issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 27, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13017 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Proposed Order and Request for Comment on a 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

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing to permit Federal Reserve Banks to hold money, securities, and property deposited into a customer account by a systemically important derivatives clearing organization in accordance with the standards to which Federal Reserve Banks are held, as specified below. Thus, the Commission is proposing to exempt Federal Reserve Banks that provide customer accounts and other services to systemically important derivatives clearing organizations from Sections 4d and 22 of the Commodity Exchange Act (''CEA'' or the ''Act'').

DATES: Comments must be received by July 5, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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

In 2013, in response to significant segregated account shortfalls experienced by futures customers, the Commission adopted rules that aimed to improve the protection of customer funds.[1] Recognizing that such protection is critical to the sound functioning of the futures and swaps markets, the Commission reiterated that money, securities, and other property deposited by customers must be carefully safeguarded and segregated at all times.

That same year, the Commission adopted enhanced risk management standards [2] and additional requirements for compliance with the derivatives clearing organization (''DCO'') core principles set forth in the CEA [3] for DCOs that are designated as systemically important (''SIDCOs'') by the Financial Stability Oversight Council.[4] The Commission adopted these requirements in part because of the critical role SIDCOs play in fostering

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[1] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

[2] Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49663 (Aug. 15, 2013).

[3] *See* Section 5b(c)(2) of the CEA; *see also* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

[4] Under Commission Regulation 39.2, a SIDCO is defined as a financial market utility that is a registered DCO under Section 5b of the Act, which has been 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 (''Dodd-Frank Act''). 17 CFR 39.2. ''Supervisory Agency'' is defined 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, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

financial stability [5] and because the ''failure of a SIDCO to complete core clearing and settlement functions within a rapid period could create systemic liquidity and credit dislocations on a global scale.'' [6] Accordingly, these additional requirements were designed to promote a SIDCO's financial strength, operational integrity, security, and reliability.[7] By requiring a SIDCO's liquidity arrangements to be highly reliable in stressed market conditions, the Commission sought to bolster a SIDCO's ability to promptly meet its cash obligations to its members in order to help avoid the loss of market confidence and cascading defaults.[8]

Title VIII of the Dodd-Frank Act, entitled ''Payment, Clearing, and Settlement Supervision Act of 2010,'' [9] also included provisions aimed at safeguarding the U.S. financial system. One example of this is Section 806(a), which expressly permits the Board of Governors of the Federal Reserve System (''Board'') to authorize a Federal Reserve Bank to establish and maintain a deposit account for a SIDCO and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[10]

The Commission believes that establishing SIDCO segregated customer accounts at a Federal Reserve Bank and enabling SIDCOs to access related services there would both augment a SIDCO's liquidity arrangements and enhance the protection of customer funds.[11] The Commission recognizes, however, that Section 4d of the CEA was not developed with a particular focus on the Federal Reserve Banks.[12] As a result, the unique role that the Federal Reserve Banks play in the financial system was not expressly taken into account when the Commission's standard of liability was developed for depositories. The Commission notes that Federal Reserve financial services provided by the Federal Reserve Banks are governed by the terms and conditions that are set forth in various federal rules, Federal Reserve Board policies, and Federal Reserve Bank operating circulars, which have been carefully developed over several decades. The Commission further recognizes that the Federal Reserve Banks could be exposed to liability under Sections 4d and 22 [13] of the CEA, which could have disparate impact on the treatment of deposits at the Federal Reserve Banks and ultimately harm U.S. taxpayers. Accordingly, to facilitate SIDCOs' use of Federal Reserve Banks as depositories for customer funds, the Commission is proposing, pursuant to its authority under Section 4(c) of the CEA, to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA.[14] The exemption would enable the Federal Reserve Banks to maintain SIDCO customer accounts in accordance with the standards set forth in the relevant Federal Reserve Bank governing documents, as specified below.

II. Background

A. Customer Protection

The protection of customers—and the safeguarding of money, securities, or other property deposited by customers—is a fundamental component of the regulatory and oversight framework of the futures and swaps markets. Section 4d of the CEA requires a futures commission merchant (''FCM'') to segregate from its own assets all money, securities, and other property deposited by futures or cleared swaps customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets, and cleared swaps. Section 4d further requires an FCM to treat customer funds as belonging to the customer, and prohibits an FCM from using the funds deposited by a customer to margin or extend credit to any person other than the customer that deposited the funds. Similarly, Section 4d of the CEA prohibits a DCO and any depository that has received such funds from holding, disposing of, or using such funds as belonging to the depositing FCM or any person other than the customers of such FCM.

