

and other voting procedures to clarify the director elections process, and to update the rules to incorporate interpretations made through recent bookletters to System institutions. We are extending the comment period so all interested parties will have additional time to provide comments.

**DATES:** You may send comments on or before August 14, 2009.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- *FCA Web site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

Elna Luopa, Senior Corporate Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or  
 Laura D. McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:** On April 16, 2009, FCA published a notice in the

**Federal Register** seeking public comment on proposed changes to the rules governing director elections for System banks and associations and the related director elections process. See 74 FR 17612. The comment period is scheduled to expire on June 15, 2009. In a letter dated May 1, 2009, the Farm Credit Council, on behalf of System banks and associations, requested that the Agency extend the comment period for another 60 days to allow more time for the boards of directors of System banks and associations to consider the proposed rule and submit their comments. Several System associations submitted separate requests to extend the public comment period for an additional 60 days, noting that they will have only one board meeting at which to consider and discuss the issues before the comment period expires. Due to the wide-ranging effect of the proposed rule on directors, director candidates, nominating committees, and the voting shareholders of System institutions, we have granted this request. The FCA supports public involvement and participation in its regulatory process and invites all interested parties to review and provide comments on our proposed rule.

Dated: May 19, 2009.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*  
 [FR Doc. E9-12013 Filed 5-21-09; 8:45 am]

**BILLING CODE 6705-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 30

**RIN 3038-AC79**

### Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is seeking public comment on possible changes to its regulations regarding the investment of customer funds segregated pursuant to Section 4d of the Commodity Exchange Act (customer segregated funds) and funds held in an account subject to Commission Regulation 30.7 (30.7 funds). Commission Regulation 1.25 provides that a derivatives clearing organization

(DCO) or a futures commission merchant (FCM) holding customer segregated funds may invest those funds in certain permitted investments subject to specified requirements that are designed to minimize exposure to credit, liquidity, and market risks. The Commission is considering significantly revising the scope and character of these permitted investments and is seeking public comment before issuing proposed rule amendments.

Additionally, in conjunction with its consideration of possible amendments to Regulation 1.25, the Commission is considering applying the investment requirements of Regulation 1.25, including any prospective amendments, to investments of 30.7 funds. The Commission is seeking public comment on this action before issuing proposed rule amendments.

**DATES:** Comments must be received on or before July 21, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving>. Follow the instructions for submitting comments.
- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "Advance Notice of Proposed Rulemaking for Regulations 1.25 and 30.7" in the subject line of the message.
- *Fax:* 202-418-5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to <http://www.CFTC.gov>. Reference should be made to "Advance Notice of Proposed Rulemaking for Regulations 1.25 and 30.7."

**FOR FURTHER INFORMATION CONTACT:**

Sarah E. Josephson, Special Counsel, 202-418-5684, [sjosephson@cftc.gov](mailto:sjosephson@cftc.gov), or Phyllis P. Dietz, Associate Director, 202-418-5449, [pdietz@cftc.gov](mailto:pdietz@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### A. Regulation 1.25

Under Section 4d(a)(2) of the Commodity Exchange Act (Act),<sup>1</sup> the

<sup>1</sup> 7 U.S.C. 6d(a)(2).

investment of customer segregated funds is limited to obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities), and general obligations of any State or of any political subdivision thereof (municipal securities). Pursuant to authority under section 4(c) of the Act,<sup>2</sup> the Commission substantially expanded the list of permitted investments by amending Commission Regulation 1.25 in December 2000 to permit investments in general obligations issued by any enterprise sponsored by the United States (government sponsored enterprise securities), bank certificates of deposit, commercial paper, corporate notes, general obligations of a sovereign nation, and interests in money market mutual funds.<sup>3</sup> In connection with that expansion, the Commission included several provisions intended to control exposure to credit, liquidity, and market risks associated with the additional investments, *e.g.*, requirements that the investments satisfy specified rating standards and concentration limits, and be readily marketable and subject to prompt liquidation.<sup>4</sup>

The Commission further modified Regulation 1.25 in 2004 and 2005. In February 2004, the Commission adopted amendments regarding repurchase agreements with customer-deposited securities and time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs.<sup>5</sup> In May 2005, the Commission adopted amendments related to standards for investing in instruments with embedded derivatives, requirements for adjustable rate securities, concentration limits on reverse repurchase agreements, transactions by FCMs that are also registered as securities brokers or dealers (in-house transactions), rating standards and registration requirements for money market mutual funds, an auditability standard for investment records, and certain technical changes.<sup>6</sup>

The Commission has been, and continues to be, mindful that customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers upon demand and to enable

these assets to be quickly converted to cash at a predictable value to minimize systemic risk. Toward these ends, Regulation 1.25 establishes a general prudential standard by requiring that all permitted investments be “consistent with the objectives of preserving principal and maintaining liquidity.”<sup>7</sup>

