



CME Group

A CME/Chicago Board of Trade/NYMEX Company

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Craig S. Donohue
Chief Executive Officer

July 21, 2009

VIA ELECTRONIC MAIL

David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
secretary@cftc.gov

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), RIN 3038-AC79

Dear Mr. Stawick:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets ("Exchanges" or "DCMs"), appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "CFTC" or "Commission") advance notice of proposed rulemaking ("Release") with respect to possible changes to its regulations regarding the investment of customer funds segregated ("Customer Segregated Funds") pursuant to Section 4d of the Commodity Exchange Act ("CEA") and funds held in an account subject to Commission Regulation 30.7 ("30.7 funds"). In the Release, the Commission noted that it may be significantly revising both the scope and character of permitted investments for Customer Segregated funds and for 30.7 funds and consequently indicated that it was seeking public comment before issuing any proposed amendments to Regulation 1.25 or to Regulation 30.7.

CME Group is the world's largest and most diverse derivatives marketplace. We operate four separate Exchanges, including Chicago Mercantile Exchange Inc. ("CME"), the Board of Trade of the City of Chicago, Inc. ("CBOT"), the New York Mercantile Exchange, Inc. ("NYMEX") and the Commodity Exchange, Inc. ("COMEX"). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products.

We also operate CME Clearing, one of the largest central counterparty clearing services in the world, which provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter derivatives transactions through CME ClearPort®.

The CME Group Exchanges serve the hedging, risk management and trading needs of our global customer base by facilitating transactions through the CME Globex® electronic trading platform, our open outcry trading facilities in New York and Chicago, as well as through privately negotiated transactions.

I. Overview and Background

CME Group commends the Commission for requesting public comment prior to undertaking potential revisions to Regulations 1.25 and 30.7. We recognize the importance of and fully support the prudential standards set forth in Regulation 1.25 that require all permitted investments of customer funds to be consistent with the objectives of preserving principal and maintaining liquidity. We also recognize that futures commission merchants ("FCMs") and DCOs operate in a globally competitive environment and that FCMs and their customers have an interest in generating investment income and attractive yields within these prudential standards. Consequently, we strongly encourage the Commission to provide substantial flexibility to FCMs and DCOs in terms of allowable permitted investments and we further encourage the Commission to be mindful of the degree of flexibility provided to foreign brokers under comparable regulatory regimes.

We believe that money market funds are a critically important component of the array of investments permitted under Regulation 1.25, and we offer some general suggestions regarding possible enhancements to Regulation 1.25 in relation to money market funds. We are also offering some suggestions regarding the process by which the Commission may amend its list of permitted investments. Finally, we do support the harmonization of Regulation 1.25 and Regulation 30.7 on investment standards by extending the Regulation 1.25 standards to Regulation 30.7

As background, CME's Clearing House clears, settles and guarantees the performance of all transactions matched through the CME Group execution facilities and from certain third party exchanges. CME Clearing's integrated clearing function is designed to ensure the safety and soundness of the markets. In 2008, CME's Clearing House cleared an average of 11.0 million contracts daily and 3.0 billion contracts overall. As of December 31, 2008, CME's Clearing House acted as custodian for approximately \$116.1 billion in performance bond, security deposit and other collateral deposited by our clearing firms and, during 2008, CME's Clearing House transferred an average of approximately \$4.4 billion a day in settlement funds through the clearing system. In addition, CME's Clearing House guarantees the performance of all contracts with a financial safeguards package of more than \$8 billion (as of December 31, 2008).

The clearing function provides three primary benefits to our markets: a reliable credit guarantee; efficient, high-volume transaction processing; and cost and capital efficiencies. The services CME's Clearing House provides can be broadly categorized as follows:

- market protection and risk management;
- transaction processing and position management;
- settlement, collateral and delivery services;
- cross-margining and mutual offset services; and
- investment services.

In light of our significant role in clearing and settling activity for exchange-traded and over-the-counter derivative transactions, as well as our role in providing collateral management and investment services for clearing members' proprietary and customer funds, CME Group believes it is uniquely qualified to comment on the CFTC's proposals.

II. Permitted Investments under CFTC Regulation 1.25

The Commission is specifically seeking comment with respect to which instruments should or should not continue to be permitted investments for customer segregated funds under Regulation 1.25. The reasons for this review by the Commission include a 2007 CFTC study of FCM and DCO investment strategies and practices under Regulation 1.25, as well as the market events of September 2008.