The importance of this statutory mandate to protect customer funds—to treat them as belonging to customers and not use the funds inappropriately—was reinforced in light of the FCM insolvency proceedings involving MF Global, Inc. (''MF Global'') and Peregrine Financial Group, Inc. (''Peregrine''). In October 2011, MF Global, which was dually-registered as an FCM with the Commission and as a securities broker-dealer with the U.S. Securities and Exchange Commission, was placed into a liquidation proceeding under the Securities Investor Protection Act by the Securities Investor Protection Corporation. At the time, the trustee appointed to oversee the liquidation of MF Global reported a potential $900 million shortfall of funds necessary to repay the account balances due to customers trading futures on designated contract markets, and an approximately $700 million shortfall in funds immediately available to repay the account balances of customers trading on foreign futures markets. The shortfall in customer segregated accounts was attributed by the MF Global trustee to significant transfers of funds out of the customer accounts that were used by MF Global, Inc. for various purposes other than to meet obligations to or on behalf of customers.[15]

Shortly thereafter, in 2012, the Commission filed a civil injunctive complaint in federal district court against Peregrine and its Chief Executive Officer and sole owner, Russell R. Wasendorf, Sr. (''Wasendorf''), alleging that Peregrine and Wasendorf misappropriated customer funds, violated customer fund segregation laws, and made false statements regarding the amount of funds in customer segregated accounts in financial statements filed with the Commission. According to the complaint, Peregrine falsely represented that it held in excess of $220 million of customer funds, when it actually held only approximately $5.1 million.[16] Spurred in part by these shocking failures, the Commission promulgated several rules aimed at strengthening the protection of customer funds and the U.S. financial markets.[17]

In an effort to further strengthen customer protection, the Commission has also examined the current

[5] *See, e.g.,* 78 FR at 49672.

[6] *Id.* at 49674.

[7] *See id.* at 49668–49669; *see also* 78 FR at 72509.

[8] *See* 78 FR at 72509.

[9] Section 801 of the Dodd-Frank Act.

[10] *See* Section 806(a) of the Dodd-Frank Act.

[11] *See* discussion *infra* Part VI.

[12] Section 4d of the CEA permits customer funds to be deposited with a bank, trust company, or DCO. 7 U.S.C. 6d.

[13] As discussed in further detail below, Section 22 of the CEA would typically 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. *See* discussion *supra* Part VI.

[14] 7 U.S.C. 6(c); 7 U.S.C. 25.

[15] *See Report of the Trustee's Investigation and Recommendations, In. re MF Global, Inc.,* No. 11–2790 (MG) SIPA (Bankr. S.D.N.Y. Jun. 4, 2012). Customer claims were eventually paid in full after customer funds were recovered through bankruptcy proceedings and the Commission's enforcement action.

[16] *See* Complaint, *U.S. Commodity Futures Trading Commission* v. *Peregrine Financial Group, Inc., and Russell R. Wasendorf, Sr.,* No. 12–cv–5383 (N.D. Ill. July 10, 2012).

[17] *See* discussion *supra* Part I; *see also, e.g.,* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011) (revising the types of investments that an FCM or DCO could make with customer funds under Regulation 1.25 to minimize the exposure of such funds to liquidity, credit, and market risks).

regulatory framework through a series of roundtables and other public meetings. The Commission held a public roundtable to solicit input on customer protection issues from a broad cross-section of the derivatives industry, including market participants, FCMs, DCOs, self-regulatory organizations, securities regulators, and academics.[18] The Commission also hosted a public meeting of the Technology Advisory Committee to discuss potential technological solutions directed at enhancing the protection of customer funds.[19]

Customer protection continues to be a bedrock guiding principle for the Commission, as the protection of customer funds is paramount to a trusted marketplace.

