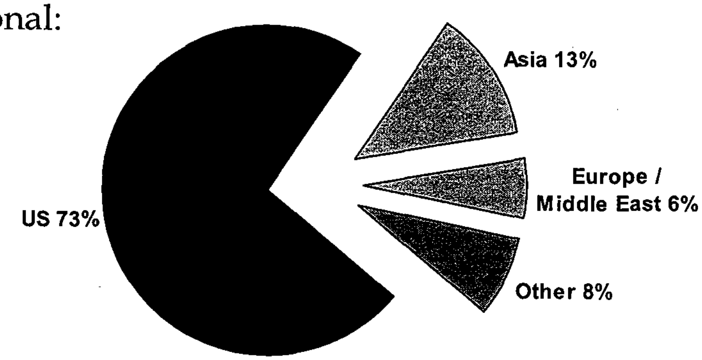
Pricing as of 4pm, June 17, 2009

Liquidity in the Agency & TLGP Markets

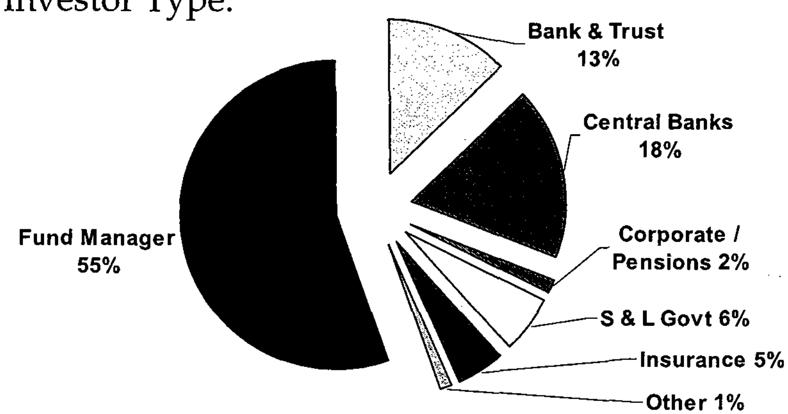
Profile Of A New Agency Deal

Typical Agency Distribution Profile

- Regional:



- Investor Type:



Key Points

- Average deal size across Fannie Mae and Freddie Mac is \$6.2bn in 2009, compared to \$3-4bn typical deal size in 2008 and prior.
- Each deal done this year has performed versus both Treasuries and Swaps, increasing the comfort level of market participants.
- Order books are typically 2x oversubscribed, allowing dealers the freedom to allocate only to the highest quality investors.
- Increased involvement from the US Fund Manager investor segment allows for greater transparency of market participants.
- New issue concessions have closed from 6-8bps very early in the year to 1-2bps in the most recent deals.

Source:: Company websites, BAML Agency Database

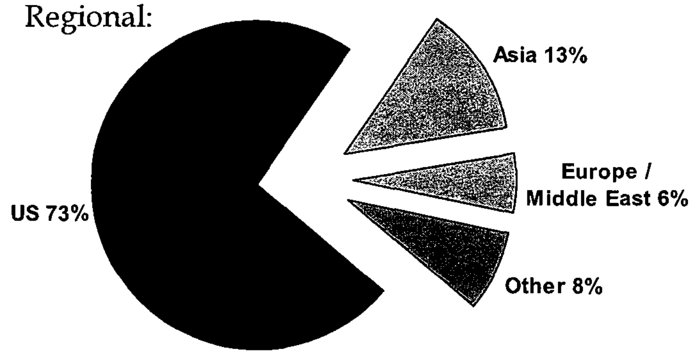
Liquidity in the Agency & TLGP Markets

TLGP & Agency New Issues Similar in Process and Composition

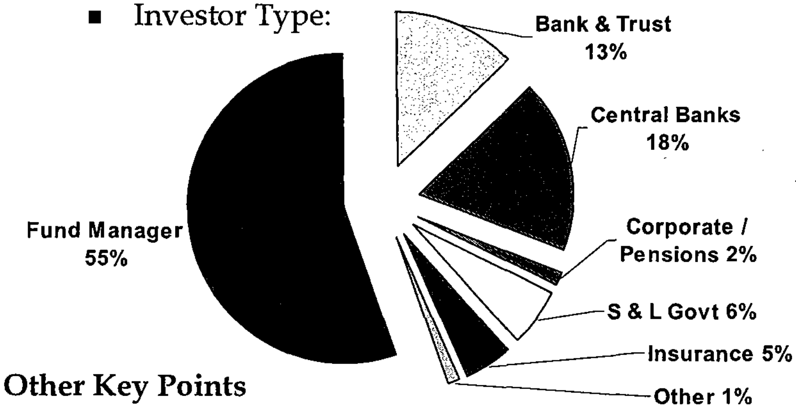
Typical Agency New Issue Syndicated Deal

