

**MEMO# 23498**

May 29, 2009

## **CFTC Considers Restrictions on Investments of Customer Funds**

[23498]

May 29, 2009

TO: MONEY MARKET FUNDS ADVISORY COMMITTEE No. 22-09  
SEC RULES MEMBERS No. 57-09 RE: CFTC CONSIDERS RESTRICTIONS ON INVESTMENTS  
OF CUSTOMER FUNDS

The Commodity Futures Trading Commission is seeking public comment on possible changes to its regulations regarding the kinds of investments that derivatives clearing organizations (“DCOs”) and future commission merchants (“FCMs”) are permitted to make with customer funds. [\[1\]](#) CFTC Regulation 1.25 provides that DCOs and FCMs holding customer segregated funds may invest those funds in certain permitted investments, including money market funds, subject to specified requirements that are designed to minimize exposure to credit, liquidity, and market risks. The CFTC is considering significantly revising the scope and character of these permitted investments and is seeking public comment before issuing proposed rule amendments. Comments are due to the CFTC on or before July 21, 2009.

### **Background**

Under Section 4d(a)(2) of the Commodity Exchange Act, the 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, and general obligations of any State or any political subdivision thereof. Regulation 1.25 expands the list of permitted investments to include government sponsored enterprise securities, bank certificates of deposit, commercial paper, corporate notes, general obligations of a sovereign nation, and interests in money market funds. According to the Release, the CFTC is 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. Indeed, to accomplish these goals, 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.”

In 2007, the CFTC’s Division of Clearing and Intermediary Oversight (“Division”) launched a review of the nature and extent of investments of, among other areas, customer segregated accounts 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 CFTC-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. Although the CFTC believes that DCOs and FCMs have managed customer segregated funds responsibly during this difficult time, the Release notes that 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 CFTC believes it is an appropriate time to review permitted investments of customer segregated funds.

As part of the CFTC’s advance notice of proposed rulemaking, the CFTC also is requesting comment regarding an FCM’s treatment of customer money, securities, and property associated with positions in foreign futures and foreign options under Regulation 30.7 (“30.7 funds”). Currently, 30.7 funds are not limited to specific investments. According to the Release, the CFTC believes that it may be appropriate to impose the limitations to permitted investments under Regulation 1.25 to 30.7 funds because the same prudential concerns that arise in the context of customer segregated funds under Regulation 1.25 also arise in the context of 30.7 funds.

### **Public Comment Solicited**

The CFTC is soliciting comments from the public regarding which instruments should be permitted investments for customer segregated funds under Regulation 1.25 and the effects of applying the requirements of Regulation 1.25 to 30.7 funds. Specifically, the CFTC is seeking 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.

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## endnotes

[\[1\]](#) See *Investment of Customer Funds and FundsHeld in an Account for Foreign Futures and Foreign Options Transactions*, Commodity Futures Trading Commission, 74 FR 23962 (May 22, 2009) (“Release”).

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