

## Cabinet News and Views

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### CFTC's Proposal on Investment of Customer Funds



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On November 3, 2023, the Commodity Futures Trading Commission (“CFTC”) [proposed](#) to significantly amend the rules on investment of customer funds by futures commission merchants (“FCMs”) and derivatives clearing organizations (“DCOs”).

A primary objective of the the Commodity Exchange Act (“CEA”) and CFTC regulations is to establish a framework to safeguard customers’ funds, and a core component of this framework is the requirement for FCMs and DCOs to segregate customer funds from their own money by holding these funds in specially designated customer accounts regulated by Part 1, 22 and 30 of CFTC regulations. Amendments to this statutory framework aim at balancing the requirement of principal preservation and fostering liquidity for clients’ funds against greater flexibility for FCMs and DCOs in managing and investing these clients’ assets.

Proposed revisions will apply with respect to customer funds deposited by customers to margin three distinct classes of derivative products: (1) futures and options on futures contracts (*i.e.*, the Commodity Exchange Act (“CEA”) § 4d accounts); (2) the foreign futures and foreign options contracts (*i.e.*, the CFTC Regulation § 30.7 accounts); and the cleared swaps (*i.e.*, the CFTC Regulation § 22.2 accounts).

The CFTC believes that the following changes are necessary: (a) addition of permitted investments to allow certain foreign sovereign debt and U.S. Treasury exchange-traded funds, limitation of investments in money market funds, and removal of corporate bonds, notes and commercial paper; (b) revision of capital charges relating to these new investments, the use of repurchase and reverse repurchase agreements, clarification of concentration limits of investments and revisions to certain reports as well as replacement of LIBOR with SOFR as a permitted benchmark; and (c) revision of template acknowledgement letters to be signed by the depositories holding customer funds and elimination of the read-

only access provisions applicable to the CFTC pursuant to these depository acknowledgment letters.

The CFTC is proposing these changes because in the 12 years since the last revision of these rules certain regulatory changes and market developments have occurred while a number of FCMs has decreased by a half. The public comment period for these rule amendments will be open until January 17, 2024.

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