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Sent: Wednesday, September 8, 2010 12:35 PM
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Subject: Comment Letter for RIN 3038-AC72/ Acknowledgement Letter for Customer Segregated Funds and Secured Amount Funds
Attach: CFTC comment letter 9-8-2010 Harris.pdf

Per the attached letter, please find Harris' comments concerning the proposed rules published in the Federal Register on August 9, 2010, 75 Fed. 47738.

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September 8, 2010

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1151 21st Street
Washington, D.C. 20581

Re: RIN 3038-AC72/Acknowledgement Letter for
Customer Segregated Funds and Secured Amount Funds

To the Commodity Futures Trading Commission:

This letter is submitted by Harris, N.A. ("Harris"), in response to the request for comment by the Commodity Futures Trading Commission (the "Commission") on the proposed rules published in the Federal Register on August 9, 2010, 75 Fed. 47738 (the "Proposed Rules"). The Proposed Rules relate to the acknowledgement letter required to be obtained by futures commission merchants ("FCMs") from depositories with which FCMs deposit customer segregated funds pursuant to Section 4d of the Commodity Exchange Act ("CEA"). For the reasons set forth below, Harris, which is a major depository of customer segregated funds, urges the Commission to clarify the fact that a depository may apply assets in one, or more segregated accounts of an FCM to satisfy permissible obligations incurred within those accounts, regardless of whether such obligations constitute payments of initial or variation margin. We believe that the standard form of acknowledgement letter included as Appendix A to the Proposed Rules may inadvertently limit the scope of long-accepted permitted activity. Clarification is therefore necessary and appropriate in order to avoid disruptions to the futures clearing and depository system.

Harris serves as a settlement bank for several exchanges and clearing houses, and is the largest settlement bank for the Chicago Mercantile Exchange and ICE Clearing. It is a line of business in which Harris has been engaged for over 30 years. In connection with its role as a settlement bank in connection with transactions in exchange-traded futures, Harris has provided its FCM clients with the acknowledgement letter required under Section 4d of the CEA.

Harris supports the general purpose and intent of the Proposed Rule and believes that the adoption of a prescribed form of acknowledgement letter under Section 4d will facilitate the establishment and maintenance of customer segregated accounts by FCMs and will serve to clarify the rights and responsibilities of depositories holding customer segregated funds. However, we are concerned with one ambiguity in the language of the proposed

acknowledgement letter which we believe could undermine the ability of depositories to service customer segregated accounts in accordance with long-standing industry practice and could therefore operate to the detriment of the depositories, the FCMs and their customers. We urge the Commission to clarify this point. Although the clarification we are requesting is simple and straightforward, we believe it is important to the continued proper functioning of the segregated account system.

The ambiguity that raises this concern arises from the following two sentences in the form of acknowledgement letter included in the Proposed Rules: “You [the depository] further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we [the FCM] may now or in the future have owing to you, and that you understand the nature of the Funds held or hereafter deposited in the Account(s) and that you will treat and maintain such Funds in accordance with the provisions of the Act and CFTC regulations. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating assets held in the Account(s) for purposes of variation margin settlement or posting original margin.” 75 Fed. Reg. at 47745.

This first sentence essentially codifies the longstanding interpretation of and practice under Section 4d, pursuant to which a depository may not exercise any rights against a customer segregated account to satisfy obligations of the FCM. As a result, this statement properly focuses on obligations of the FCM, not those of the segregated account, and clearly does not prohibit the depository from exercising a right of set off against the segregated account with respect to obligations incurred on behalf of that account. However, the second sentence is unnecessarily limited to margin payments and does not cover the full range of circumstances in which a customer segregated account may incur obligations to the depository. These additional categories of obligations can and should be satisfied, and routinely are satisfied, by the segregated account, and a depository should be able to exercise a right of set off against the segregated account for the amount of any such obligations. Indeed, while Section 4d is clear that the depository cannot look to the customer account to satisfy obligations of any third party, including the FCM, it is equally clear from the language of Section 4d and industry practice that there is no limitation on the right of the depository to offset or lien against the customer account for obligations of the customer account itself.

For example, Harris, and other depositories holding customer segregated funds, typically engage in a variety of transactions on behalf of customer segregated accounts that do not relate to the posting or settlement of margin, including the following: (i) processing of outgoing wire transfers to customers of the FCM that result from a variation or original margin collect, the maturity of securities held in the segregated account, or the release or return of excess customer margin funds; (ii) the purchase of securities, delivered against payment, on behalf of the segregated accounts, for the purpose of satisfying original margin requirements at a clearing house or as a short-term investment of excess funds; (iii) receiving incoming wire transfers to meet variation or initial margin requirements; (iv) receiving incoming wire transfers to fund the customer segregated accounts to support anticipated trading activity; and (v) delivering securities versus payment in connection with the liquidation of short-term investments of excess funds or



conversions of securities used for initial margin that is no longer required. In each of these instances, it may be necessary or appropriate for the depository to make short-term intra-day or overnight advances on behalf of a segregated account for the benefit of the FCM's customers. Such transactions are fully permissible under Section 4d and have long been a standard part of the business of acting as a futures market depository. Moreover, in such instances, the depositories have a clear right of set off against the segregated account and can apply assets in the segregated account to satisfy the resulting obligations of that account, provided that no such right of set off is asserted in connection with the obligations to the depository of the FCM itself.

We do not believe that the language in the proposed acknowledgement letter was intended to, or does, prohibit a depository from engaging in these activities, because they are for the benefit of the customers, not the FCMs. Nevertheless, given the importance of these issues to the maintenance of segregated accounts, we believe it is important for the Commission to clarify the point in the form of acknowledgement letter included in the Proposed Rules and we urge the Commission to do so. One approach that the Commission may wish to consider is to delete the limiting second sentence that we address above.

Harris appreciates the opportunity to comment on the Proposed Rules and stands ready to provide any further assistance that may be helpful to the Commission in its consideration of these issues. If you have any questions, please contact Scott M. Ferris at 312.461.6751.

Regards,

A handwritten signature in dark ink, appearing to read 'S. M. Ferris', written in a cursive style.

Scott M. Ferris
Managing Director
Harris N.A.