December 3, 2010

Via Electronic Mail

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 Fed. Reg. 67642 (Nov. 3, 2010)

Dear Mr. Stawick:

R.J. O'Brien and Associates ("RJO") wishes to thank the Commodity Futures Trading Commission ("CFTC" or the "Commission") for seeking public comment on the proposed amendments to Commission Rule 1.25, Investment of Customer Funds, as well as Rule 30.7, Treatment of Foreign Futures or Foreign Options Secured Amount (the "Proposed Amendments"). RJO is pleased to provide these comments in response to the Commission's request of November 3, 2010.

Founded in 1914, RJO is a privately owned Futures Commission Merchant ("FCM"). RJO is one of the oldest and best known independent futures brokerage firms in the industry. RJO is a founding member of the Chicago Mercantile Exchange ("CME"), a full clearing member of the Chicago Board of Trade ("CBOT"), New York Mercantile Exchange ("NYMEX"), the IntercontinentalExchange ("ICE"), and the Dubai Mercantile Exchange ("DME"), as well as a member of Eurex AG and NYSE-Liffe.

With client assets of approximately $2.4 billion, RJO is a well-diversified, fully integrated FCM. Our revenue base is approximately $230 million annually, while our net capital base is approximately $150 million. RJO's diversified client base allows us to regularly capture top tier market share in both agricultural and financial futures products at both the CME and CBOT.

Introduction

RJO is a member of the Futures Industry Association ("FIA") and did participate in the drafting of the FIA's letter to the Commission on the topics addressed herein. Although RJO substantially agrees with the comments of the FIA, we want to address certain issues in more detail than was feasible in the FIA letter. We will not, however, address every topic raised by the Commission in its November 3, 2010 request for comments.

Before addressing the Commission's specific queries, RJO would like to highlight certain "global" points with respect to the Proposed Amendments. RJO makes these comments cognizant of the general prudential standard stated in Rule 1.25 that all permitted investments must be "consistent with the objectives of preserving principal and maintaining liquidity." 17 C.F.R. 1.25(b).

The Commission implies that the list of newly designated permissible investments is intended to "guarantee" the principal of client assets. We disagree with this assumption and submit that credit, market and/or liquidity risk still exists even with the proposed list of permissible investments. It is our view that there is no guarantee, government or otherwise, that will fully eliminate all credit, market and/or liquidity risk when investing customer funds. By way of example, market risk could essentially erode the value of an investment, even an investment as safe as a U.S. Treasury, to the point where an FCM or a Derivatives Clearing Organization ("DCO") is forced to liquidate the investment prior to maturity, or at a price/value below original purchase cost. Thus, RJO's specific comments as to the CFTC queries, below, are colored by this view, i.e., that risk can never truly be eliminated but can be mitigated through diversification and prudent portfolio management.

It may be valuable to review the state of the FCM community prior to, during and after the credit crisis. Using the CFTC's selected financial data website, the chart below shows that assets held by the FCM community has steadily risen since January 2007 from $144 billion to a high of $215 billion in June 2008. Since this high, assets held by FCMs dropped by 20% over the next 12 months to $174 billion and has remained stable at approximately $172 billion on average since. Thus, it is at a level that is still 16.3% above January 2007 before the credit crisis began (notably assets grew to high of $215 billion during the credit crisis).

