Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures." paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:


§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas.

AGL ND E6 Harvey, ND [New]

Harvey Municipal Airport, ND (Lat. 47°47′28″ N., long. 99°55′54″ W.)

That airspace extending upward from 1,200 feet above the surface within a 100-mile radius of Harvey Municipal Airport, excluding that airspace within Canada.

Issued in Fort Worth, TX, on August 3, 2016.

Vonnie L. Royal,
Acting Manager, Operations Support Group, ATO Central Service Center.
[FR Doc. 2016–19006 Filed 8–11–16; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AE48

Written Acknowledgment of Customer Funds From Federal Reserve Banks

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is amending its regulations to revise or repeal certain provisions related to the requirement that a derivatives clearing organization (“DCO”) obtain from a Federal Reserve Bank acting as a depository for customer funds a written acknowledgment that the Federal Reserve Bank was informed that the customer funds deposited therein are those of customers and are being held in accordance with Section 4d of the Commodity Exchange Act (“CEA”).

DATES: Effective August 12, 2016.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, edonovan@cftc.gov; M. Laura Astrada, Associate Director, 202–418–7622, lastrada@cftc.gov; or Parisa Abadi, Attorney-Advisor, 202–418–6620, pabadi@cftc.gov, in each case, at the Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On June 2, 2016, the Commission published for public comment in the Federal Register a proposed order that would exempt Federal Reserve Banks that provide customer accounts and other services to certain designated financial market utilities registered with the Commission from Sections 4d and 22 of the CEA.1 The proposed order would permit Federal Reserve Banks to hold money, securities, and property deposited into a customer account by certain designated financial market utilities in accordance with the standards to which Federal Reserve Banks are held.

In response to the request for public comment, CME Group Inc. noted that the proposed order would be inconsistent with Regulation 1.20(g)(4)(ii).2 Commission Regulation 1.20(g)(4)(ii) requires that a DCO obtain from a Federal Reserve Bank acting as a depository for customer funds a written acknowledgment that the customer funds deposited therein are being held in accordance with Section 4d of the CEA; however, pursuant to the terms of the proposed order, the Federal Reserve Banks would be exempt from Section 4d. The Commission subsequently issued a final exemptive order that is substantively similar to the proposed order. In the Federal Register notice issuing the final exemptive order, the Commission noted that, in light of the comment, it had determined to repeal the written acknowledgment requirement with respect to customer accounts held with a Federal Reserve Bank in a separate Federal Register notice. The final exemptive order will render these provisions inapplicable, as the Federal Reserve Banks will not be held to the requirements of Section 4d of the CEA. Therefore, the Commission is amending Regulation 1.20 to remove the acknowledgment letter requirement for customer funds deposited by a DCO with a Federal Reserve Bank. The Commission welcomes any comments and/or questions regarding this amendment.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

1 Notice of Proposed Order and Request for Comment on Proposal to Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks from Sections 4d and 22 of the Commodity Exchange Act, 81 FR 35337 (June 2, 2016).

2 17 CFR 1.20(g)(4)(ii), Regulation 1.20(g)(4)(ii) provides that a DCO shall obtain from a Federal Reserve Bank only a written acknowledgment that: (A) The Federal Reserve Bank was informed that the customer funds deposited therein are those of customers and are being held in accordance with the provisions of section 4d of the Act and Commission regulations thereunder; and (B) The Federal Reserve Bank agrees to reply promptly and directly to any request from Commission staff for confirmation of account balances or provision of any other information regarding or related to an account. Id.
2. Amend § 1.20 by revising paragraphs (g)(4)(i) and (ii) to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

(g) * * * * *

(4) * * *

(i) A derivatives clearing organization must obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of a futures customer funds account; provided, however, that a derivatives clearing organization is not required to obtain a written acknowledgment from a Federal Reserve Bank with which it has opened a futures customer funds account.

(ii) The written acknowledgment must be in the form as set out in appendix B to this part.

* * * * *

Issued in Washington, DC, on August 8, 2016, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Written Acknowledgment of Customer Funds From Federal Reserve Banks—Commission Voting Summary, Chairman’s Statement, and Commissioner’s Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Today, the Commission continues its work to ensure the resiliency of clearinghouses and protect customers in our markets. To provide the necessary context for these efforts, it is useful to look back at recent history.