B. Designation of Financial Market Utilities Under Title VIII of the Dodd-Frank Act

Title VIII of the Dodd-Frank Act was enacted to mitigate risk in the financial system and promote financial stability.[20] Accordingly, Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council (''Council'')[21] to designate those financial market utilities (''FMUs'') that the Council determines are, or are likely to become, systemically important.[22] 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.[23] As noted by the Council, FMUs are vital to the nation's financial infrastructure, and ''their smooth operation is integral to the soundness of the financial system and the overall economy.''[24]

In determining whether an FMU is systemically important, the Council follows a detailed two-stage designation process, using statutory considerations[25] and other metrics to assess, among other things, ''whether possible disruptions [to the functioning of an FMU] are potentially severe, not necessarily in the sense that they themselves might trigger damage to the U.S. economy, but because such disruptions might reduce the ability of financial institutions or markets to perform their normal intermediation functions.''[26] Thus, if a systemically important FMU fails to perform, this failure could pose significant risk to its participants and to the U.S. financial system more broadly. For example, if a systemically important FMU fails to complete timely settlement, there could be significant credit and/or liquidity problems for its participants and participants' customers. On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII.[27] Two of these designated FMUs, Chicago Mercantile Exchange, Inc. and ICE Clear Credit LLC, are SIDCOs.

C. Access to Federal Reserve Bank Accounts and Services

As noted above, 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 SIDCO and provide to the SIDCO 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.[28] 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.''[29] 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.''[30] 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.[31]

III. Standards of Depository Liability

A. Depository Liability Under Section 4d of the CEA

Under Section 4d of the CEA, a depository, which may be a bank, trust company, or a DCO, will be held liable for the improper transfers of customer funds by an FCM or DCO if it knew or should have known that the transfer was improper.[32] While a depository has no affirmative obligation to police or monitor an FCM or DCO account holder's compliance with the CEA or Commission regulations, a depository cannot ignore signs of wrongdoing.[33]

To ensure that a depository that holds customer funds has been informed that

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[18] Further information on the public roundtable, including video recordings and transcripts of the discussions, are available on the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff022912* (relating to Feb. 29, 2012); *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff030112* (relating to Mar. 1, 2012).

[19] Additional information, including documents submitted by meeting participants, is available on the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_tac072612.*

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

[21] The Council was established by Section 111 of the Dodd-Frank Act. In general, the Council is tasked with identifying risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace, promoting market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure, and responding to emerging threats to the stability of the United States financial system. Section 112(a)(1) of the Dodd-Frank Act.

[22] *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).

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

[24] 76 FR at 44763.

[25] Under Section 804(a)(2) of the Dodd-Frank Act, in determining whether an FMU is or is likely to become systemically important, the Council must take into consideration the following: (A) The aggregate monetary value of transactions processed by the FMU; (B) the aggregate exposure of the FMU to its counterparties; (C) the relationship, interdependencies, or other interactions of the FMU with other FMUs or payment, clearing, or settlement activities; (D) the effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and (E) any other factors the Council deems appropriate.

[26] 76 FR at 44766.

[27] *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.*

[28] 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.

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

[30] *Id.*

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

[32] *See* CFTC Interpretative Letter No. 79–1, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,835 (May 29, 1979). Section 4d of the CEA covers customer funds only; it does not relate to proprietary funds of clearing members.

[33] *See* 78 FR at 68539.

the deposited funds are those of customers being held in accordance with Section 4d of the CEA, the Commission requires an FCM or DCO to obtain from each depository with which it deposits customer funds a written acknowledgment in this regard.[34] Commission regulations require FCMs and DCOs to use a template acknowledgment letter in order to promote a uniform understanding among FCMs, DCOs, and depositories as to their obligations under the CEA and Commission regulations with respect to the proper treatment of customer funds. The template acknowledgment letter contains a provision that reflects the Commission's expectation that a depository will engage in its customary practices and will be held liable for a violation of Section 4d if it knew or should have known of the violation.[35]

It is important to note that as the aforementioned standard of liability was developed, the unique nature of the Federal Reserve Banks was not taken into account. Indeed, until recently, there was no statutory authority permitting a SIDCO to hold customer funds at a Federal Reserve Bank. However, and as discussed below, the standard of liability for Federal Reserve Banks acting as depositories has been carefully developed by the Board and not the Commission.