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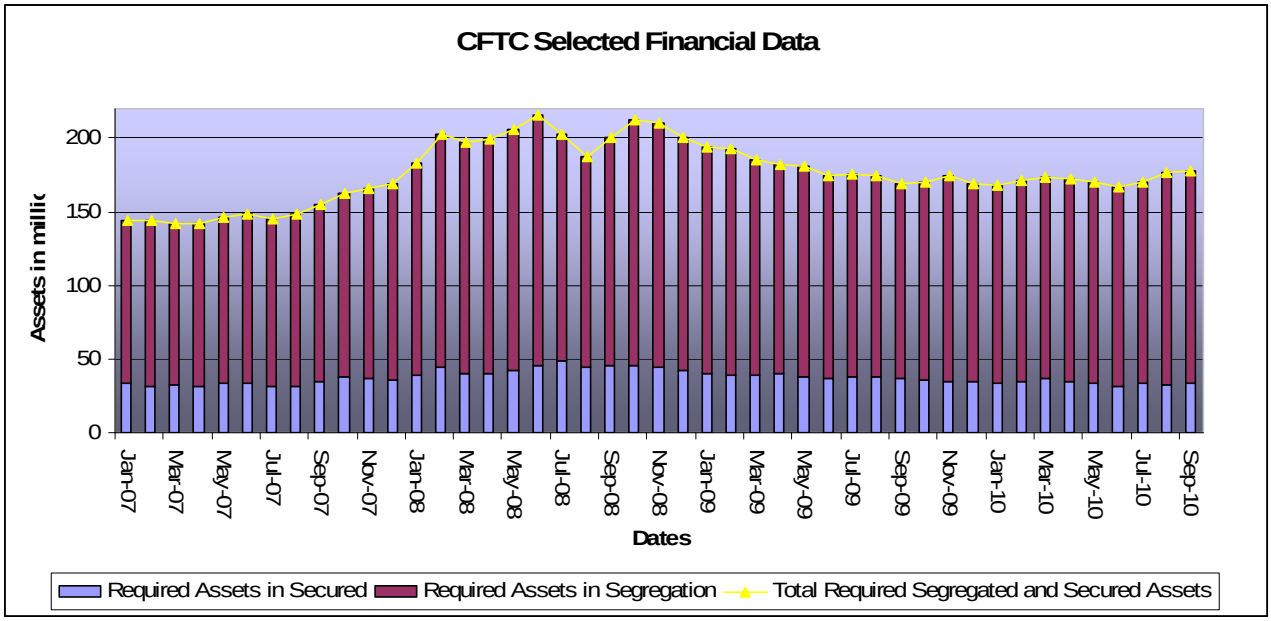

This growth and assets held by FCMs could be viewed as validation of the CFTC's current rules governing how client assets may be invested, as well as its policies on capital requirements for FCMs. This is not to say that RJO would object to a thorough review of eligible investments; instead, it is a testament to the premise that a complete overhaul is unnecessary.

Additionally, RJO would encourage the Commission to include provisions for dilution of a FCMs holding in any newly designated ineligible investments from the Commission's final rules. We recommend that six (6) months be the standard time frame, after a suitable substitute for credit ratings is agreed to, for defining eligible investments.

With respect to repurchase agreements ("Repos"), the proposed counterparty limits of 5% would create significant operationally risk, eliminate efficiency related to larger denominated transactions and potentially expose the FCM community to a broader group of less capitalized counterparties. While RJO does not believe that a limit is necessary, if the Commission desires that one exist, RJO would suggest it be at least 25%, regardless of the status of the counterparty, i.e., an affiliate or a third party. On this point, RJO further submits that:

- In-House transactions currently do not provide protection to the capital base of the FCM arm of a dually registered entity. Without ring fencing the capital associated with the separately regulated business lines, RJO cannot accept in-house transactions as satisfactory substitutes for a separately capitalized affiliate or third party; and,

- Affiliated Repos should be judged as acceptable if the affiliate meets or exceeds the capital base or some other methodology deemed satisfactory for adding an arms-length counterpart.

Discussion of Specific Issues Raised by the Commission

As noted above, RJO did not comment on every issue set forth by the Commission in its release. Nonetheless, we are pleased to provide you with the following thoughts.

1. Comment whether Government Sponsored Entities ("GSE") securities should remain as permitted investments under Regulation 1.25, either subject to a federal guarantee requirement or not.

During the Fannie Mae and Freddie Mac "crisis," U.S. Treasury Secretary Henry Paulson stated that, "Our economy and our markets will not recover until the bulk of this housing correction is behind us" and that "Fannie Mae and Freddie Mac are critical to turning the corner on housing." Secretary Paulson also noted that these institutions were so large that "a failure of either of them would cause great turmoil in our financial markets here at home and around the globe." U.S. Department of Treasury Press Release (Sept. 7, 2008).

