1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN(s)—Product Name(s): MR 753—Pillow, Jumbo
Mandatory for: Military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.
Mandatory Source(s) of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: Defense Commissary Agency
Distribution: C-List
NSN(s)—Product Name(s)
7930–00–NIB–0578—Disinfectant 256 Cleaner, Neutral, Concentrated, High Dilution
7930–00–NIB–0579—Disinfectant PD–128 Cleaner, Intermediate, Broad Spectrum, Concentrated
8125–00–NIB–0031—Spray Bottle, High Dilution 256 Neutral Disinfectant, 32 oz. Bottle
8125–00–NIB–0032—Spray Bottle, PD–128 Disinfectant Cleaner, 32 oz. Bottle
Mandatory for: Department of Veterans Affairs
Mandatory Source of Supply: VisionCorps, Lancaster, PA
Contracting Activity: Department of Veterans Affairs, Strategic Acquisition Center, Fredericksburg, VA
Distribution: C-List

Services

Service Type: Janitorial Service
Mandatory for: USDA APHIS, Luis Munoz Marin Airport, Terminal A & D, 150 Central Sector, Carolina, PR
Mandatory Source(s) of Supply: The Corporate Source, Inc., New York, NY
Contracting Activity: Dept of Agriculture, USDA APHIS MRPBS, Animal and Plant Health Inspection Service, Minneapolis, MN
Service Type: Mailroom Operation Service
Mandatory for: US Air Force, Postal Service Center, Tyndall Air Force Base, Tyndall Air Force, FL
Mandatory Source(s) of Supply: VersAbility, Resources, Inc., Hampton, VA
Contracting Activity: Dept of the Air Force, FA4890 ACC AMIC, Newport News, VA

Deletions

On 7/8/2016 (81 FR 44597), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Order Processing Service
Mandatory for: McGuire Air Force Base, McGuire AFB, NJ
Mandatory Source(s) of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK
Service Type: Operation of Postal Service Center Service
Mandatory for: Luke Air Force Base, Glendale, AZ
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK
Service Type: Telephone Switchboard Operations Service
Mandatory for: Barksdale Air Force Base, Shreveport, LA
Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK
Service Type: Embroidery of USAF Service Name Tapes & Emboss of Plastic Name Tags Base
Mandatory for: Lackland Air Force Base, San Antonio, TX
Mandatory Source(s) of Supply: Delaware Division for the Visually Impaired, New Castle, DE
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–19236 Filed 8–11–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Order Exempting the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is issuing an order to exempt Federal Reserve Banks that provide customer accounts and other services to registered derivatives clearing organizations that are designated financial market utilities from Sections 4d and 22 of the Commodity Exchange Act (''CEA'').

DATES: *Effective Date:* August 8, 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; or Joe Opron, Special Counsel, 312–596–0653, *jopron@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On June 2, 2016, the Commission published in the **Federal Register** a notice and request for public comment regarding a proposed Commission order that would exempt, pursuant to Section 4(c) of the CEA,[1] Federal Reserve Banks that provide customer accounts and other services to systemically important derivatives clearing organizations (''SIDCOs'') [2] from Sections 4d and 22 of the CEA (the ''Proposal'').[3] After consideration of the comments and for the reasons set forth in the Proposal and in this release, the Commission is issuing an order that exempts, subject to certain conditions, Federal Reserve Banks that provide customer accounts and other services to designated financial market utilities (''FMUs'') that are registered derivatives clearing organizations (''Designated FMUs'') [4] from Sections 4d and 22 of the CEA. The exemption enables Federal Reserve Banks to maintain customer accounts for Designated FMUs in accordance with the standards set forth in the relevant Federal Reserve Bank governing documents, as specified below.

II. Background

A. Designation of FMUs Under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was enacted to mitigate risk in the financial system and promote financial stability.[5] Accordingly, Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council (''Council'') to designate those FMUs that the Council determines are, or are likely to become, systemically important.[6] An FMU includes ''any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.'' [7]

On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII.[8] Two of these systemically important FMUs, Chicago Mercantile Exchange, Inc. (''CME'') and ICE Clear Credit LLC (''ICC''), are SIDCOs (and therefore, Designated FMUs). In addition, the Options Clearing Corporation (''OCC''), which is a registered derivatives clearing organization (''DCO'') but not a SIDCO, is a Designated FMU. OCC was designated in its capacity as a securities clearing agency; the Securities and Exchange Commission is its Supervisory Agency.

B. Access to Federal Reserve Bank Accounts and Services

Section 806(a) of the Dodd-Frank Act permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a Designated FMU and provide to the Designated FMU the services listed in Section 11A(b) of the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[9] In adopting regulations pursuant to Section 806(a) of the Dodd-Frank Act, the Board noted that the ''terms and conditions for access to Federal Reserve Bank accounts and services are intended to facilitate the use of [Federal] Reserve Bank accounts and services by a designated FMU in order to reduce settlement risk and strengthen settlement processes, while limiting the risk presented by the designated FMU to the [Federal] Reserve Banks.'' [10] Accordingly, the Board ''expects that [Federal] Reserve Banks would provide services that are consistent with a designated FMU's need for safe and sound settlement processes under account and service agreements generally consistent with the provisions of existing [Federal] Reserve Bank operating circulars for such services.'' [11] Highlighting the importance of Federal Reserve Bank operating circulars in this regard, the Board further requires that designated FMUs be in compliance with existing operating circulars.[12]

C. Proposed Order

The proposed Commission order would, subject to certain terms and conditions, exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA. In the Proposal, the Commission emphasized the importance of protecting customers and safeguarding customer funds, and highlighted the critical role that SIDCOs play in the financial markets. The Commission recognized that the failure of a SIDCO or a disruption to the operations of a SIDCO could threaten the stability of the U.S. financial system. As a result, the Commission determined that reducing SIDCOs' credit and liquidity risks would better protect market participants and the public, and would serve to promote the integrity of the financial markets. The Commission explained that because Federal Reserve Banks are the source of liquidity with regard to U.S. dollar deposits, a SIDCO would face much lower credit and liquidity risk with a deposit at a Federal Reserve Bank than it would with a deposit at a commercial bank.