Distribution Profile

- Regional:



- Investor Type:



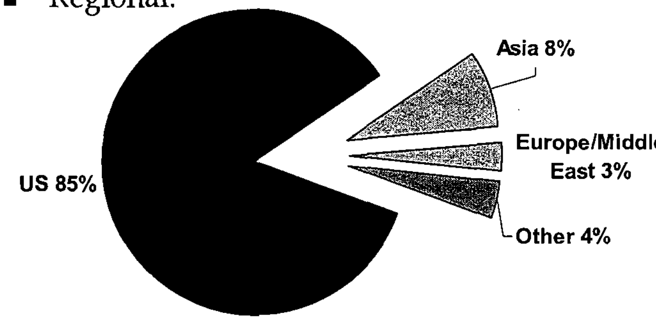
Other Key Points

- Typical Size: $3-$8 Billion
- Marketing Period: 1-2 Days
- Trace Eligible: In September
- Government Backing: Implied guarantee by US government

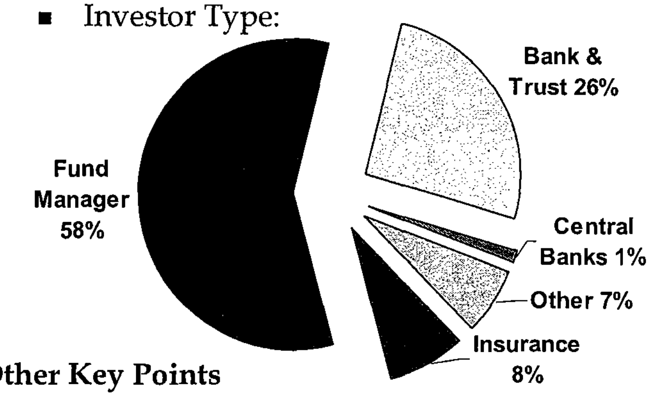
Typical TLGP New Issue Fixed Benchmark

Distribution Profile

- Regional:



- Investor Type:



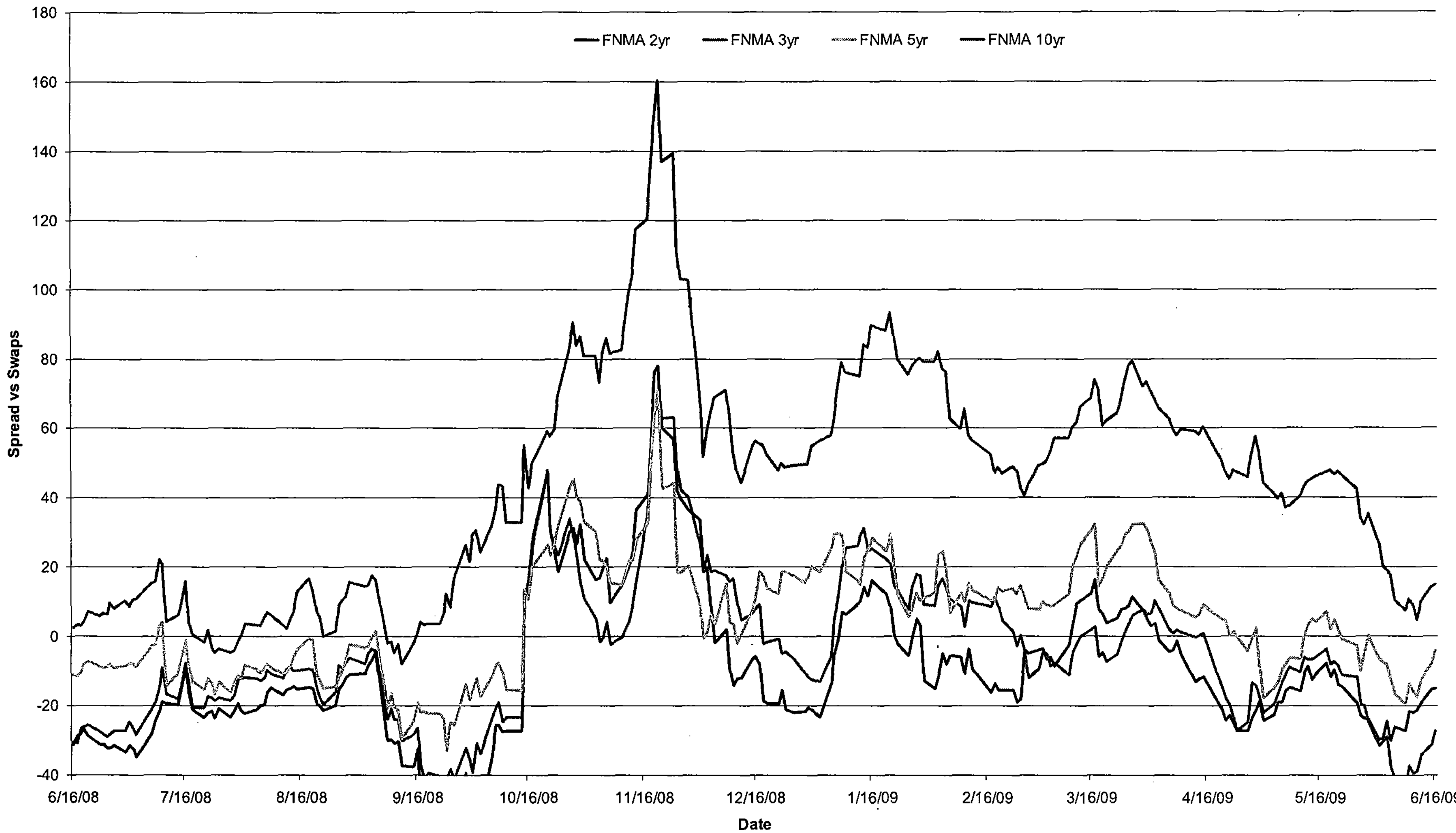
Other Key Points

- Typical Size: $2-$5 Billion
- Marketing Period: 1-2 days
- Trace Eligible: YES
- Government Backing: Principal and interest explicitly guaranteed

Source:: Company websites, BAML Agency Database

Liquidity in the Agency & TLGP Markets

Agency Spreads Have Returned To Pre-Conservatorship Levels



Source: MLX

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MF Global.

OTR US Treasury Securities - 12/07 to 6/09

	Bid/Offer Spreads in 32nds			
	High	Low	Average	Std
2yr	1.00	0.00	0.34	0.16
5yr	1.50	0.25	0.43	0.18
10yr	2.00	0.50	0.69	0.18
30yr	8.00	0.25	1.86	1.03

source: Tradeweb End of Day Marks

Historical On-the-Run US Agency Bid/Ask Spreads

BID ASK SPREAD ($price in points) ON THE RUN AGENCIES 12/17/07 - 5/28/09				
Generic On-The-Run Agency	HIGH	LOW	AVERAGE	ST. DEV.
FNMA 2y	0.208	0.004	0.062	0.032
FNMA 3y	0.329	0.006	0.105	0.062
FNMA 5y	0.622	0.009	0.161	0.102
FNMA 10y	0.968	0.077	0.376	0.200
FNMA 230y	2.717	0.080	0.623	0.365
FHLMC 2y	0.182	0.004	0.062	0.032
FHLMC 3y	0.405	0.003	0.104	0.068
FHLMC 5y	0.516	0.014	0.170	0.095
FHLMC 10y	1.122	0.024	0.313	0.194
FHLMC 30y	1.702	0.079	0.616	0.336

BID ASK SPREAD (32nds) ON THE RUN AGENCIES 12/17/07 - 5/28/09				
Generic On-The-Run Agency	HIGH	LOW	AVERAGE	ST. DEV.
FNMA 2y	7	0	2	1
FNMA 3y	11	0	3	2
FNMA 5y	20	0	5	3
FNMA 10y	31	2	12	6
FNMA 230y	87	3	20	12
FHLMC 2y	6	0	2	1
FHLMC 3y	13	0	3	2
FHLMC 5y	17	0	5	3
FHLMC 10y	36	1	10	6
FHLMC 30y	54	3	20	11

source: Tradeweb Market Data End of Day Marks