RJO recognizes that the term "too big to fail" has become a bit colloquial, but it has a significant meaning as to GSE institutions who, unlike other corporations, were created by an act of Congress and intended to permeate the very fabric of the market sector they were designed to support. GSEs are the principal supplier of "secondary markets" to the U.S.'s mortgage lending institutions and therefore interwoven into the fabric of our mortgage-based markets. Even the consideration of their elimination as an eligible asset class could vastly contradict the intention of the Government ownership in these institutions. Consistent with this background, we believe that GSE products should be considered as a permitted investment for FCMs and DCOs. GSE securities will remain a high credit quality investment for the foreseeable future, regardless of direct government ownership.

The Commission should also consider any unintended consequences that will result by declaring GSE as ineligible for investment of customer funds when they are, at the same time, recognized by some of the largest foreign governments, pension funds and money market mutual funds (MMF's), as some of the "safest and most liquid" investment options.

With respect to the Federal Home Loan Bank ("FHLB") and Federal Farm Credit Banks ("FFCB"), markets in these securities experienced minimal, if any, impact on liquidity or credit quality during the most recent credit crisis. We suspect that these markets were properly maintained because FHLB and FFCB obtain credit from member banks and not directly from the market. As such, these entities should continue to be considered permitted investments for FCMs and DCOs. RJO understands that the FHLB will be submitting a comment letter, which will further support this position.

Based upon the historical commitment of supporting GSEs by the Federal Government and the U.S. Treasury, as well as Secretary Paulson's comments, above, we believe that Fannie Mae ("Fannie") and Freddie Mac ("Freddie") should be considered as permitted investments for the foreseeable future. However, if the Commission is inclined to change the investment status of these securities, we would suggest that, at a minimum, Fannie and Freddie should be considered as permitted investments until at least December 31, 2012 when the government guarantee is set to expire. Furthermore, as long as the U.S. Government holds exposure of greater than 50% of these two agencies~~,~~ we believe the credit quality of these issuances is better than any bank or corporation. As such, the Commission could adopt a rule whereby Fannie and Freddie are permitted investments until such time as the U.S. Government owns less than 50% of such company.

Finally, excluding any non-guaranteed product may also have the unintended consequence of FCMs adding significantly more duration to their portfolio. RJO is not comfortable with the obvious outcome of trading off credit risk for duration risk to make up the lost yield.

2. Comment on the proscription of Commercial Paper ("CP") and Corporate Notes ("CN") or bonds that are not federally guaranteed under the Temporary Liquidity Guarantee Program ("TLGP"), the liquidity of TLGP debt, and whether the removal of the requirements for adjustable rate securities have any unintended / detrimental effects on Reg. 1.25 investments.

The Commission states that based on a study conducted from November 2006 through November 2007, CP and CNs are not widely used by FCMs or DCOs. However, the lack of usage of such products is more likely a testament to the consideration FCMs undertake when investing customer funds under difficult economic conditions. Portfolio management is critical. During the time of this study, prudent FCMs would have reduced holdings in CP and CNs due to liquidity and risk reward calculations. That is, in 2007 many FCMs would have chosen not to re-invest in CP and CN's due to constraints on credit, not necessarily linked directly to the CP and CN markets themselves, but because of the potential contagion-related risk associated with all credit-based products.

It makes sense to allow non-TLGP issued CP and CN product, which are already utilized by prime money market mutual funds ("MMMF"), because these asset classes continue to provide some of the highest quality issuers available and should be considered as meeting the Commission's objectives of "preserving principal and maintaining liquidity."

Additionally, adding such products will give FCMs greater diversification, potentially higher yield opportunities, and a reduction of the tendency to "trade interest rate risk for credit risk" by extending the duration of the portfolio that attempts to find yield on "risk free" assets. For example, an FCM with a portfolio of similar credit quality assets and a weighted average maturity ("WAM") of 60 to 90 days has a significantly lower risk profile than one with a WAM of 24 months, which many FCMs would be forced to utilize if the

Commission's proposal was adopted in its current form. FCMs would need to absorb the mark-to-market volatility of a longer duration portfolio, which erodes the principal available for repayment to clients.