B. Federal Reserve Bank Liability Under Federal Reserve Bank Governing Documents

The Federal Reserve System, which serves as the nation's central bank, was created by an act of Congress in 1913. The Federal Reserve System consists of a seven member Board, and twelve Federal Reserve Banks. The Federal Reserve Banks operate under the general supervision of the Board, although each Bank has a Board of Directors that oversees its operations. Federal Reserve Banks generate their own income, which is generally from interest earned on U.S. government securities that are acquired in the course of Federal Reserve monetary policy actions and from the provision of priced services to depository institutions. Federal Reserve Banks do not, however, operate for a profit. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses. Federal Reserve Banks are, in essence, the operating arms of the United States' central banking system. In addition to their many responsibilities, Federal Reserve Banks operate as a bank for depository institutions and the U.S. government.[36]

Some of the services provided by Federal Reserve Banks include the provision of funds and book-entry securities accounts, as well as certain financial services, such as wire transfers, book-entry securities transfers, and multilateral settlement services. These accounts and services 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'').[37] Additionally, one or more Federal Reserve Banks have established proprietary accounts for SIDCOs[38] pursuant to Section 806 of the Dodd-Frank Act. These proprietary accounts are also governed by the Federal Reserve Bank Governing Documents.

The Federal Reserve Banks' standard of liability for the financial services it offers to depository institutions has been developed over the 100-plus years of Federal Reserve Bank operations, in many cases hand-in-hand with the development of federal and state statutory and regulatory provisions, as well as common law governing securities transfers, funds transfers, and other payment mechanisms. The operating circulars of the Federal Reserve Banks began having uniform terms and conditions across Federal Reserve Bank districts as of January 2, 1998. The 1998 version of the uniform Operating Circular 1 (Account Relationships) sets out the Federal Reserve Banks' standard and scope of liability that limits a Federal Reserve Bank's liability to only damages suffered by the account holder that are caused by the Federal Reserve Bank's failure to exercise ordinary care, and does not include lost profits, claims by third parties, or consequential or incidental damages.[39]

The Commission understands that, in accordance with the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are authorized to act on the instructions received through the use of procedures agreed upon with the account holders, without any liability or obligation to inquire as to the legitimacy or accuracy of the instruction or the transaction. By agreement with the respective account holders, the procedures for accepting an instruction are not used to detect an error in the transmission or content of the instruction, or compliance by the account holder with its legal obligations. In addition to limiting the areas of liability, the Commission understands 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[40] 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.

IV. Features Specific to the Federal Reserve Banks

As noted above, Federal Reserve Banks play a unique role in the U.S. banking and payment system as compared to commercial banks and other depositories and payment service providers.[41] The standards set forth in the Federal Reserve Bank Governing Documents are reflective of this unique role and have been developed over the years to capture the distinctive nature of

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[34] *See* 17 CFR 1.20, Appendices A and B.

[35] *See* 78 FR at 68535; *see also* 17 CFR 1.20(g)(4)(ii).

[36] For example, Federal Reserve Banks provide checking accounts for the U.S. Department of Treasury, issue and redeem U.S. government securities, and act in other ways as a fiscal agent for the U.S. government. *See* Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), *http://www.federalreserve.gov/pubs/frseries/frseri3.htm.*

[37] *See, e.g.,* 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); 31 CFR part 357, subpart B (setting forth the Department of the Treasury's regulations governing book-entry treasury bonds, notes, and bills).

[38] A SIDCO's proprietary account holds the proprietary funds of its clearing members.

[39] *See* Federal Reserve Board, Financial Services, *https://web.archive.org/web/19990125095428/http://www.frbservices.org/* (last visited Apr. 28, 2016). Prior to 1998, each Federal Reserve Bank had its own system with different numbered operating circulars; as a result, the circular language was not necessarily uniform.

[40] Under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are not liable to third parties.

