THE FARM CREDIT COUNCIL

VIA EMAIL

December 3, 2010

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Proposed Rule Regarding Investment of Customer Funds (RIN 3038–AC15)

Dear Mr. Stawick:

The Farm Credit Council ("Council"), on behalf of its membership, appreciates the opportunity to provide comments to the Commodity Futures Trading Commission ("CFTC") on its proposed rule regarding the investment of customer collateral.[1] We strongly believe that securities issued by government-sponsored enterprises ("GSEs"), specifically the Farm Credit System, should remain permitted investments under Regulation 1.25.

The Council is the national trade association for the Farm Credit System ("Farm Credit" or "System"), which is the oldest currently operating GSE. The System's five banks and eighty-seven associations provide credit and financial services to farmers, ranchers, producers and harvesters of aquatic products, agricultural cooperatives, and rural residents and businesses throughout the nation. To raise funds for the lending activities and operations of our banks and associations, the Federal Farm Credit Banks Funding Corporation issues and markets Systemwide Debt Securities. For the reasons set forth below, we believe these securities are safe and appropriate investments for customer funds.

The CFTC proposes these rule changes in connection with its obligations pursuant to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[2] Section 939A requires only that federal agencies, including the CFTC, modify their regulations "to remove any reference to or requirement of reliance on credit ratings and to

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1 Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 Fed. Reg. 67,642 (proposed Nov. 3, 2010) (to be codified at 17 C.F.R. pts. 1 and 30).

2 Pub. L. No. 111-203, 124 Stat. 1376, 1887 (2010).

substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations."[3] We agree with the CFTC about the "importance of conducting periodic assessments and, as necessary, revising regulatory policies to strengthen safeguards designed to minimize risk."[4] We understand that the CFTC is constantly reevaluating the appropriateness of investment options for customer money and has issued related advanced notices of proposed rulemaking in recent years concerning changes to the list of permitted investments. However, unless and until Congress signals its intention to erode the federal government's support of GSEs, we respectfully request that the CFTC not amend Regulation 1.25 with respect to investments in GSEs. In the midst of the many rule changes mandated by Dodd-Frank that will affect the financial markets in various ways, we believe the prudent approach would be to make the Section 939A changes pertaining to credit rating issues as required at this time, and continue to collect and study information about permitted investments as the financial markets evolve. Specifically, the CFTC should continue to allow futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") the diversification afforded by the currently permitted, sound investment products offered by the GSEs, and particularly the Systemwide Debt Securities.

1. Investment in Farm Credit Systemwide Debt Securities Satisfies the CFTC's Objectives of Preserving Principal and Maintaining Liquidity

If the CFTC does choose to modify Regulation 1.25, we believe that GSE securities, particularly those issued by the Farm Credit System, should remain permitted investments. In this regard, we share the CFTC's concern that all investments permitted by Regulation 1.25 should be "consistent with the objectives of preserving principal and maintaining liquidity."[5] But we are confident that Systemwide Debt Securities, which make up part of the $1,882 billion GSE debt market[6], satisfy the CFTC's prudential standard.

Systemwide Debt Securities offer a series of important protections of investor capital, making them ideal investments for customer funds pursuant to Regulation 1.25. First, debt obligations are insured by the Farm Credit System Insurance Corporation ("Insurance Corporation") — an independent U.S. government-controlled corporation — not under the control of any System institution. Farm Credit banks pay premiums to the Insurance Corporation, which maintains an insurance fund of roughly 2% of the value of outstanding loans, totaling $3.289 billion at the end of last year. If a bank cannot pay principal or interest on an insured debt obligation, the Insurance Corporation must pay investors from the fund. In the event that the entire insurance fund is exhausted, investors have further recourse to the five System banks, which are jointly and severally liable for Systemwide Debt Securities.

Further, the Farm Credit System is regulated by the Farm Credit Administration, an independent, executive branch agency. Our members' broadly diversified loan portfolios have

3 *Id.*

4 75 Fed. Reg. at 67,643.

5 Proposed 7 C.F.R. § 1.25(b).

6 Securities Industry and Financial Markets Association (SIFMA) Research Quarterly, September 30, 2010 and Farm Credit System 2010 Third Quarter Press Release

minimized risk to investors and allowed Farm Credit to survive the recent financial crisis. Ultimately, as a network of cooperatives owned by its borrowers, our members have a strong incentive to ensure the System's stability.

In light of these multiple layers of investor protection, we urge the CFTC to conclude that Systemwide Debt Securities are appropriate investments for customer collateral.

2. Farm Credit Systemwide Debt Securities Have Remained Safe and Sound Through the Recent Period of Market Volatility and Financial Instability

We further agree with the CFTC that, in considering the appropriateness of different investments, "the safety of a particular instrument or transaction must be viewed through the lens of its likely performance during a period of market volatility and financial instability."[7] We disagree, however, that all GSE securities are inappropriate investments in light of the failure of two housing GSEs: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Regardless of whether these organizations' securities should be viewed as riskier investments going forward, the stable performance of the Farm Credit System during the recent financial crisis confirms that Systemwide Debt Securities are appropriate investments for customer funds.

Unlike Fannie Mae and Freddie Mac, the Farm Credit System has remained fundamentally safe and sound. In 2008, when the financial crisis began, Farm Credit reported combined annual net income of $2.916 billion, up from $2.703 billion in 2007. Although the amount of nonperforming loans increased that year from 2007 levels to 1.5%, that figure was consistent with historical averages. As the financial crisis continued in 2009, Farm Credit reported $2.850 billion in net income. More recently, during the first three quarters of 2010, Farm Credit reported combined net income of $2.633 billion, up from $2.018 billion for the same period in 2009. These numbers demonstrate Farm Credit's sustained viability despite market volatility.

3. Proposed Regulation 1.25 Could Have the Unintended Consequence of Increasing the Cost of Capital for the Farm Credit System

In concluding that Systemwide Debt Securities are too risky for investment of customer funds or that the United States may not support GSEs in the future, the proposed rules may destabilize the market for GSE securities beyond customer accounts at FCMs and DCOs. Specifically, we are concerned that, guided by the CFTC's suggestion that GSE securities are unsafe, other investors may question the stability of Farm Credit, thereby raising the cost to the System of obtaining the capital we need to secure our mission of providing funding for agriculture and rural America.

Again, we thank you for the opportunity to comment on the proposed regulations. We support the CFTC's goal of preserving the principal and maintaining the liquidity of customer collateral. We believe, however, that Farm Credit Systemwide Debt Securities remain an appropriate investment for customer funds and should not be excluded from the CFTC's list of permitted investments for this purpose.

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7 75 Fed. Reg. at 67,644.

Sincerely,

Robbie Boone
Vice President, Government Affairs
Farm Credit Council