With respect to protecting customers and safeguarding customer funds, the Commission explained that under Section 4d of the CEA, a depository will be held liable for an improper transfer of customer funds by an FCM or DCO if it knew or should have known that the transfer was improper.[13] The

[1] 7 U.S.C. 6(c).

[2] Under Commission Regulation 39.2, a SIDCO is defined as a financial market utility that is a registered derivatives clearing organization under Section 5b of the CEA, which is currently designated by the Financial Stability Oversight Council to be systemically important, and for which the Commission acts as the Supervisory Agency pursuant to Section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 17 CFR 39.2. *See also* Section 803(8)(A) of the Dodd-Frank Act, which defines the term Supervisory Agency as the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws. Section 803(8)(A) of the Dodd-Frank Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[3] 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).

[4] For the avoidance of doubt, the term ''Designated FMU'' includes the more narrow term ''SIDCO.''

[5] *See* Section 802(b) of the Dodd-Frank Act.

[6] *See* Section 804(a) of the Dodd-Frank Act. The term systemically important means a situation where the failure of or a disruption to the functioning of a financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. Section 803(9) of the Dodd-Frank Act; *see also* Authority to Designate Financial Market Utilities as Systemically Important, 76 FR 44763, 44774 (July 27, 2011).

[7] Section 803(6)(A) of the Dodd-Frank Act.

[8] *See* Press Release, Financial Stability Oversight Council, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012), *available at http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.*

[9] The services listed in Section 11A(b) of the Federal Reserve Act include wire transfers, settlement, and securities safekeeping, as well as services regarding currency and coin, check clearing and collection, and automated clearing house transactions. *See* 12 U.S.C. 248a(b). Section 806(a) of the Dodd-Frank Act also permits the Board to authorize a Federal Reserve Bank to establish deposit accounts under the first undesignated paragraph of Section 13 of the Federal Reserve Act, 12 U.S.C. 342.

[10] Financial Market Utilities (Regulation HH), 78 FR 14024, 14025 (Mar. 4, 2013).

[11] *Id.*

[12] *See* 12 CFR 234.5(b)(2) (setting forth rules to govern Federal Reserve Bank accounts held by designated FMUs).

[13] *See* 81 FR at 35339. Further, the Commission requires a DCO to obtain from each depository with which it deposits customer funds a written acknowledgment that the customer funds are being

Commission noted, however, that as this standard of liability was developed, the unique nature of the Federal Reserve Banks was not taken into account.[14] The accounts and financial services provided by Federal Reserve Banks are governed by account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer's regulator (''Federal Reserve Bank Governing Documents'').[15] In the Proposal, the Commission explained that the Federal Reserve Bank Governing Documents limit a Federal Reserve Bank's liability in maintaining an account or acting on such an instruction to actual damages that are incurred solely by the account holder and that are proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents. The Commission found the standard of liability as set forth in the Federal Reserve Bank Governing Documents to be appropriate in the context of Federal Reserve Banks, as this standard has been developed to more appropriately reflect the unique nature of the Federal Reserve Banks. Notably, the Commission argued that the Board has prescribed detailed rules and standards that govern account services provided to SIDCOs by the Federal Reserve Banks, which have been carefully developed to provide clarity surrounding the provision of Federal Reserve financial services and to promote consistency in the treatment of deposit accounts at the Federal Reserve Banks for the benefit of the U.S. financial system.[16]

The Commission noted its concern that exposing the Federal Reserve Banks to the standard of liability set forth in Section 4d of the CEA, as well as to potential third-party claims under Section 22 of the CEA,[17] could disrupt these goals and ultimately harm the U.S. financial system and, by extension, U.S. taxpayers. Accordingly, the Commission proposed that a Federal Reserve Bank acting as a depository for SIDCO customer funds or otherwise providing account services to a SIDCO would continue to be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.

However, the Commission reiterated the importance of the segregation requirements set forth in Section 4d of the CEA to make sure that customer funds are used only for the purpose of margining, securing, or guaranteeing their futures contracts and options on futures contracts, and cleared swaps. Therefore, as a condition to the proposed order, customer funds held at a Federal Reserve Bank would continue to be required to be segregated from the funds deposited in the SIDCO's proprietary account. In addition, Federal Reserve Banks would be required to reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the customer account(s) of a SIDCO that are established pursuant to the CEA from the director of the Division of Clearing and Risk of the Commission, or any successor division, or such director's designees.

The Commission further noted that Title VIII of the Dodd-Frank Act permits a Federal Reserve Bank to have access to confidential supervisory information with respect to a SIDCO. The Commission recognized, however, that the fact that Board supervisory staff may have access to confidential supervisory information about a SIDCO could create the false perception that Federal Reserve Bank staff responsible for managing the SIDCO's account and financial services would gain special knowledge about the SIDCO. As a result, the Commission recognized that a Federal Reserve Bank acting as a depository for customer funds could face greater scrutiny than a commercial bank acting as such. Therefore, the proposed order included a statement recognizing that, pursuant to the Wall Policy,[18] information obtained by the Board supervisory staff during the course of supervising SIDCOs or any counterparty to a SIDCO will not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO account holders.