[41] Federal Reserve Banks '' 'are not operated for the profit of shareholders;' rather, they 'were created and are operated in furtherance of the national fiscal policy.' '' *See Starr Int'l Co.* v. *Fed. Reserve Bank of New York,* 742 F.3d 37, 40 (2d Cir. 2014) (*quoting Fed. Reserve Bank of Bos.* v. *Comm'r of Corps. & Taxation of the Commonwealth of Mass.,* 499 F.2d 60, 62 (1st Cir. 1974)). ''Because Federal Reserve Banks 'conduct important governmental functions regarding' matters including the 'general fiscal duties of the United States,' they are 'instrumentalities of the federal government.' '' *See id.* (*quoting Fed. Reserve Bank of St. Louis* v. *Metrocentre Improvement Dist. #1,* 657 F.2d 183, 185–186 (8th Cir. 1981)).

the Federal Reserve Banks. In addition to the accounts and services that Federal Reserve Banks provide to the government and to other depository institutions, the Federal Reserve Banks supervise and examine member banks for safety and soundness. They also participate in the setting of U.S. monetary policy, an activity that is the primary responsibility of the Federal Reserve System. Moreover, in an effort to reduce U.S. taxpayer burden, Congress requires that the residual earnings of each Federal Reserve Bank be distributed to the U.S. Treasury's general fund.[42] In fact, the Federal Reserve Banks have sent to the U.S. Treasury approximately $98.7 billion in residual earnings in 2014 and about $500 billion on a cumulative basis since 2008.[43]

Federal Reserve Banks also do not provide financial services to businesses generally; rather, they serve only account holders authorized by statute, such as depository institutions and the U.S. government.[44] In addition, Federal Reserve Banks may engage in a set range of services and only with the respective account holder. As such, Federal Reserve Banks do not provide the range of related account services that a commercial bank might provide, such as offering services to executives of the account holder as an additional incentive to do business with the bank. Therefore, the Commission believes that the Federal Reserve Banks do not have the potential conflict of interest that may arise when a commercial bank provides such services.

Moreover, Federal Reserve Banks play a distinctive, dual role with respect to SIDCOs, as they may be both account service providers and participants in the supervision of SIDCOs. Under Title VIII of the Dodd-Frank Act, the Board may participate in any Commission examination of a SIDCO and otherwise consult and share information with the Commission regarding SIDCOs. Federal Reserve Banks may be delegated authority to assist the Board in fulfilling this function.[45]

Further, Title VIII of the Dodd-Frank Act expressly permits the Commission and the Board to provide confidential supervisory information to, among others, the Federal Reserve Banks.[46] Although a Federal Reserve Bank may have access to confidential supervisory information regarding a particular SIDCO, 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.[47] The Board has adopted certain standards regarding the organization, operations, and business practices of Federal Reserve Bank financial services which, among other things, generally prohibit Federal Reserve Bank personnel involved in day-to-day monetary policy, bank supervision, or the lending function from providing confidential information obtained in the course of their duties to Federal Reserve Bank personnel involved in day-to-day account services. In addition, the Wall Policy would generally prohibit Board supervisory staff from sharing any confidential supervisory information they receive about a SIDCO with the Federal Reserve Bank staff responsible for managing the SIDCO's account and financial services. Accordingly, given the unique role that Federal Reserve Banks play in the U.S. financial system, Federal Reserve Bank account services staff are unlikely to face conflicts of interest that would motivate them to overlook information that would otherwise raise suspicion of wrongdoing.

V. Section 4(c) of the CEA

Section 4(c) of the CEA provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation, or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirements of Section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions, if the Commission determines that the exemption would be consistent with the public interest.[48]

VI. Proposed Exemption From Sections 4d and 22 of the CEA

The Commission proposes to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA. The Commission further proposes to permit SIDCOs to maintain customer accounts with a Federal Reserve Bank pursuant to the standard of liability set forth in the Federal Reserve Bank Governing Documents. The proposed exemption would, however, require a Federal Reserve Bank to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO, and to reply to any request from Commission staff for confirmation of account balances or for provision of any other information regarding the SIDCO account.

As discussed above, Title VIII of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for SIDCOs. A Federal Reserve Bank, in its capacity as an instrument of the U.S. central bank, does not present the same types of risks as traditional commercial banks. Federal Reserve Banks are an integral part of the Federal Reserve System, serving the public interest and helping to maintain stability in the U.S. financial markets. Further, deposits at a Federal Reserve Bank have the lowest

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[42] The current congressional mandate requires that Federal Reserve Banks transfer their residual earnings in excess of $10 billion to the U.S. Treasury. *See* FAST Act, Pub. L. 114–94, 129 Stat. 1312 (2015). For prior congressional mandates in this regard, *see, e.g.,* District of Columbia Appropriations Act, Pub. L. 106–113, 113 Stat. 1501 (1999) (requiring that, in fiscal year 2000, Federal Reserve Banks transfer their residual earnings in the amount of $3,752,000,000 to the U.S. Treasury's general fund); Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312 (requiring that, during fiscal years 1997 and 1998, Federal Reserve Banks transfer their residual earnings in excess of 3 percent of the total paid-in capital and surplus to the U.S. Treasury's general fund).

