

December 3, 2010

Via Electronic Mail

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW.
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:

Brown Brothers Harriman & Co. (“BBH”) appreciates the opportunity to provide comments on the proposed amendments by the Commodity Futures Trading Commission (“the Commission” or “the CFTC”) to regulations regarding the investment of customer segregated funds and, in particular, with respect to investments of customer segregated funds in money market mutual funds.

BBH is a privately owned commercial bank that has focused on meeting the needs of the futures industry for over thirty-five years. We are proud to be one of a limited number of settlement banks providing the exchange traded derivatives industry with the necessary credit intermediation, commercial payment systems, custody services and collateral maintenance required to maintain market liquidity and reduce settlement risk. In our role as a settlement bank and as a custodian, we as a matter of course maintain customer segregated and secured accounts for our FCM clients. These accounts invest, hold and transact in investments permitted under the CFTC rules, including money market mutual funds. In connection with these accounts we provide our clients with the acknowledgment letters required under CFTC Regulation 1.20.

In its proposed amendments to Regulation 1.25(c)(3) (Federal Register / Vol 75, November 3, 2010) (the “Proposing Release”), the Commission states that it seeks to clarify the intention of its regulations covering the issuance of an acknowledgment letter where customer assets of an FCM are invested in money market mutual funds. The Commission states in the Proposing Release that “because money market mutual funds are generally not held at a depository in the first instance, like other permitted

investments, regulation 1.25 (c) (3) currently provides an exception to the Regulation 1.26 requirement that an acknowledgement letter be provided by the depository.” Proposing Release at 67650.

The Proposing Release goes on to state that its proposed changes to Reg. 1.25(c)(3) are “to require an acknowledgement letter from a party that has *substantial control* over the fund’s assets and has the *knowledge and authority* to facilitate redemption and payment or transfer of the customer segregated funds invested” in money market mutual fund shares. *Id.* (emphasis added). The Proposing Release notes that a “the fund sponsor, the investment adviser, or fund manager” would satisfy this requirement, as well as a fund administrator in certain circumstances. *Id.*, at 67650. The final proposed rule states that an appropriate entity “may include the fund sponsor or investment adviser,” but the Proposing Release requests comment on “whether there are other entities that could serve as examples.” *Id.*, at 67650.

In the exchange traded derivatives industry, a settlement bank is generally also used as a custodian bank by its FCM customers. A custodian is universally recognized, both by regulation and standard contractual terms, as an entity that exercises legitimate control and authority over assets deposited both directly with it or held in an account at a third party depository or fund. Under contract, a custodian is authorized by the depositor/client to act as its authorized agent and, pursuant to proper instruction, to effect purchases, redemptions, payments, etc., with the appropriate third parties, including third party depositories and funds. The CFTC has itself clearly recognized that a custodian bank is qualified to hold FCM customer assets and to be able to issue the appropriate segregation letter for assets the bank itself safekeeps or holds in its account at a central depository. *See* Rule 1.20 (acknowledging the ability of an FCM to deposit customer funds with banks or depositories). Where an FCM deposits customer assets with such a custodian, and thereafter instructs the custodian to invest such customer funds in a money market mutual fund, the custodian makes the investment through an account it holds and controls at the money market mutual fund. The bank has both the “knowledge and authority” through proper instruction by the FCM to facilitate purchases and redemptions from that account on behalf of the FCM for its customers.

BBH believes the proposed regulatory changes provide helpful guidance for the industry in circumstances where the FCM is itself investing directly with a money market mutual fund on behalf of its customers. BBH respectfully requests, however, that the proposed language be explicitly modified to include a bank or custodian as an additional example of an entity with the appropriate requisite control and authority to issue the acknowledgement letter with respect to money market mutual fund investments under Reg. 1.25. Providing this clarification would acknowledge the important role described above that BBH and other banks in the industry play in safekeeping and servicing investments in money market mutual funds through segregated and secured accounts¹ reflected on the books of the bank as an asset of the FCM for its customer.²

It is important to note that, for purposes of the issuance of acknowledgment letters, proposed CFTC Regs. 1.25 and 1.26 separate out money market mutual fund investments made by FCMs on behalf of their customers from all other such permitted investments. While Reg. 1.20 – addressing the issuance of

¹ This clarification – *i.e.*, that an acknowledgement letter may be issued by a custodian with control and authority over an account – should also apply with respect to secured, or Regulation 30.7 funds, and any sequestered or other over-the-counter accounts under Regulation 1.25.

² Additionally, money market mutual funds may be held by a derivatives clearing organization with a bank or custodian for the FCM customer account, either as a result of a transfer by the FCM in regards to a margin request or purchased directly by the derivatives clearing organization.

acknowledgement letters for permitted investments outside of money market mutual funds – recognizes the valid role that a bank or custodian may play in holding these investments, proposed Reg. 1.25 seemingly only addresses the issuance of the letter in the context of investments made by FCMs on behalf of their customers *directly with the money market mutual funds*. The lack of a clear acknowledgement by the CFTC of the validity of a custodian’s role with respect to money market mutual fund investments may cause some FCM investors confusion as to whether it is, in fact, acceptable and appropriate for them to invest in money market mutual funds through a bank at all.

We accordingly ask the Commission to confirm and clarify in its proposed modifications to Regulation 1.25 that a bank or custodian is an appropriate entity from which an FCM may obtain an acknowledgement letter with respect to investments held by the bank or custodian at money market mutual funds on behalf of the FCM for its customers.

We appreciate the opportunity to submit these comments for your consideration. If any member of the Commission or its staff has any questions or should additional information be required please contact me at 212-493-7970.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank A. Perrone".

Frank A. Perrone
Senior Vice President
Brown Brothers Harriman & Co.