III. Public Comments

In response to its request for public comment on the Proposal, the Commission received six comment letters.[19] All six letters expressly supported the issuance of an order exempting the Federal Reserve Banks from Sections 4d and 22 of the CEA, citing such benefits as mitigating systemic risk in the clearing and settlement system, reducing credit and liquidity risks for Designated FMUs, and enhancing the protection of customer funds.

Specifically, ICC agreed that holding SIDCO customer funds at a Federal Reserve Bank would decrease the SIDCO's credit, liquidity, and operational risks. ICC also agreed that ''the existing limitations on how Federal Reserve Banks hold assets provide adequate protections to account holders,'' and ''such protections are consistent with the customer protection initiatives of the CEA.'' [20] ICC and the International Swaps and Derivatives Association, Inc. (''ISDA'') both noted that the use of a Federal Reserve Bank as a depository for SIDCO customer funds would help to reduce systemic risk by reducing interconnectedness in the financial system. ISDA observed that such interconnectedness is particularly present when one firm simultaneously acts as a custodial bank, settlement bank, and/or clearing member with

held in accordance with Section 4d of the CEA to ensure that the depository has been informed that the deposited funds are those of customers.

[14] *See id.* at 35340–35342.

[15] The operating circulars of the Federal Reserve Banks began having uniform terms and conditions across Federal Reserve Bank districts as of January 2, 1998.

[16] In fact, SIDCOs have established proprietary accounts with one or more Federal Reserve Banks that are governed by the Federal Reserve Bank Governing Documents.

[17] In the Proposal, the Commission explained that Section 22 of the CEA provides for private rights of action for damages against persons who violate the CEA, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of the CEA. *See* 81 FR at 35342; *see also* 7 U.S.C. 25. The Commission noted that under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are currently insulated from third-party claims. While the Commission continues to believe that private claims empower injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf, and the prospect of such claims serves the public interest in deterring misconduct, the Commission has determined that, for the reasons discussed herein and in the Proposal, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest.

[18] As discussed in greater detail in the Proposal, Board staff has represented that it has a long-standing ''Wall Policy'' that generally prohibits, subject to the limitations contained therein, the sharing of confidential supervisory information with Federal Reserve Bank account services staff, and requires that care be exercised to avoid actual or apparent conflict between a Federal Reserve Bank's role as a provider of financial services and its role as a regulator, supervisor, and lender. *See* 81 FR at 35341; *see also* Federal Reserve's Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks (1984), *available at http://www.federalreserve.gov/paymentsystems/pfs_standards.htm.*

[19] Letters were submitted by CME, ICC, and OCC (each of which is a Designated FMU), Minneapolis Grain Exchange, Inc. (which is a DCO), American Council of Life Insurers, and the International Swaps and Derivatives Association, Inc. The Commission also received one non-substantive comment. All comments referred to herein are available on the Commission's Web site, at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1703.*

[20] ICC Comment Letter at 2 (July 1, 2016).

respect to one central counterparty.[21] ISDA believes that reducing this interconnectedness would positively impact SIDCO resilience during a market disruption and promote safety and soundness in the cleared derivatives markets by decreasing contagion risk. Furthermore, in ISDA's view, customer accounts at Federal Reserve Banks would only benefit derivatives customers and promote safety and soundness in the cleared derivatives markets. ISDA believes that the strict limitations on how the Federal Reserve Banks hold deposits adequately protect customers without the additional safeguards provided under Sections 4d and 22 of the CEA.

The Commission requested comments regarding whether the proposed exemption should be expanded to include not just SIDCOs but all Designated FMUs (in other words, all registered DCOs that have been designated as systemically important by the Council, regardless of whether the Commission is the DCO's Supervisory Agency). In response, OCC requested that the Commission expand the exemption.[22] As previously noted, OCC is currently designated by the Council to be systemically important; however, it is not a SIDCO, as the Securities and Exchange Commission is its Supervisory Agency. OCC commented that Section 806(a) of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for all Designated FMUs and not just SIDCOs. OCC argued that denying it the opportunity to deposit segregated customer funds in a Federal Reserve Bank account would undermine one of the purposes of Title VIII and would place OCC at an unjustified competitive disadvantage with respect to other Designated FMUs. ISDA also urged the Commission to expand the exemption to include customer accounts at a Federal Reserve Bank established by Designated FMUs given the benefits associated with holding customer accounts with a Federal Reserve Bank.

Minneapolis Grain Exchange, Inc. (''MGEX'') requested that the Commission expand the exemption to include customer accounts held at Federal Reserve Banks by Subpart C DCOs.[23] MGEX stated that limiting access to Federal Reserve Bank services and accounts to SIDCOs creates a competitive disadvantage to those DCOs that have not been designated as systemically important because such DCOs would not have access to these credit and liquidity risk reducing opportunities afforded to SIDCOs.[24] MGEX commented that this disadvantage may be more pronounced for Subpart C DCOs because they are held to the same standards as SIDCOs but do not have access to accounts at the Federal Reserve Banks.[25] MGEX recognized, however, that this is due to the ''restrictive wording'' of Section 806(a) of the Dodd-Frank Act, which specifically limits access to Federal Reserve Bank accounts to Designated FMUs, and the Commission cannot simply grant Subpart C DCOs permission to have accounts at a Federal Reserve Bank.[26] MGEX requested that the Commission use alternative language in the exemptive order, so as not to be SIDCO-specific, in the event that Federal Reserve Banks are subsequently permitted to maintain accounts for Subpart C DCOs in the future.