Most participants in our markets will recall what happened at the beginning of the financial crisis in September 2008, when the Reserve Fund—a money market fund—“broke the buck” following the bankruptcy of Lehman Brothers. Redemptions were suspended and investors were not able to make withdrawals. As a result, many futures commission merchants (FCMs) were not able to access customer funds invested in the Reserve Fund. Absent relief by the CFTC, many would have been undercapitalized, potentially ending up in bankruptcy. In addition, clearinghouses could not liquidate investments in the Reserve Fund. And there could have easily been a widespread run on money market funds, but for the emergency actions taken by the U.S. government.

As a result of the crisis, as well as the collapse of MF Global, the CFTC and our self-regulatory organizations took a number of actions to better protect customer funds. We required customer funds to be strictly segregated and limited the ways they can be invested. We expanded auditing procedures at FCMDs, including by requiring daily verification from depositories of the amounts deposited by FCMDs.

Today, CFTC rules require that customer funds be invested in highly liquid assets and be convertible into cash within one business day without a material discount in value. Our rules also require that clearinghouses invest margin deposits in a manner that allows them to promptly liquidate any such investment.

Over the last few years, the Securities and Exchange Commission (SEC) has also taken action in response to the lessons of the financial crisis, by adopting a number of measures to address the potential vulnerabilities of money market funds. One such recent reform, which takes effect in October of this year, sets forth the circumstances where prime money market funds are permitted, or in some circumstances required, to suspend redemptions in order to prevent the risk of investor runs.

While we recognize the benefit of the SEC’s new rule in preventing investor runs, a suspension of redemptions by a money market fund would mean investments in such funds are not accessible and cannot be promptly liquidated. Such an event could result in customer funds, FCMs, and clearinghouses being unable to access the funds necessary to satisfy margin obligations.

Therefore, CFTC staff is today providing guidance making clear that Commission rules prohibit a clearing member from investing customer funds, or a clearinghouse from investing amounts deposited as initial margin, in such money market funds.

Some industry participants have suggested we should interpret or revise our rules to permit investments of at least some customer monies in such money market funds unless and until redemptions are suspended. We have declined to do so, as it would be too late to protect customers at that point. Moreover, there are alternatives to prime funds, including certain government money markets funds or Treasury securities. In fact, investments in prime money market funds represent a relatively small portion of the total customer funds on deposit and the total initial margin deposits at clearinghouses.

Some of our clearinghouses and FCMDs do not have any investments in prime funds.

...
we know that funds are more likely to close the gates on redemptions when market dislocation happens. That is just the time when futures commission merchants (FCMs) and customers would need access to their money, and a multi-day delay can mean catastrophe for some businesses.

For that very reason, I have concerns about the Division of Swap Dealer and Intermediary Oversight’s (DSIO) “No-Action Relief With Respect to CFTC Regulation 1.25 Regarding Money Market Funds.” While the 4(c) exemption and the DCR interpretation are clearly customer protection initiatives, the DSIO no action letter is not. This no action letter would allow FCMs to keep money in segregated customer accounts that actually would not be readily available in a crisis. Thus, while it may appear that an FCM had considerable funds available to settle customer accounts during a market dislocation, in fact that would be only an illusion; a portion of those funds could be locked down behind the prime money market funds’ gates and therefore not actually be available when needed.

I do not think that the staff of the Commission should be supporting this kind of “window dressing”—giving the impression of greater security than there actually is. If the funds are not suitable investments for customer funds, then they are not suitable for the additional capital that the FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation, in fact that would be only an illusion. The FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation, in fact that would be only an illusion. The FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation.

For that reason, I have concerns about the Division of Swap Dealer and Intermediary Oversight’s (DSIO) “No-Action Relief With Respect to CFTC Regulation 1.25 Regarding Money Market Funds.” While the 4(c) exemption and the DCR interpretation are clearly customer protection initiatives, the DSIO no action letter is not. This no action letter would allow FCMs to keep money in segregated customer accounts that actually would not be readily available in a crisis. Thus, while it may appear that an FCM had considerable funds available to settle customer accounts during a market dislocation, in fact that would be only an illusion; a portion of those funds could be locked down behind the prime money market funds’ gates and therefore not actually be available when needed.

I do not think that the staff of the Commission should be supporting this kind of “window dressing”—giving the impression of greater security than there actually is. If the funds are not suitable investments for customer funds, then they are not suitable for the additional capital that the FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation, in fact that would be only an illusion. The FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation, in fact that would be only an illusion. The FCMs put in those accounts to protect against potential shortfalls. Having lived through bankruptcies, such as MF Global and Peregrine, I have a healthy respect for the importance of having strong clearing systems in place to prevent dislocation, in fact that would be only an illusion.