Originally, under Section 4d(a)(2) of the CEA, the investment of Customer Segregated funds was limited in scope to obligations of the United States and obligations fully guaranteed as to interest and principal by the United States (i.e., U.S. Government Securities), and general obligations of any State or of any political subdivision thereof (i.e., municipal securities). As set forth in the Release, the Commission expanded the list of permitted investments by amending Regulation 1.25 in December 2000, February 2004 and May 2005. As a result of these modifications of Regulation 1.25, the Commission now allows investments in general obligations issued by any enterprise sponsored by the United States, bank certificates of deposit, commercial paper, corporate notes, general obligations of a sovereign nation, interests in money market mutual funds as well as certain repurchase agreements and investments with embedded derivatives.

Recent actions taken by the Treasury Department, the Federal Reserve and other governmental agencies have brought needed stability back to the credit markets and the financial services sector. However, in order to learn from experiences gained as a result of the credit issues that transpired last year, CME Group applauds the efforts of the Commission to perform a detailed analysis of the different collateral classes that customer funds may be invested in under Regulation 1.25. As part of its analysis, we anticipate that the Commission will also weigh and consider the benefits of diversification afforded DCOs and clearing firms when there are a variety of collateral classes available for investing customer funds. An important lesson learned from last year's financial crisis is that risk reduction achieved through diversification can be an important goal, particularly in uncertain and volatile times.

Currently, Regulation 1.25 contains a large number of asset classes that are permitted investments for Customer Segregated funds. CME Group's experience, based on its own information as well as information received from various FCMs, indicates that a small subset of the complete list of Regulation 1.25 permitted investments are actually used by the industry when customer funds are invested. CME Group recognizes the CFTC will conduct its own research and analysis with respect to permitted asset classes under Regulation 1.25. If the CFTC determines that certain permitted asset classes available pursuant to Regulation 1.25 are not being utilized to a material extent, CME Group suggests that the Commission may then wish to consider whether such asset classes should be eliminated from the regulation.

CME Clearing's collateral guidelines are set forth below and CME Group recommends that, at a minimum, these asset classes be maintained in Regulation 1.25. Acceptable Collateral for CME's Clearing House includes:

- Cash (including FX)
- Foreign Sovereign Debt
- US Treasuries
- US Government Agencies
- Select Mortgage Backed Securities
- Money Market Mutual Funds
- Letters of Credit
- US Equities (sub-set of S&P 500)
- IEF 3 & IEF 4 (typically allowing for the acceptance of high grade Corporate Debt and Municipal Debt in restricted amounts) and
- IEF 5 (an account at CME-approved banks that pays a monthly "hard dollar" benefit for member firm cash on the books of that bank's trust ledger)

Additionally, the Release indicates that the CFTC is "considering a significant revision" to the scope and character of permitted investments for Customer Segregated funds. In the event the CFTC expands the list of eligible asset classes under Regulation 1.25, modifies the concentration limits of available asset classes or makes other material changes to the regulation, CME Clearing reserves the right to adopt more restrictive requirements than those ultimately adopted by the CFTC. The ability to maintain such flexibility is important to CME Clearing for purposes of maintaining appropriate risk management and financial safeguards standards.

i. Concentration Limits

Regulation 1.25 sets forth concentration limits only for certain forms of collateral that are held in segregation by an FCM and a DCO. For example, section (b)(4) of Regulation 1.25 states that "securities of any single issuer of government sponsored enterprise securities held by an FCM or DCO may not exceed 25 percent of total assets held in segregation by the FCM and DCO." In addition, "securities of any single issuer of municipal securities, certificates of deposit, commercial paper or corporate notes or bonds held by an FCM or DCO may not exceed 5 percent of total assets held in segregation by the FCM and DCO."

CME Group believes the CFTC should have the flexibility to modify its list of acceptable collateral and its concentration limits in a simple and expeditious manner based on market events. For example, concentration limits could be linked to specific asset class market conditions such as price volatility, secondary market depth and trading volume. If the CFTC had the ability to make such changes in accordance with the regulations, it could act quickly to notify the public about changes to the list of acceptable collateral and potentially provide greater protection for customers whose funds are invested by FCMs and DCOs. In addition, the Commission should consider a procedure in the regulations to add

liquid and safe asset classes on an expedited basis in extreme circumstances. An example of such a product made available by the federal government in an emergency situation is FDIC Insured Corporate Debt.

ii. Money Market Mutual Funds

The ability of FCMs and DCOs to invest customer funds in an expanded list of asset classes was first introduced in December 2000. The expanded asset classes included money market mutual funds ("MMMFs"), commercial paper, certificates of deposit as well as several other asset classes. In the Federal Register release issued by the CFTC in 2000, it was stated that "the Commission believes that an expanded list of permitted investments could enhance the yield available to FCMs, clearing organizations and their customers, without compromising the safety of customer funds."