CME supported the exemption, but noted that it would be inconsistent with Commission Regulation 1.20(g)(4)(ii), which requires that a DCO obtain from a Federal Reserve Bank acting as a depository for customer funds a written acknowledgment that the customer funds are being held in accordance with Section 4d of the CEA.[27] CME noted, however, that pursuant to the terms of the exemptive order, the Federal Reserve Banks would be exempt from Section 4d.[28] CME suggested that the exemptive order and Commission Regulation 1.20(g)(4)(ii) be harmonized.

In addition, CME commented that, as a SIDCO account holder, it would need multiple Federal Reserve Bank accounts in order to comply with the segregation requirements set forth in the exemptive order.[29] CME stated that, under the Federal Reserve Banks' Operating Circular 1, a financial institution may maintain only one Master Account with a Federal Reserve Bank, although the Federal Reserve Bank may, in its discretion, allow multiple Master Accounts in certain situations. CME noted that this may require a Federal Reserve Bank to exercise its discretion under its standard policies and operating circulars to permit the use of multiple Master Accounts for SIDCO account holders.

CME also stated that account agreements between the Federal Reserve Banks and depository institution account holders typically include certain set-off rights and liens in favor of the Federal Reserve Banks. In this regard, CME commented that Federal Reserve Bank account agreements may need to be tailored in order to provide comfort to SIDCO clearing members, and customers of SIDCO clearing members, that their margin deposits are ''bankruptcy remote'' from the SIDCO under applicable bank capital requirements.[30] Similarly, American Council of Life Insurers (''ACLI'') requested that the Commission clarify ''for the benefit of public customers who are the ultimate beneficiaries of segregated accounts at commercial or federal banks, that customer segregated funds (*i.e.,* initial margin) shall never be used for any other purpose under any circumstances, even the most exigent.'' [31]

IV. Findings and Conclusions

After careful review and consideration of the comments, and for the reasons cited herein and set forth in the Proposal, the Commission has determined that the requirements of Section 4(c) of the CEA have been met with respect to exempting Federal Reserve Banks that provide customer accounts and other services to Designated FMUs from Sections 4d and 22 of the CEA. The Commission is therefore issuing an order granting the exemption essentially as proposed. However, the Commission is making minor technical clarifications to the language of the order, and is expanding the exemption to include those customer accounts that are established pursuant to the CEA and that are held at Federal Reserve Banks by Designated FMUs. The Commission agrees with OCC and ISDA that Section 806(a) of the Dodd-Frank Act supports Federal

[21] ISDA Comment Letter at 2 (July 5, 2016).

[22] OCC Comment Letter at 1 (July 5, 2016).

[23] A Subpart C DCO is a DCO registered with the Commission pursuant to Section 5b of the CEA that is not a SIDCO and has elected to become subject to the requirements of Subpart C of Part 39 of the Commission's regulations. 17 CFR 39.2. MGEX has made this election and is therefore a Subpart C DCO.

[24] MGEX Comment Letter at 1 (July 5, 2016).

[25] SIDCOs and Subpart C DCOs are required to comply with the requirements set forth in Subpart C of Part 39 of the Commission's regulations, as well as the requirements applicable to all DCOs, which are set forth in Subparts A and B of Part 39. Subpart C, together with the provisions in Subparts A and B, establish domestic regulations that are consistent with the Principles for Financial Market Infrastructures. As a result, SIDCOs and Subpart C DCOs are considered qualified central counterparties for purposes of the Basel capital requirements for central counterparties. *See, e.g.,* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013) (discussing the regulatory framework for SIDCOs and Subpart C DCOs and providing further background on qualified central counterparties).

[26] MGEX Comment Letter at 2 (July 5, 2016).

[27] 17 CFR 1.20(g)(4)(ii).

[28] CME Comment Letter at 3 (July 1, 2016).

[29] As a condition to the exemptive order, the Federal Reserve Banks are required to segregate customer funds deposited by a Designated FMU from the proprietary funds deposited by a Designated FMU.

[30] CME Comment Letter at 4 (July 1, 2016).

[31] ACLI Comment Letter at 2 (July 5, 2016).

Reserve Banks acting as depositories for all Designated FMUs, not just SIDCOs.

The Commission notes MGEX's request that the Commission expand the exemption to include customer accounts held at Federal Reserve Banks by any Subpart C DCO. However, the Commission further notes that Subpart C DCOs are not currently eligible for Federal Reserve Bank accounts.[32] Accordingly, the Commission is declining to expand the exemption to include customer accounts held at Federal Reserve Banks by Subpart C DCOs. As MGEX acknowledges, the Commission does not have the authority to direct the Federal Reserve Banks to provide accounts and services to Subpart C DCOs. If, in the future, a registered DCO that is not a Designated FMU is able to establish an account at a Federal Reserve Bank, the Commission may reconsider the scope of the exemption at that time.

In response to CME's comment that the exemption would be inconsistent with the acknowledgement letter requirements in Commission Regulation 1.20(g)(4)(ii),[33] the Commission agrees and has determined to repeal this requirement[34] in a separate **Federal Register** notice. The exemptive order will render these provisions inapplicable, as the Federal Reserve Banks that provide customer accounts and other services to Designated FMUs would be exempt from Section 4d of the CEA.

