



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

Ananda Radhakrishnan
Director

CFTC Letter No. 08-17
September 24, 2008
Other Written Communication
Division of Clearing and Intermediary Oversight

Debra K. Kokal
Director, Audit Department
CME Group
20 S. Wacker Dr.
Chicago, IL 60606

Re: Request for Guidance Regarding CFTC Regulations 1.17, 1.20, 1.25, and Part 30

Dear Ms. Kokal:

This is in response to your letter dated September 24, 2008, to the Division of Clearing and Intermediary Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), written on behalf of the Joint Audit Committee ("JAC"),¹ as supplemented by telephonic communications with Division staff. By your letter, you request guidance concerning regulatory reporting requirements applicable to futures commission merchants ("FCMs") with investments in the Reserve Primary Fund, a regulated money market mutual fund ("MMMF"). We understand the following information to be relevant to your request.

As required by Section 4d(a) of the Commodity Exchange Act and Commission Regulation 1.20, FCMs must segregate and separately account for the funds of their commodity and option customers.² Commission Regulation 1.25 specifies requirements for investments of customer funds, and includes as "permitted investments" interests in MMMFs that meet the criteria set forth in the regulation. Part 30 of the Commission's regulations requires "secured amount" accounts for foreign futures and options customers as defined in Part 30, and also permits investments in MMMFs. Whether held as investments for their customers or as proprietary assets of the FCM, CFTC regulations require interests in MMMFs to be reported at market value, and CFTC Regulation 1.17 further requires a deduction of two percent (2%) of the total market value when calculating the adjusted net capital of the FCM.

As noted in your letter, the Reserve Primary Fund had issued recent announcements stating that (1) its net asset value is below \$1.00 a share, and (2) an order issued by the Securities and Exchange

¹ The JAC is a voluntary, cooperative organization comprised of representatives of the financial surveillance staff of designated contract markets and the National Futures Association and was formed for the purpose of coordinating the monitoring and examination of common members of such entities.

² The Commodity Exchange Act ("Act") is codified at 7 U.S.C. §1 et seq. (2007). Commission regulations referred to in this letter may be found at 17 C.F.R. Ch. 1 (2008).

Commission (“SEC”), dated September 22, 2008, permits the fund to temporarily suspend redemptions and postpone payments. The SEC order includes a finding that such action is necessary for protection of the fund’s security holders. The SEC based its determination on representations by the fund, including those “relating to the current extraordinary market conditions.” Other representations by the fund include that it will create a plan for the orderly liquidation, which shall be subject to SEC supervision.

In light of the SEC order, you have requested, as Chairman of the JAC, guidance on the application of Commission regulations to investments in the Reserve Primary Fund. Your request is made on behalf of any FCM that may hold shares of the fund, either as proprietary assets or as investments held in accounts governed by Section 4d of the Act or Part 30 of the Commission’s regulations. As stated in your letter, enabling FCMs to include investments in the fund at a conservative net asset value would be appropriate in light of current market conditions.

In view of all the facts and circumstances presented, the Division believes that your request has merit. Accordingly, the Division hereby provides guidance that FCM calculations required for purposes of compliance with capital, segregation, and secured amount reporting requirements may include their investments in the Reserve Primary Fund, with the condition that the net asset value be reduced appropriately in light of currently available information. Based on such information, Division staff has determined that FCMs should report their investments in the fund at the following maximum net asset values, effective as of the following dates:

- \$0.94 as of September 29 and September 30
- \$0.93 as of October 1 and October 2
- \$0.92 as of October 3 and thereafter.³

In addition to applying the net asset values described above, FCMs must continue to apply the 2% capital deduction required by Regulation 1.17. Furthermore, should the Reserve Primary Fund or the SEC report a lower net asset value at any time, the lower net asset value must be applied instead.

Division staff will continue to monitor developments related to the Reserve Primary Fund and to provide further guidance in accordance with such developments. The Division further states that this letter is applicable solely to regulatory reporting requirements with respect to investments in the Reserve Primary Fund. It does not excuse any FCM from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder.

This letter is based upon the representations made to the Division to date. Any different, changed, or omitted material facts or circumstances might render this letter void. Moreover, this letter represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission. If you have any questions concerning this correspondence, please contact Thelma Diaz, Associate Director, at (202) 418-5137.

Very truly yours,

Ananda Radhakrishnan
Director

³ These net asset values apply to all FCMs, regardless of whether an FCM’s redemption request was made before the 3:00pm deadline specified in the press release issued by the Reserve Primary Fund on September 16, 2008.