



Commodity Futures Trading Commission

Office of Public Affairs

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

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Fact Sheet - Notice of Proposed Rulemaking: Protection of Clearing Member Funds Held by Derivatives Clearing Organizations

The Commodity Futures Trading Commission (“Commission”) is proposing to amend Part 39 of the Commission’s regulations to implement protections for clearing member funds held by a derivatives clearing organization (“DCO”). The proposed rule will be published in the Federal Register as well as on the Commission’s website and open for a 60-day public comment period, which will begin when the rule is published on the Commission’s website.

Background of the Proposal

The Commission has long maintained regulations providing comprehensive protections for funds belonging to customers of a futures commission merchant (“FCM”). However, similar protections are not in place for funds belonging to clearing members of a DCO, whether they are individual market participants or FCMs. The proposed rule would revise existing Regulation 39.15 to provide these protections for clearing member funds. The Commission is also proposing rules to facilitate DCOs holding customer and clearing member funds at certain foreign central banks.

Key Elements of the Proposal

Proprietary Funds

The Commission is proposing to amend Regulation 39.15 to provide protections for clearing members’ funds and other property that are held by a DCO. To implement these protections, the Commission is proposing a definition of “proprietary funds” in Regulation 39.2 to include all money, security, or property received by a DCO from or on behalf of clearing members in connection with futures, options on futures, and swaps contracts cleared by the DCO.

Segregation of Proprietary Funds – Regulation 39.15(f)(1)

The Commission is proposing new Regulation 39.15(f)(1), which would require a DCO to account for proprietary funds separately from its own funds, and to hold proprietary funds in accounts that are named to clearly identify the funds as belonging to clearing members.

Written Acknowledgment from Depositories – Regulation 39.15(f)(2)

The Commission is proposing new Regulation 39.15(f)(2), which would require a DCO to obtain a written acknowledgment letter from any depository holding proprietary funds. The proposed rule includes a template letter that DCOs would use for this purpose, which is substantively the same as the current template letter for customer funds found in Regulation 1.20.

Commingling of Proprietary Funds – 39.15(f)(3)

The Commission is proposing new Regulation 39.15(f)(3), which would permit DCOs to commingle proprietary funds belonging to multiple clearing members in a single account, but would not permit DCOs to hold proprietary funds together with customer funds or the DCO’s own funds.

Limitation on use of Proprietary Funds – 39.15(f)(4)

The Commission is proposing new Regulation 39.15(f)(4), which would only permit DCOs and depositories to use proprietary funds as belonging to clearing members.

Daily Reconciliation – 39.15(g)

The Commission is proposing new Regulation 39.15(g), which would require a DCO to confirm on a daily basis the amount of proprietary and customer funds it owes to each clearing member, and to verify on a daily basis that it is holding enough proprietary and customer funds to cover the amounts it owes to all clearing members.

Permitted Investments – 39.15(e)

The Commission is proposing to amend Regulation 39.15(e) to limit the investments a DCO can make with proprietary funds to the investments permitted for customer funds under Regulation 1.25.

Exclusion for Foreign DCOs – 39.15(h)

The Commission is proposing new Regulation 39.15(h), which would specifically exclude DCOs that have a primary place of business outside the United States (“foreign DCO”) from many of the proposed rules. Proprietary funds held at a foreign DCO would be subject to the foreign jurisdiction’s bankruptcy or insolvency laws in the event the foreign DCO enters bankruptcy, and the Commission is attempting to avoid imposing requirements that would conflict with these bankruptcy regimes.

Central Bank Depositories

Central Banks – 39.15(b)(3) and 39.15(f)(2)(vi)

The Commission is proposing new Regulations 39.15(b)(3) and 39.15(f)(2)(vi), which would facilitate DCOs holding customer and proprietary funds at the central bank of a money center country (defined as Canada, France, Germany, Italy, Japan, and the United Kingdom) and therefore allow DCOs to take advantage of the credit and liquidity risk management benefits that central bank accounts provide. Because certain central banks have requested modifications to the existing template acknowledgment letter for customer funds, the proposed rule includes a modified written acknowledgment that a DCO would need to obtain from the central bank of a money center country that is holding customer or proprietary funds.