In addition, CME commented that, as a SIDCO account holder, it would need multiple Federal Reserve Bank accounts in order to comply with the segregation requirements set forth in the exemptive order.[35] CME noted that obtaining multiple Master Accounts may require a Federal Reserve Bank to exercise its discretion under its standard policies and operating circulars. The Commission agrees that this issue would appear to be within the scope of the Federal Reserve's authority and not the Commission's.

CME also noted that account agreements between the Federal Reserve Banks and depository institution account holders typically include certain set-off rights and liens in favor of the Federal Reserve Banks. CME argued that Federal Reserve Bank account agreements may need to be revised to make sure customer margin deposits are ''bankruptcy remote'' from the SIDCO under applicable bank capital requirements.[36] Similarly, ACLI argued that the interests of customers in their segregated funds should never be subordinated for the benefit of any other party. The Commission agrees that a Designated FMU cannot grant security interests in, rights of set-off against, or other rights in customer collateral. Therefore, the Commission believes that a Designated FMU's account agreement must be free from any rights of set-off or liens on customer funds.

The exemptive order applies to all Federal Reserve Banks that provide customer accounts and other services to Designated FMUs. It requires that all money, securities, and property deposited into a customer account established pursuant to the CEA by a Designated FMU with a Federal Reserve Bank must be separately accounted for and not commingled with the money, securities, and property deposited into the account of any other person, including a proprietary account of the Designated FMU depositing such funds.[37] In addition, Federal Reserve Banks must reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the customer account(s) of a Designated FMU that are established pursuant to the CEA from the director of the Division of Clearing and Risk of the Commission, or any successor division, or such director's designees.

In light of the foregoing, the Commission believes the exemption would promote responsible economic and financial innovation and fair competition, and is consistent with the ''public interest,'' as that term is used in Section 4(c) of the CEA.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[38] requires federal agencies, in promulgating rules, to consider whether those rules will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission believes that the exemptive order will not have a significant economic impact on a substantial number of small entities. The exemption will impact Designated FMUs and Federal Reserve Banks. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its actions on small entities in accordance with the RFA.[39] The Commission has previously determined that DCOs, including Designated FMUs, are not small entities for purposes of the RFA.[40] Similarly, the Commission believes that Federal Reserve Banks are not small entities for purposes of the RFA.

Accordingly, the Commission does not expect the exemption to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the exemption would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (''PRA'')[41] are,

[32] Federal Reserve Banks serve only account holders authorized by statute, such as depository institutions and the U.S. government. *See, e.g.,* Federal Reserve Bank of Richmond, Consumer Issues and Information, *available at https://www.richmondfed.org/faqs/consumer/* (last visited Feb. 26, 2016) (stating that ''Federal Reserve Banks are not authorized to open accounts for individuals[; rather, o]nly depository institutions and certain other financial entities may open an account at a Federal Reserve Bank''); *see also* Section 806(a) of the Dodd-Frank Act (authorizing accounts at a Federal Reserve Bank for designated FMUs).

[33] 17 CFR 1.20(g)(4)(ii). Under Commission Regulation 1.20(g)(4)(ii), a DCO must obtain from a Federal Reserve Bank acting as a depository for customer funds a written acknowledgement 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 CEA 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.*

[34] Specifically, the Commission is revising paragraphs (g)(4)(i) and (g)(4)(ii), and repealing paragraphs (g)(4)(ii)(A) and (g)(4)(ii)(B).

[35] As a condition to the exemptive order, the Federal Reserve Banks are required to segregate customer funds deposited by a Designated FMU from the proprietary funds deposited by a Designated FMU.

[36] CME Comment Letter at 4 (July 1, 2016).

[37] The Commission is slightly modifying the language from the proposed order so that the exemptive order makes clear that customer funds deposited by a Designated FMU may not be commingled with funds held in any other account at the Federal Reserve Banks, including the Designated FMU's proprietary account. This language is included in the order because, despite the exemption for the Federal Reserve Banks, a Designated FMU is still subject to the requirements of Section 4d of the CEA and Commission Regulation 1.20, which require a DCO to separately account for and segregate customer funds. Specifically, the Commission is changing the phrase ''separately accounted for and segregated from'' in the proposed order to ''separately accounted for and not commingled with'' to more closely mirror the language used in Section 4d. For purposes of this exemption, customer funds held by the Federal Reserve Banks can meet this standard so long as the customer funds are held in a separate account and the funds in the customer account are not used to pay or secure the obligations arising out of any other account.

[38] 5 U.S.C. 601 *et seq.*

[39] *See* 47 FR 18618, 18618–21 (Apr. 30, 1982).

[40] *See* New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001).

[41] 44 U.S.C. 3501 *et seq.*

among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, regardless of form or format, whenever the government is obtaining, causing to be obtained or soliciting information, and requires disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons. The PRA would not apply in this case given that the exemption would not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require approval of the Office of Management and Budget.

C. Cost and Benefit Considerations

1. Summary of Comments on the Costs and Benefits of the Proposed Order

The Commission requested comments on the costs and benefits associated with the proposed order. The Commission requested but received no comments providing data or other information to enable the Commission to better quantify the expected costs and benefits attributable to this exemption. In terms of qualitative cost and benefit comments, OCC stated that Section 806(a) of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for all Designated FMUs and not just SIDCOs. OCC commented that limiting the exemption to SIDCO customer accounts would place OCC at a competitive disadvantage because, although OCC is a Designated FMU, it is not a SIDCO. In addition, OCC argued that denying OCC the opportunity to deposit customer funds at a Federal Reserve Bank would undermine the purpose of Title VIII of the Dodd-Frank Act.