[43] *See* Press Release, Board of Governors of the Federal Reserve System, Reserve Bank Income and Expense Data and Transfers to the Treasury for 2014 (Jan. 9, 2015), *available at http://www.federalreserve.gov/newsevents/press/other/20150109a.htm;* Annual Report, Board of Governors of the Federal Reserve System (2014), *available at http://www.federalreserve.gov/publications/annual-report/files/2014-annual-report.pdf.*

[44] *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).

[45] *See* Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), *http://www.federalreserve.gov/pubs/frseries/frseri3.htm* (noting that some supervisory responsibilities are delegated to the Federal Reserve Banks by the Board).

[46] *See* Section 809(e)(2) of the Dodd-Frank Act.

[47] 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.* The policy permits certain limited exceptions in cases where such disclosure fulfills an important supervisory objective, preserves the integrity of the payment mechanism, or protects the assets of the Federal Reserve Banks. In such cases, information will be provided on a need-to-know basis and only with the approval of senior management.

[48] 7 U.S.C. 6(c).

credit risk. The Board and, through their role in the Federal Reserve System, Federal Reserve Banks are also the source of liquidity with regard to U.S. dollar deposits. A SIDCO would, therefore, 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.

Moreover, customer funds held at a Federal Reserve Bank would not be exposed to the risks associated with a commercial bank insolvency. As a result, the Commission believes that customer funds would be protected in an account held by a Federal Reserve Bank and would continue to be required to be segregated from the funds deposited in the SIDCO's proprietary account. The Commission notes that the standard of liability as set forth in the Federal Reserve Bank Governing Documents appears to be appropriate in the context of Federal Reserve Banks because this standard has been developed over the years to more appropriately reflect the unique nature of the Federal Reserve Banks. At this time, the Commission does not have any reason to believe that holding a Federal Reserve Bank to this standard would have the potential to harm futures and cleared swaps customers.

The Federal Reserve Banks would also be exempt from liability under Section 22 of the CEA. 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.[49] The proposed exemption would preclude a third party from succeeding in a private right of action under Section 22 for a violation of Section 4d.[50] The Commission believes that an exemption from Section 22 is appropriate because, for those requirements from which the Federal Reserve Banks are exempt, it follows that there should be no claim under Section 22 of the CEA with respect to those requirements. The Commission further notes 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 believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest.

Federal Reserve Banks were created and are operated in furtherance of the national interest; they are not for-profit enterprises. Moreover, as discussed above, Federal Reserve Banks return all earnings in excess of operating and other expenses to the U.S. Treasury. All such amounts transferred to the U.S. Treasury's general fund inure to the benefit of U.S. taxpayers. In this case, private claims against a Federal Reserve Bank would reduce the amount of excess earnings that could be returned to the U.S. Treasury. In the Commission's view, the benefits afforded customers by holding SIDCO customer funds at a Federal Reserve Bank exceed the benefits of preserving the ability to bring any private claims under Section 22 of the CEA.

Furthermore, the Commission recognizes that Title VIII of the Dodd-Frank Act permits a Federal Reserve Bank to have access to confidential supervisory information. Specifically, Section 809(e)(2) provides that the Board of Governors or any Supervisory Agency may provide confidential supervisory information and other information obtained under Title VIII to each other and to the Federal Reserve Banks, State financial institution supervisory agencies, and foreign financial supervisors, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the CEA (7 U.S.C. 12). By permitting the Federal Reserve Banks to receive confidential supervisory information, Congress recognized the unique role of Federal Reserve Banks in the U.S. financial system, as distinguished from the role of commercial banks and other depository institutions. The Commission further recognizes, 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. Accordingly, and notwithstanding the Wall Policy described above, the Commission recognizes that a Federal Reserve Bank acting as a depository for customer funds could face greater scrutiny than a commercial bank acting as such. As a result, the proposed exemption would specify that: (1) Pursuant to the Wall Policy, 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; and (2) 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.

