

December 2, 2010

Mr. David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
secretary@cftc.gov

RE: RIN 3038-AC15
Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions

Dear Mr. Stawick:

The Joint Audit Committee (“JAC”) appreciates the opportunity to comment on the proposed changes to the regulations regarding permitted investments of customer segregated and secured 30.7 funds. Market conditions and events of the past couple of years have highlighted the necessity to preserve principal and maintain liquidity when investing customer funds and we applaud the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) efforts to ensure such goals are achieved. At the same time, as the Commission proposes to narrow the scope of permitted investments allowed under CFTC Regulations 1.25 and 30.7 and augments the concentration limits surrounding those permitted investments, we encourage the Commission to be mindful that the regulations do not become overly restrictive in allowing futures commission merchants (“FCMs”) to invest customer funds in a safe and effective manner.

The JAC as a representative committee of exchanges and regulatory organizations offers the following comments on certain aspects of the proposed changes to permitted investments of customer segregated and secured 30.7 funds. The JAC recognizes that numerous parties are impacted by the proposed rule changes and encourages the Commission to carefully consider all comments as the final rules are crafted.

The CFTC is proposing to replace the Securities and Exchange Commission’s (“SEC”) “readily marketable” standard with a “highly liquid” standard that can be better applied to determine the appropriateness of debt securities as investments of customer funds. The JAC is recommending the Commission keep as proposed the definition of highly liquid which is defined

as having “the ability to be converted into cash within one business day without a material discount in value.” A more precise or calculable standard may result in liquid U.S. government obligations falling outside the definition of highly liquid. As an alternative, the Commission should consider proposing a “safe haven” calculable standard to provide further guidance to the industry.

Further, the rulemaking initiatives of the CFTC and SEC commencing as a result of the signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act gives opportunity for both agencies to coordinate the definition of highly liquid and determine what impact, if any, the change from readily marketable to highly liquid would have on the calculation of a firm’s net capital and segregated and secured 30.7 debit/deficits. The interchangeable terms “readily marketable” securities and/or collateral and securities that have a “ready market” as defined by SEC Rule 15c3-1(c)(11)(i) are used throughout CFTC regulations and in the CFTC Form 1-FR-FCM Instructions. Currently, readily marketable securities acceptable for margin can be used to secure balance sheet debit/deficits and other receivables, are a factor in determining adequate secured demand note collateral, and are used to offset debit/deficits on the segregation/secured 30.7 statements. Therefore, the JAC respectfully requests confirmation that the highly liquid standard will not be substituted in any of the above situations and if changes are contemplated, consideration be given to ensure consistent treatment by the CFTC and SEC where applicable.

Considering the highly liquid standard and requirement, together with potential concentration limits and a potentially narrowed list of permitted investments, the JAC asks the Commission to consider eliminating the portfolio weighted average time to maturity requirement. In analyzing the requirements for investment of customer funds, depending upon the final version of revised Regulation 1.25, the portfolio weighted average time to maturity requirement may be unwarranted.

In addition to excluding customer owned securities from total assets in segregation/secured accounts in the calculations of the asset-based and issuer-based concentration limits as proposed for in the regulations, the JAC recommends that customer net option value be likewise excluded from the calculations.

In the listing of acceptable depositories under Regulation 30.7(c)(1) it appears that “foreign boards of trade” was inadvertently omitted when the rule was amended in the Federal Register dated February 4, 2003, Vol. 68, No. 23 - Denomination of Customer Funds and Location of Depositories. The JAC proposes that foreign boards of trade be added back as an acceptable depository for secured 30.7 funds.

The JAC fully endorses the Commission’s proposal to apply the requirements of CFTC Regulation 1.25 to CFTC Regulation 30.7 investments. The added clarity provides FCMs with confidence and certainty for permitted investments of customer secured 30.7 funds.

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Finally, the FCM community should be given adequate time to comply with the new rules once they are effective. The JAC recommends an implementation period of no less than 180 days for firms to comply with the new requirements regarding their investments of customer funds.

In summary, given the events of recent years, we recognize the need to re-evaluate allowable investments of customer funds to minimize FCM exposures to credit, liquidity and market risks. We thank the Commission for the opportunity to comment on these significant proposed rule changes to permitted investments of customer segregated and secured 30.7 funds and appreciate the Commission's efforts in this regard in the midst of writing a myriad of rule changes. If you have any questions or comments, feel free to contact me at (312) 930-3235 or debbie.kokal@cmegroup.com.

On Behalf of the Joint Audit Committee,



Debra K. Kokal
Chairman

cc: Tom Smith, Deputy Director, Audit and Financial Review