



January 17, 2024

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN 3038-AF24: Investment of Customer Funds by Futures Commission
Merchants and Derivatives Clearing Organizations

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) notice of proposed rulemaking (NPR) to Commission Regulation 1.25, which governs permitted investments for futures commission merchants (FCMs) and derivatives clearing organizations (DCOs) of funds held for the benefit of customers trading futures, foreign futures and cleared swaps transactions (customer funds). This Regulation, and the Commission's enhancements to it over the years, has proven to be an effective measure for the protection of customer funds. NFA fully supports the Commission's goal of reviewing Regulation 1.25 to ensure it continues to meet the stated policy objective of strengthening the existing customer protection framework to safeguard customer funds and minimize risk while retaining the appropriate degree of investment flexibility and opportunities for capital efficiency for FCMs and DCOs investing customer segregated funds. NFA respectfully requests that the Commission consider the following comments on its proposed amendments.

Amendments to the List of Permitted Investments

NFA supports the Commission's proposed changes to add certain sovereign debt instruments to the list of permitted investments in Regulation 1.25. As the Commission notes in the NPR, the conditions placed on the proposed investment of customer funds in these specified foreign debt instruments are consistent with the criteria specified in the Commission's 2011 amendments to Regulation 1.25's permitted investments. Moreover, they are consistent with the terms imposed in the Commission's 2018 Order, which granted DCOs an exemption to invest euro-denominated futures customer funds and cleared swaps customer collateral in euro-denominated sovereign debt issued by France and Germany.

In supporting the proposed changes, NFA believes the limitations and terms imposed by the Commission are extremely important. Specifically, among other terms, DCOs and FCMs may only invest customer funds in the foreign sovereign debt of Canada, France, Germany, Japan and the United Kingdom to the extent a DCO or FCM has balances in accounts owed to customers that are denominated in these five countries' currencies. Moreover, as noted in the NPR, these five countries are among the seven largest economies in the International Monetary Fund's classification of advanced economies, as well as are members of the Group of 7 and qualify as money center countries under the Commission's Regulations. Therefore, NFA believes the proposed limited expansion of the list of permitted investments to include these five countries' sovereign debt meets Regulation 1.25's objectives of preserving principal and maintaining liquidity of customer funds, while at the same time provides FCMs and DCOs with an investment option to manage the potential foreign exchange risk that arises from holding the underlying foreign currency.

Revision to the Read-Only Access Provisions

As the Commission notes in its NPR, when it adopted the requirement for depository institutions to provide the Commission with read-only electronic access to FCM depository accounts holding customer funds, it did not anticipate it would access those FCM accounts on a regular basis. The Commission further notes that CME Group (CME) and NFA had adopted rules requiring FCMs to instruct each depository holding customer funds to report balances daily to CME and NFA, respectively. Therefore, at the time it adopted the read-only access provision, the Commission noted that it expected to make use of the provision only when necessary to obtain account balances and other information that Commission staff could not obtain via CME's and NFA's daily segregation confirmation systems or otherwise directly from depositories.

As the Commission's NPR states, NFA and CME receive account information from all depositories daily, and we both have programs in place that compare the daily balances reported by the depositories with those reported by FCMs in their daily segregation reports. Importantly, CME and NFA receive alerts when there is a discrepancy that exceeds defined thresholds, and CME or NFA staff conduct appropriate analysis and prompt follow up with an impacted FCM to clarify and remedy the situation, if necessary, and document this work. Based on CME's and NFA's adopted processes, which are designed to verify daily customer fund balances held at an FCM's depositories, NFA fully supports and agrees with the Commission's view that it no longer require read-only electronic access to FCM depository accounts holding customer funds. We do not believe that the Commission's read-only electronic access requirements provide any meaningful additional customer protection.

NFA appreciates the opportunity to comment on the Commission's proposal. If you have any questions concerning this letter, please do not hesitate to contact Dale Spoljaric, Vice President, OTC Derivatives at dspoljaric@nfa.futures.org or Kathleen Clapper, Managing Director, Compliance at kclapper@nfa.futures.org.

Respectfully submitted,



Carol A. Wooding
Senior Vice President
General Counsel and Secretary