Finally, the unique role that the Federal Reserve Banks play in the Federal Reserve System was not expressly taken into account when the Commission's standard of liability was developed for depositories. In fact, as described above, it was the Dodd-Frank Act that, for the first time, authorized designated FMUs (including SIDCOs) that are not banks or trust companies to open deposit accounts with a Federal Reserve Bank. However, while the Federal Reserve Banks may establish deposit accounts for SIDCOs, such accounts are subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[51] The Commission notes that the Board has prescribed detailed rules and standards that govern account services provided to SIDCOs by the Federal Reserve Banks.[52] These rules and standards 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. The Commission is concerned 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, could disrupt these goals and ultimately

[49] 7 U.S.C. 25. By enacting Section 22, Congress provided private rights of action as a means for addressing violations of the Act as an alternative or supplement to Commission enforcement action. Specifically, Congress found that private damages actions are ''critical to protecting the public and fundamental to maintaining the credibility of the futures market.'' H.R. Rep. No. 97–565, at 57 (1982).

[50] *Cf.* Effective Date for Swap Regulation, 76 FR 42508, 42517 (July 19, 2011) (stating that ''exemptive relief would, in effect, preclude a person from succeeding in a private right of action under CEA section 22(a)''). However, for the avoidance of doubt, the Commission believes that an express exemption from Section 22 of the CEA for the Federal Reserve Banks is appropriate.

[51] *See* Section 806(a) of the Dodd-Frank Act.

[52] *See* 12 CFR 234.5 (setting forth the conditions and requirements for Federal Reserve Banks to open and maintain accounts for and provide financial services to designated FMUs); *see also* discussion *supra* Part III.B (discussing the Federal Reserve Bank Governing Documents).

harm the U.S. financial system and, by extension, U.S. taxpayers.

For the reasons discussed above, the Commission believes that the proposed exemption would promote the safeguarding of futures and cleared swaps customer funds in a manner that would also benefit U.S. taxpayers. In light of the foregoing, the Commission believes the proposed exemption would promote responsible economic and financial innovation and fair competition, and would be consistent with the ''public interest,'' as that term is used in Section 4(c) of the CEA.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [53] requires that agencies consider whether the proposed exemption 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 proposed exemption will not have a significant economic impact on a substantial number of small entities. The exemption proposed by the Commission will impact SIDCOs 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.[54] The Commission has previously determined that DCOs, including SIDCOs, are not small entities for purposes of the RFA.[55] Similarly, the Commission believes that Federal Reserve Banks are not small entities for purposes of the RFA.

Accordingly, the Commission does not expect the proposed 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 proposed exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by this proposed exemption should be considered small entities for purposes of the RFA, and, if so, whether there is a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (''PRA'') [56] are, 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. Costs

The proposed exemption would exempt the Federal Reserve Banks from Sections 4d and 22 of the CEA. The Commission recognizes that such relief could represent a cost to a SIDCO, its FCM clearing members, and the FCMs' customers in the event of a loss of the deposited customer funds. For instance, if customer funds were lost due to the fault of a Federal Reserve Bank, the SIDCO, FCM clearing member, or customer would not have a cause of action under the CEA. Rather, as discussed above, the Federal Reserve Banks would be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.[57] This cost, however, will never be realized if an incident does not occur. Therefore, given the resilience of the Federal Reserve Banks and the standards set forth in the Federal Reserve Bank Governing Documents, the Commission estimates that the circumstances that may give rise to such costs would be remote. Similarly, as discussed above, 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 believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest. The Commission further believes that the condition in the proposed exemption that would require Federal Reserve Banks to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO and the benefits of facilitating SIDCOs' use of these accounts mitigate any costs that would flow from the loss of protection under Section 4d of the CEA.

As described above, the Commission has reinforced and enhanced the provisions of Section 4d of the CEA in order to further protect customer funds, and this proposal represents a limited exception to those provisions.

