December 3, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Plaza
1155 21st Street, N.W.
Washington, DC 20581

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

Dear Mr. Stawick:

National Futures Association appreciates the opportunity to comment on the Commission's proposed rulemaking regarding the investment of customer segregated funds under Commission Rule 1.25 and funds held in an account subject to Commission Rule 30.7.

As the Commission's release notes, Rule 1.25 establishes a general prudential standard by requiring that all permitted investments be "consistent with the objectives of preserving principal and maintaining liquidity" for customer funds. Given recent events in the financial markets, NFA applauds the Commission's attempt to further this objective through the proposed rules. However, as discussed below, NFA encourages the Commission to consider the following in adopting final rules in this area.

The Commission's proposed rules apply asset based, issuer based and counterparty concentration limits to an FCM's permitted investments of customer funds. Although NFA encouraged the Commission to consider whether it is appropriate to tighten the concentration limits contained in Regulation 1.25 in our July 2009 comment letter in response to the Advanced Notice of Proposed Rulemaking (Advanced Notice), NFA is concerned that the limits as proposed, particularly with respect to Money Market Mutual Funds (MMMFs), may be too restrictive.

While NFA acknowledges that the Reserve Primary Fund's financial difficulties posed serious financial concerns in the Fall of 2008, NFA believes that the Commission should give significantly more weight in establishing its concentration limits for MMMFs to the SEC's March 2010 amendments to Rule 2a-7 under the Investment

Company Act, which governs the operation of money market funds. In particular, these amendments require MMMFs to increase the credit quality of fund portfolios, reduce the maximum weighted average maturity of their portfolios, maintain liquidity buffers that will help them withstand sudden demands on redemptions, and stress test their portfolios against sudden increases in interest rates, heavy redemptions, and potential defaults. The SEC's release specifically states its belief that the amendments "will make money market funds more resilient and less likely to break the buck" and that they "will better protect money market fund investors in times of financial market turmoil and lessen the possibility that the money market industry will not be able to withstand stresses similar to those experienced in 2007-2008."[1]

Moreover, NFA believes that the proposed MMMF concentration limits must be viewed in context of the availability of other investment vehicles. In particular, although the Commission under the proposed rules permits investments in Government Sponsored Enterprise Securities (GSES), FCMs cannot avail themselves of this investment option since no GSESs currently meet the proposed requirement that the GSES be fully guaranteed as to principal and interest by the United States. In addition, since the Temporary Liquidity Guarantee Program (TLGP) is set to expire in 2012, FCMs may no longer have the ability to invest customer funds in commercial paper and corporate notes or bonds that are federally guaranteed as to principal and interest under TLGP unless this program is extended. Although the Commission states that it seeks to "increase the safety of Regulation 1.25 investments by promoting diversification," NFA is concerned that the proposed narrowing of asset classes when combined with the more restrictive concentration limits may consequently reduce rather than promote the diversification sought by the Commission.

Given these concerns and the SEC's recent changes, NFA believes it may be appropriate for the Commission to consider an alternative approach, which increases the overall asset-based concentration limit for MMMFs as well as the issuer-based limit for an MMMF family of funds. If the Commission has concerns that a higher limit for MMMFs may somehow reduce the overall liquidity and safety of an FCM's customer funds, then the Commission could address this concern by mandating that FCMs hold a certain amount of customer funds in U.S. government securities.

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1 See 75 Fed. Reg 10060, 10062.

The Commission should be also aware that several FCMs for which NFA is the DSRO have customer funds invested in MMMFs that are well beyond the proposed ten percent asset-based concentration limit. Therefore, regardless of the concentration limit ultimately adopted for the different asset classes, NFA encourages the Commission to set an effective date for the final rules that provides FCMs adequate time to liquidate certain positions and reinvest the monies in other permitted investments. To that end, NFA believes that the Commission should consider an effective date of at least 180 days after publication of the final rules.

Finally, as NFA stated in our July 2009 comment letter regarding the Advanced Notice, NFA recommends the Commission retain foreign sovereign debt of a money center country as a permitted investment to the extent currently allowed under Commission Rule 1.25(b)(4)(D). NFA believes foreign sovereign debt can be an important means by which an FCM hedges against the risk of holding the underlying currency.

NFA again appreciates the opportunity to comment on this matter. If the Commission would like any specific information on the investment of customer funds by FCMs for which NFA is the DSRO, NFA would be happy to provide that information. If you have any questions on these comments or would like to further discuss them, please do not hesitate to contact me.

Sincerely,

Thomas W. Sexton, III
Senior Vice President and
General Counsel

(caw:Regulatory/Comment Letter Reg. 1.25 and 30.7)