MGEX also supported the proposed exemption, but noted that DCOs that are not designated as systemically important would not have the same access to the credit and liquidity risk reducing opportunities afforded to SIDCOs with access to Federal Reserve Bank accounts. MGEX stated that limiting access to Federal Reserve Bank accounts to SIDCOs would create a competitive disadvantage to those DCOs that are not designated as systemically important, particularly Subpart C DCOs. MGEX recognized that the Commission cannot grant Subpart C DCOs permission to have accounts at a Federal Reserve Bank. However, MGEX argued that the Commission should expand the exemption to cover customer accounts maintained by Federal Reserve Banks for Subpart C DCOs in the event that Federal Reserve Banks are subsequently permitted to maintain accounts for Subpart C DCOs.

ICC commented that accounts at Federal Reserve Banks would reduce credit, operational, and liquidity risks that are associated with traditional deposit accounts. ISDA and ICC further noted that such accounts may reduce interconnectedness in the cleared derivatives market. CME commented that migrating a portion of the eligible assets it has on deposit from clearing members to a Federal Reserve Bank may have a number of positive effects on its clearing members and their customers. ACLI stated that the proposed order would reduce overall systemic risk that could arise from liquidity and other risks on commercial banks where SIDCOs currently deposit their customer funds.

In the discussion that follows, the Commission considers the costs and benefits of the exemptive order to the public and market participants. It also considers the costs and benefits of the exemption in light of the public interest factors enumerated in Section 15(a) of the CEA.

2. Costs

This order is exemptive and provides the Federal Reserve Banks relief from certain of the requirements in the CEA and attendant Commission regulations. As with any exemptive rule or order, the exemption in the order is permissive, meaning that the Federal Reserve Banks are not required to rely on it. In addition, Designated FMUs are not required to deposit customer funds with a Federal Reserve Bank. Accordingly, the Commission assumes that interested parties would rely on the exemption only if the anticipated benefits warrant the costs of the exemption.

The exemptive order would exempt the Federal Reserve Banks from Sections 4d and 22 of the CEA. All of the commenters generally supported issuing this exemption. However, two commenters raised the possibility that the proposed order could place them at a competitive disadvantage. First, as discussed above, OCC argued that, under Title VIII of the Dodd-Frank Act, a Federal Reserve Bank may be permitted to maintain an account for a Designated FMU. OCC argued that, as a result, it would be placed at a competitive disadvantage with respect to SIDCOs. The Commission agrees that Title VIII of the Dodd-Frank Act permits Federal Reserve Banks to maintain accounts for, and provide services to, Designated FMUs, and not just SIDCOs. Accordingly, and as discussed above, the Commission has determined to expand the exemption to include customer accounts held at Federal Reserve Banks by Designated FMUs generally, for purposes of consistency with Title VIII.

Second, MGEX argued that it would be placed at a competitive disadvantage with respect to SIDCOs because, as a Subpart C DCO, MGEX is held to the same standards as SIDCOs under the Commission's regulations, but is not afforded the same opportunity to hold customer accounts at a Federal Reserve Bank. The Commission has declined to expand the exemption to include customer accounts held at Federal Reserve Banks by Subpart C DCOs. Under Title VIII, the Board may authorize a Federal Reserve Bank to maintain accounts only for Designated FMUs. As MGEX recognizes, the Commission does not have the authority to authorize a Federal Reserve Bank to maintain accounts for Subpart C DCOs. Accordingly, the competitive disadvantage identified by MGEX cannot be remedied by the Commission by expanding the scope of the exemption. Moreover, the Commission does not believe it would be appropriate to expand the scope of the exemption based on the theoretical possibility that Federal Reserve Banks may one day be permitted to provide accounts to Subpart C DCOs. In the event that a Federal Reserve Bank is authorized to maintain an account for other registered DCOs, the Commission may reconsider the scope of the exemptive relief at that time.

3. Benefits

The exemption will benefit market participants by facilitating Designated FMUs' use of Federal Reserve Banks as depositories for customer funds. Whereas commercial banks present credit and liquidity risks to a Designated FMU, its FCM clearing members, and the FCMs' customers, the Federal Reserve Banks are substantially insulated from such risks. As discussed in greater detail above, Title VIII of the Dodd-Frank Act was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through an enhanced supervisory framework for Designated FMUs. In addition to this framework, Title VIII, and more specifically, Section 806(a) of the Dodd-Frank Act, permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a

Designated FMU and provide to the Designated FMU certain financial services. By enacting Title VIII in general, and Section 806(a) in particular, Congress recognized the importance of reducing systemic risk and providing Designated FMUs with a potential safeguard during an extraordinary liquidity event. The exemption would therefore help promote Congress' goal of better preparing the U.S. financial system for potential future liquidity events.[42] Commenters generally agreed that the exemption would benefit market participants by enhancing the protection of customer funds. Commenters noted that accounts at Federal Reserve Banks would decrease a SIDCO's credit, liquidity and operational risk, and reduce interconnectedness in the cleared derivatives market.

Moreover, the Federal Reserve Banks' standard of liability, as set forth in the Federal Reserve Bank Governing Documents, is better suited for the Federal Reserve Banks than Section 4d of the CEA, which was designed to govern customer funds deposited with a commercial bank, trust company, or DCO. Unlike commercial banks, Federal Reserve Banks do not operate for profit and serve only account holders authorized by statute, such as depository institutions and the U.S. government. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses, such as litigation expenses. By exempting the Federal Reserve Banks from certain potential enforcement actions and private suits, the exemption would reduce the Federal Reserve Banks' exposure to litigation. Because the Federal Reserve Banks return their earnings to the U.S. Department of Treasury's general fund, U.S. taxpayers could benefit from the exemption. Therefore, the Commission believes that it is appropriate to apply the Federal Reserve Banks' standard of liability in order to facilitate the use of these accounts.