2. Benefits

The proposed exemption would benefit market participants by permitting SIDCOs to deposit customer funds at the Federal Reserve Banks. Whereas commercial banks present credit and liquidity risks to a SIDCO, 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 SIDCOs. 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 SIDCO and provide to the SIDCO 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 SIDCOs with a potential safeguard during an extraordinary liquidity event. The proposed exemption would therefore help promote Congress's goal of better preparing the U.S. financial system for potential future liquidity events. A SIDCO's access to Federal Reserve Bank deposit accounts is also consistent with the international standards set forth in the Principles for Financial Market Infrastructures (''PFMIs''), which acknowledge the protections afforded by central banks from such credit and liquidity risks.[58]

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[53] 5 U.S.C. 601 *et seq.*

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

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

[56] 44 U.S.C. 3501 *et seq.*

[57] For a more detailed discussion of the standard of liability set forth in the Federal Reserve Bank Governing Documents, *see* discussion *supra* Part IV.

[58] *See, e.g.,* CPSS–IOSCO, PFMIs, ¶ 3.9.3 (noting that ''[c]entral banks have the lowest credit risk and

Continued

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 proposed 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 may benefit from the proposed exemption. Therefore, the Commission believes that it is appropriate to apply the Federal Reserve Bank's standard of liability in order to facilitate the use of these accounts.

3. 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.[59] 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 proposed exemption would serve to facilitate SIDCOs' use of Federal Reserve Banks as depositories for customer funds. As the Federal Reserve System is the nation's central bank, such accounts would provide SIDCOs 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, SIDCOs with access to a deposit account at a Federal Reserve Bank would also be better equipped to handle a liquidity event. As SIDCOs 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 SIDCO could cause wide-spread and significant damage to the financial integrity of derivatives markets as a whole. Therefore, by facilitating a SIDCO's use of Federal Reserve Banks as depositories for customer funds, the proposed exemption would reduce liquidity and credit risk to the SIDCO, which would, in turn, promote the financial integrity of the derivatives markets.

The Commission does not anticipate the proposed exemption to have a significant impact on the efficiency and competitiveness of the derivatives markets.

c. Price Discovery

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

d. Sound Risk Management Practices

The Commission believes that establishing SIDCO segregated customer accounts and enabling SIDCOs to access related services at a Federal Reserve Bank would improve a SIDCO'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 SIDCO to reduce its concentration risk by adding an additional creditworthy depository in which to diversify funds. Accordingly, the proposed exemption promotes sound risk management practices.

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

e. Other Public Interest Considerations

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

VIII. Request for Comment

The Commission requests comment on all aspects of the proposed exemption, including, without limitation, the Commission's determination that the proposed exemption is consistent with the public interest, and the Commission's consideration of the costs and benefits of the proposed exemption.

The Commission requests comment regarding whether the proposed exemption should be expanded to include those customer accounts that are established pursuant to the CEA and that are held at Federal Reserve Banks by designated FMUs for which the Commission is not the Supervisory Agency.

IX. Proposed Order of Exemption

After considering the above factors, the Commission proposes to issue the following:

Proposed Order

Pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the Commodity Futures Trading Commission (''Commission'') is the supervisory agency for certain derivatives clearing organizations (''DCOs'') that have been designated by the Financial Stability Oversight Council as systemically important. 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 a systemically important DCO (''SIDCO'') and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

DCOs, including SIDCOs, are required to hold funds belonging to customers of their clearing members in accounts subject to

are the source of liquidity with regard to their currency of issue''); *see also* PFMIs, 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'').

[59] 7 U.S.C. 19(a).

Section 4d of the Commodity Exchange Act (''CEA''). In addition, Section 22 of the CEA would typically 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 also 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 SIDCO 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 SIDCO 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 proposes to exempt the Federal Reserve Banks in order to facilitate Federal Reserve Banks' ability to accept SIDCO customer accounts.

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 SIDCO with a Federal Reserve Bank shall be separately accounted for and segregated from the money, securities, and property deposited into a proprietary account of the SIDCO depositing such funds and from the money, securities, and property deposited into the account of any person other than the customers for whom the money, securities, or property is held.

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 SIDCO customer account(s) 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 SIDCOs. 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 SIDCOs, pursuant to Title VIII of the Dodd-Frank Act, or any counterparty to a SIDCO under any authority, shall not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO 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 May 27, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendix to Notice of Proposed Order and Request for Comment on a 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—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–13055 Filed 6–1–16; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Voucher and Payment Request Form/National Service Trust Manual Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202–606–6753 or email to *njarrett@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on February 12, 2016, at 81 FR