CME Group continues to concur with that position. As part of our comments regarding the expanded list of asset classes for customer funds, CME, as well as NYMEX, stated they each would need to make their own determination as to the types of assets that would be accepted by the clearing organizations. The Commission responded by recognizing that a self-regulatory organization may adopt more restrictive requirements than those set forth in Rule 1.25 for its member FCMs.

CME Group allows certain MMMFs for use as performance bond collateral through its Interest Earning Facility 2 Program ("IEF2"), which began in 2001. The IEF 2 Program allows both FCMs and CME Clearing to diversify its collateral holdings of customer funds by investing in MMMFs. In addition, investments in MMMFs offer flexibility and ease of use while enhancing the yield available to FCMs and DCOs. CME Group has designed the IEF2 Program in a conservative manner so that the safety of customer funds is not compromised. CME Group believes that MMMFs should remain in the list of available asset classes offered as an investment option for customer funds subject to certain concentration and diversification measures that would be comparable to CME Group's existing IEF2 Program.

The diversification and concentration policies of the IEF 2 Program are set forth below for review and consideration by the CFTC in connection with its review of Regulation 1.25. The combined investment of Customer Segregated and house non-segregated performance bond cash for each clearing member thus would be subject to the following:

1. *Diversification*

- With total investments of less than \$100 million, no diversification requirements.
- With total investments of greater than \$100 million, but less than \$200 million, there is a maximum investment limit of \$100 million in any one fund.
- For investments greater than or equal to \$200 million, there is a 50% maximum investment in any one fund.

2. *Concentration*

- A clearing member will be prohibited from investing an amount which will create a position that is greater than 5% of the specific fund's total assets. The percentage limit is calculated on a monthly basis and is based on the fund's reported asset balances.
- The aggregate limit of any one fund of IEF2 deposits as held by CME must not exceed 15% of a fund's total assets. If this threshold is met, CME will reduce or reject the investment of the last clearing member's deposit.

In addition to these diversification guidelines, CME Group proposes that the Commission consider these additional enhancements to MMMFs allowed under Regulation 1.25. We believe these conditions are consistent with the SEC's proposed changes to Rule 2a.7:

- Minimum daily liquidity standards: at least 10% in cash or cash equivalents for institutional class funds.
- Minimum weekly liquidity standards: at least 30% in instruments maturing in five business days for institutional class funds.
- Standard monthly reporting of all assets and counterparties.
- Reducing the Weighted Average Maturity ("WAM") to 60 days for rated funds. We believe that securities that have a shorter maturity exhibit lower price volatility and lower interest rate risk. A shorter WAM puts a fund in a better position to withstand material redemptions.

III. Funds Held in an Account for Foreign Futures and Foreign Options Transactions

The Commission is also seeking public input regarding the application of the investment requirements of Regulation 1.25, including any prospective amendments, to investments of Commission Regulation 30.7 funds. CME Group is not aware of any business reason or risk related reason to require different standards between Regulation 1.25 and Regulation 30.7 investments and encourages the CFTC to harmonize the two investment standards.

IV. Additional Opportunity to Comment

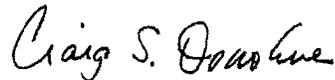
The Release indicates that the Commission will be conducting its own research and analysis before suggesting specific changes to the regulations. CME Group looks forward to the opportunity to provide more specific comments in the event that the Commission publishes any proposals for revisions to its regulations on the investment of customer funds.

V. Conclusion

In conclusion, CME Group commends the Commission for requesting public comment prior to considering potential revisions to Regulations 1.25 and 30.7. We continue to fully support the prudential standards set forth in Regulation 1.25. We also encourage the Commission to provide substantial flexibility to FCMs and DCOs in terms of allowable permitted investments and to be mindful of the degree of flexibility available under comparable regulatory regimes. Money market funds are a critically important component of the array of investments permitted under Regulation 1.25, and we have provided some general suggestions regarding possible enhancements to Regulation 1.25 in relation to such investments. Finally, we support the harmonization of Regulations 1.25 and 30.7 on investment standards.

CME Group thanks the Commission for the opportunity to comment on this matter. We would be happy to discuss any of these issues with Commission staff. If you have any comments or questions, please feel free to contact me at (312) 930-8275 or Craig.Donohue@cmegroup.com; or Stephen Szarmack, Director and Associate General Counsel, at (312) 648-5422 or Stephen.Szarmack@cmegroup.com.

Sincerely,



Craig S. Donohue

CSD/7477 CFTC Comment Letter

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Thelma Diaz