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA.[43] By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

a. Protection of Market Participants and the Public

The exemption would serve to facilitate Designated FMUs' use of Federal Reserve Banks as depositories for customer funds. Because the Federal Reserve System is the nation's central bank, such accounts would provide Designated FMUs with the lowest possible credit risk in the event of a market disruption. Moreover, as Federal Reserve Banks are the source of liquidity with regard to U.S. dollar deposits, Designated FMUs with access to a deposit account at a Federal Reserve Bank would also be better equipped to handle a liquidity event. Since Designated FMUs have been so designated because of their importance to the broader financial system, reducing these risks would protect market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity

A temporary or permanent disruption to the operations of a Designated FMU could cause widespread and significant damage to the financial integrity of derivatives markets as a whole. Therefore, by facilitating a Designated FMU's use of Federal Reserve Banks as depositories for customer funds, the exemption would reduce liquidity and credit risk to the Designated FMU, which would, in turn, promote the financial integrity of the derivatives markets.

As noted above, two commenters raised concerns that the exemptive order may result in a competitive disadvantage. The Commission has addressed the concern of one commenter (OCC) by expanding the exemption to include customer accounts held at Federal Reserve Banks by Designated FMUs generally. On the other hand, the Commission does not have the authority to take action to address the concerns of the other commenter (MGEX).

The Commission does not anticipate the exemption will have a significant impact on the efficiency of the derivatives markets.

c. Price Discovery

The Commission does not anticipate the exemption will have an impact on the price discovery process.

d. Sound Risk Management Practices

The Commission believes that establishing segregated customer accounts for Designated FMUs and enabling Designated FMUs to access related services at a Federal Reserve Bank would improve a Designated FMU's ability to manage liquidity risk and protect customer funds. Additionally, the Commission believes that the availability of a Federal Reserve Bank account could allow a Designated FMU to reduce its concentration risk by adding an additional creditworthy depository in which to diversify funds. Accordingly, the exemption promotes sound risk management practices.

The Commission further notes that, notwithstanding the exemption from Section 4d of the CEA, the Federal Reserve Banks are still required to segregate customer funds deposited by a Designated FMU from the proprietary funds deposited by a Designated FMU and to adhere to the longstanding standards of liability that govern the Federal Reserve Banks.

e. Other Public Interest Considerations

The Commission believes that facilitating a Designated FMU's access to Federal Reserve Bank accounts will promote the public interest by bolstering a Designated FMU's ability to conduct settlements with a high degree of confidence under a wide range of stress scenarios, thereby increasing the likelihood of the Designated FMU being able to provide its customers with access to their funds in times of market distress.

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[42] A Designated FMU's access to Federal Reserve Bank deposit accounts is also consistent with the international standards set forth in the Principles for Financial Market Infrastructures, which acknowledge the protections afforded by central banks from such credit and liquidity risks. *See, e.g.,* CPSS–IOSCO, Principles for Financial Market Infrastructures, ¶ 3.9.3 (noting that ''[c]entral banks have the lowest credit risk and are the source of liquidity with regard to their currency of issue''); *see also* Principles for Financial Market Infrastructures, Key Consideration 8 (specifying that a financial market infrastructure ''with access to central bank accounts, payment services, or securities services should use these services, where practical, to enhance its management of liquidity risk'').

[43] 7 U.S.C. 19(a).

VI. Order of Exemption

After considering the above factors and the comment letters received in response to the request for comments, the Commission has determined to issue the following:

Order

Pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the Financial Stability Oversight Council (''Council'') is required to designate those financial market utilities (''FMUs'') that the Council determines are, or are likely to become, systemically important. A derivatives clearing organization registered with the Commodity Futures Trading Commission (''Commission'') and designated by the Council as systemically important is referred to herein as a ''Designated FMU''. Under Section 806(a) of the Dodd-Frank Act, the Board of Governors (''Board'') of the Federal Reserve System is permitted to authorize a Federal Reserve Bank to establish and maintain a deposit account for, among others, a Designated FMU and provide certain services to the Designated FMU, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

Designated FMUs are required to hold funds belonging to customers of their clearing members in accounts subject to Section 4d of the Commodity Exchange Act (''CEA''). In addition, Section 22 of the CEA would provide for private rights of action for damages against persons who violate Section 4d, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of Section 4d. However, the Commission understands that deposit accounts maintained by any Federal Reserve Bank would be governed by applicable account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer's regulator (''Federal Reserve Bank Governing Documents''). The Federal Reserve Bank Governing Documents, as may be amended from time to time, include, but are not limited to, Federal Reserve Bank Operating Circular No. 6 (governing funds transfers through the Fedwire Funds Service); Federal Reserve Bank Operating Circular No. 7 (governing the maintenance of and transfer services for book-entry securities accounts); 12 CFR part 210, subpart B (governing funds transfers through the Fedwire Funds Service); and 31 CFR part 357, subpart B (setting forth the U.S. Department of the Treasury's regulations governing book-entry treasury bonds, notes, and bills).