In 2007, the Commission’s Division of Clearing and Intermediary Oversight (Division) launched a review of the nature and extent of investments of customer segregated funds and 30.7 funds in order to obtain an up-to-date understanding of investment strategies and practices and to assess whether any changes to the regulations would be appropriate. As part of this review, all Commission-registered DCOs and FCMs carrying customer accounts provided responses to a series of questions. As the Division was conducting follow-up interviews with respondents, the market events of September 2008 occurred and changed the financial landscape such that the data previously gathered no longer reflected current market conditions. Recent events in the economy have underscored the importance of conducting periodic reassessments, and through this advance notice of proposed rulemaking the Commission is refocusing its review of permitted investments for customer segregated funds and 30.7 funds.

The Commission believes that DCOs and FCMs have managed customer segregated funds and 30.7 funds responsibly during this difficult economic time. Nonetheless, the market events of the past year, notably the failures of certain government sponsored enterprises, difficulties encountered by certain money market mutual funds in honoring redemption requests, illiquidity of certain adjustable rate securities, and turmoil in the credit ratings industry, have challenged many of the fundamental assumptions regarding investments. As a result, the Commission believes it is an especially appropriate time to review permitted investments for customer segregated funds and 30.7 funds.

#### B. Regulation 30.7

Regulation 30.7<sup>8</sup> governs an FCM’s treatment of customer money, securities, and property associated with positions in foreign futures and foreign options. Regulation 30.7 was issued pursuant to the Commission’s plenary authority under Section 4(b) of the Act.<sup>9</sup> Because Congress did not expressly apply the limitations of Section 4d of the Act to

30.7 funds, the Commission historically has not subjected those funds to the investment limitations applicable to customer segregated funds.

The investment guidelines for 30.7 funds are general in nature.<sup>10</sup> Although Regulation 1.25 investments offer a safe harbor, the Commission has not limited investments of 30.7 funds to permitted investments under Regulation 1.25. The Commission believes that it may be appropriate to impose such a limitation because the same prudential concerns that arise in the context of customer segregated funds also arise in the context of 30.7 funds. Applying the same standards to both types of funds would be consistent with the Act and would establish a bright line for the industry and the Commission.

#### II. Public Comment Solicited

The Commission is considering significantly revising the scope and character of permitted investments for customer segregated funds and 30.7 funds and is seeking public comment before issuing any proposed amendments to Regulations 1.25 or 30.7.

In the interest of gathering as much information as possible before reaching any conclusions, the Commission is soliciting comments from the public regarding which instruments should continue to be permitted investments for customer segregated funds under Regulation 1.25. The Commission welcomes comments on which instruments no longer merit inclusion as permitted investments, as well as comments in support of any new instruments that might qualify as permitted investments. The Commission also requests comment on appropriate limitations or safeguards that should be applied to permitted investments.

The Commission is particularly interested in relevant data that commenters can provide regarding the credit, liquidity, and market risk of various investment choices. The Commission is open both to evidence in support of retaining current permitted investments and evidence indicating a need to eliminate certain permitted investments. Additionally, the Commission urges commenters to analyze the benefits and burdens of any

<sup>2</sup> 7 U.S.C. 6(c).

<sup>3</sup> 17 CFR 1.25. See 65 FR 77993 (Dec. 13, 2000) (publishing final rules); and 65 FR 82270 (Dec. 28, 2000) (making technical corrections and accelerating effective date of final rules from February 12, 2001 to December 28, 2000).

<sup>4</sup> *Id.*

<sup>5</sup> 69 FR 6140 (Feb. 10, 2004).

<sup>6</sup> 70 FR 28190 (May 17, 2005).

<sup>7</sup> 17 CFR 1.25(b).

<sup>8</sup> 17 CFR 30.7.

<sup>9</sup> 7 U.S.C. 6(b).

<sup>10</sup> See Commission Form 1–FR–FCM Instructions at 12–9 (Mar. 31, 2007) (“In investing funds required to be maintained in separate section 30.7 account(s), FCMs are bound by their fiduciary obligations to customers and the requirement that the secured amount required to be set aside be at all times liquid and sufficient to cover all obligations to such customers. Regulation 1.25 investments would be appropriate, as would investments in any other readily marketable securities.”).

potential regulatory modifications in light of current market realities.

Given the substantive and practical concerns that may arise from altering the current list of permitted investments, the Commission is seeking the views of all interested parties before regulatory changes, if any, are proposed. The Commission also will conduct its own research and analysis. Before any regulatory changes are adopted there will be an opportunity for additional public comment.