The Commission understands that under the Federal Reserve Bank Governing Documents, a Federal Reserve Bank has no requirement or obligation to inquire as to the legitimacy or accuracy of the instructions, or the transactions related to those instructions, or compliance by the Designated FMU with its obligations under the CEA. To the extent that liability may accrue under the Federal Reserve Bank Governing Documents, the Commission understands that the Federal Reserve Bank may be held liable only for actual damages that are (i) incurred solely by the Designated FMU account holder, and (ii) proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents. The Commission is issuing an exemption to the Federal Reserve Banks in order to facilitate Federal Reserve Banks' ability to establish customer accounts for Designated FMUs.

Therefore, *it is ordered,* pursuant to Section 4(c) of the CEA, 7 U.S.C. 6(c), that the Federal Reserve Banks are granted an exemption from Sections 4d and 22 of the CEA, subject to the terms and conditions specified herein:

1. Segregation. Money, securities, and property deposited into a customer account established pursuant to the CEA by a Designated FMU with a Federal Reserve Bank shall be separately accounted for and not commingled with the money, securities, and property deposited into the account of any other person, including a proprietary account of the Designated FMU depositing such funds.

2. Information Requests. Federal Reserve Banks must reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the customer account(s) of a Designated FMU that are established pursuant to the CEA from the director of the Division of Clearing and Risk of the Commission, or any successor division, or such director's designees.

3. Applicability to Federal Reserve Banks. Subject to the conditions contained herein, the order applies to all Federal Reserve Banks that provide customer accounts and other services to Designated FMUs. In addition, pursuant to the Federal Reserve's Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks, information obtained by the Board of Governors of the Federal Reserve System or its designees during the course of supervising Designated FMUs, pursuant to Title VIII of the Dodd-Frank Act, or any counterparty to a Designated FMU under any authority, shall not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to Designated FMU account holders.

4. Reservation of Rights. This order is based upon the analysis set forth above. Any material change in law or circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the exemption contained herein is appropriate and/or consistent with the public interest and purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities described herein should be subject to the Commission's full jurisdiction, and to condition, suspend, terminate, or otherwise modify or restrict the exemption granted in this order, as appropriate, upon its own motion.

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

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendices to Order Exempting the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act—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 enhanced accounting and auditing procedures at FCMs, including by requiring daily verification from depositories of the amounts deposited by FCMs.

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 initial 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 customers, 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 FCMs do not have any investments in prime funds.

Staff has been careful not to be overly restrictive, and therefore has issued no-action relief to allow FCMs to invest certain ''excess'' proprietary funds held in customer accounts in these money market funds. That is, our existing rules require FCMs to deposit their own funds (*i.e.,* targeted residual interest) into customer accounts to make sure that there are sufficient funds in the segregated customer accounts to cover all obligations due to customers. FCMs frequently deposit an amount of their own funds that is in excess of the targeted residual interest amount required under our rules, and that excess amount can be withdrawn at any time. Indeed, if an FCM should default, customers—and the system as a whole—are better off if excess funds are on deposit, and we do not wish to incentivize FCMs to withdraw such excess funds from the segregated account. Therefore, the no action relief makes clear that FCMs can continue to invest their own funds in excess of their targeted residual interest in such money market funds, even though they cannot invest the customer funds—or any proprietary funds they are required to deposit—in this manner.

Finally, the Commission is taking action today that will further ensure the safety of customer funds. We are issuing an order that will help make it possible for systemically important clearinghouses to deposit customer funds at Federal Reserve Banks. Our order makes clear that a Federal Reserve Bank that opens such an account would be subject to the same standards of liability that generally apply to it as a depository, rather than any potentially conflicting standard under the commodity laws.

Although Federal Reserve accounts for customer funds held by systemically important clearinghouses do not exist today, they are allowed under the Dodd-Frank Act, and we have been working with the Board of Governors to facilitate them. The two clearinghouses designated as systemically important in our markets have been approved to open Federal Reserve Bank accounts for their proprietary funds. We hope that with today's action, accounts for customer funds can be opened soon. Doing so will help protect customer funds and enhance the resiliency of clearinghouses.

I thank the dedicated CFTC staff and my fellow Commissioners for their work on these matters.

Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

I am pleased to concur with the two Commission actions: The ''Order Exempting the Federal Reserve Banks from Sections 4d and 22 of the Commodity Exchange Act'' and ''Written Acknowledgment of Customer Funds from Federal Reserve Banks.'' I have long believed that, in order to protect customer funds, we need to keep that money at our central bank. In the event of a major market event, I, and I believe the rest of the American people, would feel much better knowing that investors' money is at the Federal Reserve instead of at multiple central counterparties. I am glad that our agency and the Federal Reserve have come to an agreement on an effective way to accomplish this.

I am similarly pleased with the Division of Clearing and Risk's (DCR) ''Staff Interpretation Regarding CFTC Part 39 In Light Of Revised SEC Rule 2a–7,'' which clearly outlines the staff's understanding that, given the limitations that the Securities and Exchange Commission (SEC) has imposed on redemptions for prime money market funds, that they are no longer considered Rule 1.25 assets. This is the correct interpretation. The key feature in a Rule 1.25 asset is that it must be available quickly in times of crisis or illiquidity. And 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 be 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 members with a large cushion of funds that can be accessed when needed. This no action letter undermines that effort. Given the importance of this topic to the general public, we should at least have asked for comments or even held a roundtable before making this change. I therefore hope to reexamine this subject in the near future.

[FR Doc. 2016–19210 Filed 8–11–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind Program; Correction

Catalog of Federal Domestic Assistance (CFDA) Number: 84.160C.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; correction.

SUMMARY: On July 25, 2016, we published in the **Federal Register** (81 FR 48409) a notice inviting