The Commission requests comment on all aspects of Regulation 1.25, as follows:

*A. Permitted Investments Under the Act.* U.S. government securities and municipal securities are permitted investments under Section 4d(a)(2) of the Act and Regulation 1.25(a)(1)(i)–(ii). Please provide any comments, information, research, or data regarding appropriate regulatory requirements that might be imposed in order to better safeguard customer segregated funds.

*B. Other Permitted Investments Under Regulation 1.25.* Please provide any comments, information, research, or data in support of retaining, rescinding, or modifying authorization to invest customer segregated funds in the following instruments:

1. Government sponsored enterprise securities (Regulation 1.25(a)(1)(iii));
2. Certificates of deposit issued by a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934,<sup>11</sup> or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation (Regulation 1.25(a)(1)(iv));
3. Commercial paper (Regulation 1.25(a)(1)(v));
4. Corporate notes or bonds (Regulation 1.25(a)(1)(vi));
5. General obligations of a sovereign nation (Regulation 1.25(a)(1)(vii)); and
6. Interests in money market mutual funds (Regulation 1.25(a)(1)(viii)).

*C. Transactions in Permitted Investments.* Please provide any comments, information, research, or data in support of retaining, rescinding, or modifying authorization to enter into the following transactions, and please consider the effect that a more limited list of permitted investments would have on:

1. Repurchase and reverse repurchase transactions using customer cash or securities purchased with customer cash (Regulation 1.25(a)(2)(i));
2. Repurchase transactions using customer-deposited securities (Regulation 1.25(a)(2)(ii)); and

3. In-house transactions by FCMs that are also registered as securities brokers or dealers (Regulation 1.25(a)(3)(i)–(iii)).

*D. Limitations and Safeguards.* Please provide any comments, information, research, or data regarding the general terms and conditions of permitted instruments, including:

1. Marketability/liquidity (Regulation 1.25(b)(1));
2. Rating requirements (Regulation 1.25(b)(2));
3. Restrictions on instrument features, such as instruments that contain an embedded derivative and adjustable rate securities (Regulation 1.25(b)(3));
4. Issuer concentration limits (Regulation 1.25(b)(4));
5. Time-to-maturity (for an investment portfolio or individual instruments) (Regulation 1.25(b)(5));
6. Investments in instruments issued by affiliates (Regulation 1.25(b)(6));
7. Requirements specific to interests in money market mutual funds (Regulation 1.25(c));
8. Requirements specific to repurchase agreements and reverse repurchase agreements (Regulation 1.25(d)); and
9. Requirements specific to in-house transactions (Regulation 1.25(e)).

The Commission requests comment on Regulation 30.7, as follows:

Please provide comments, information, research, or data on the effect of applying the requirements of Regulation 1.25 to investments of 30.7 funds. The Commission also requests comments, information, research, or data relating to whether there is any basis supporting the continued application of two different investment standards.

Issued in Washington, DC, on May 19, 2009, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–12020 Filed 5–21–09; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 150

RIN 3038–AC40

#### Concept Release on Whether To Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Extension of comment period.

**SUMMARY:** On March 24, 2009, the Commodity Futures Trading Commission (“Commission”) published a concept release on whether to eliminate the *bona fide* hedge exemption for certain swap dealers and create a new limited risk management exemption from speculative position limits. Comments on the proposal were originally due by May 26, 2009. Now, at the request of interested parties, the Commission is extending the comment period to June 16, 2009.

**DATES:** Comments must be received by June 16, 2009.

**ADDRESSES:** Written comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may also be sent by facsimile to (202) 418–5521, submitted via e-mail to [secretary@cftc.gov](mailto:secretary@cftc.gov). The words, “Concept Release, Swap Dealers” should appear in the subject field of responses submitted via e-mail, and should be clearly indicated in written submissions. Comments may also be submitted by connecting to the Federal eRulemaking Portal at: <http://www.regulations.gov> and following comment submission instructions.

**FOR FURTHER INFORMATION CONTACT:** Donald H. Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418–5041, e-mail [dheitman@cftc.gov](mailto:dheitman@cftc.gov).

**SUPPLEMENTARY INFORMATION:** On March 24, 2009, the Commission published and sought public comment regarding a concept release on whether to eliminate the *bona fide* hedge exemption for certain swap dealers and create a new limited risk management exemption from speculative position limits.

By letters dated May 12, 2009, the Futures Industry Association and the CME Group, Inc., respectively, requested that the original comment period be extended to June 16, 2009. Recognizing the significance of the issues raised in the Concept Release, and to encourage the submission of meaningful comments, the Commission has decided to grant the requests. The comment period for the Commission’s Concept Release on Whether to Eliminate the *Bona Fide* Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption from Speculative Position Limits is hereby extended to June 16, 2009.

<sup>11</sup> 15 U.S.C. 78c(a)(6).