TLGP paper lacks liquidity, not because of a lack of confidence in the asset class, but because of the lack of available supply. With only minimal new issuance of TLGP paper made available since late 2009, it would seem logical that lack of sellers in the secondary market is the primary cause of the lack of availability. Limiting FCM investments to such products is equivalent to eliminating the asset class of corporate note/bonds and commercial paper. RJO recommends that negotiable certificates of deposits ("CDs") be permitted investments due to their broad secondary market and similar status in bankruptcy as a non-negotiable CD.

RJO would further stipulate that the proposed amendment limiting CDs to non-negotiable CDs is troublesome. The non-negotiable CD market was not intended for institutional size transactions. Furthermore, such a market could have problems obtaining FDIC protection (due to the commingling of multiple client assets) on a timely basis in the event of a crisis, are not generally settled on a delivery versus payment basis ("DVP"), as with negotiable CDs, and could severely limit the quantity and quality of banks willing to accept the proposed stringent limitation on breakage fees.

Finally, on this topic, we note that CP and CNs are products that: (i) have many high quality names, (ii) have a mature and liquid secondary market; and, (iii) provide greater diversification than merely "financial sector" bank certificate of deposits. These products should be allowed within the portfolio of the FCM community to a manageable degree. RJO suggests that a 25% cap on aggregate holdings of non-TLGP CP and CN's as well as negotiable CD's (with a 3% maximum per issuer and a maximum duration of 6 months for CP) would be reasonable.

3. Comment whether foreign sovereign debt should remain to any extent as a permitted investment and, if so, what requirements or limitations might be imposed in order to minimize sovereign risk.

Foreign sovereign debt, like other high quality asset classes, can be limited to those issuers with an acceptable credit quality and secondary market. We would propose G-7 only issuers with limits based upon the margin requirement of all client positions, as single currency margining is prevalent among FCMs.

RJO understands the Committee's concern as to sovereign risk, but as with agency products, eliminating the asset class would likely have unintended consequences, such as forcing the balance of our investments in non-USD currencies to bank deposits and adding additional concentration risk of the FCM community to the financial sector.

4. Comment on scenarios where a repurchase or reverse repurchase agreement with a third party could not be satisfactorily substituted for an in-house transaction.

Since joint Broker/Dealer and FCM institutions share their capital base and a third party or affiliated broker are separately capitalized, we do not believe that an in-house transaction (utilizing the same capital) is a satisfactory substitute. Excess capital intended to support both the growth of an FCM client portfolio, and under margined accounts, is not segregated from utilization from the Broker/Dealer arm and therefore put the safety of the FCM capital at risk to aggressive position taking by the Broker/Dealer.

5. Comment whether the proposed definition of "Highly Liquid" accurately reflects the industry's understanding of the term, and whether the term "material" might be replaced with a more precise or perhaps even calculable standard. The Commission further welcomes comments on the ease / difficulty in applying the proposed or alternative "highly liquid" standards.

The "highly liquid" definition proposed within the FIA comment letter accurately reflects the intention of the Commission, and that adding a calculable standard may be too rigid or too difficult to monitor. The term "without material discount in value" should be sufficient.

6. Comment whether there should be a differentiation between asset-based concentration limits for TLGP debt securities and CDs and, if so, what they should be?

If the Commission adopts a rule limiting investments to guaranteed only products, we suspect that such rule would create equivalent risk and therefore no need for concentration limits.

7. Comment whether 10% is an appropriate asset-based concentration limit for MMFs. Is there an alternative concentration limit appropriate for MMFs, and if higher than 10%, what corresponding issuer based concentration limit should be adopted?

The recently modified 2a-7 Money Market Rule amendments set forth various requirements for funds: (i) that they hold 10% in daily liquid assets (where previously there was no set limit); (ii) that they must hold 30% within seven days; (iii) the WAM was reduced from 90 days to 60 days; and, (iv) the institution of a new limit of 120 days in weighted average live ("WAL").[1] These new rules should significantly improve the liquidity component of MMFs, reduce their credit risk exposures as well as their market risk

[1] The WAL takes into account the final maturity of each and every security, whereas the WAM would only calculate the next interest rate rollover date.

exposures. With these 2a-7 rules on MMFs already implemented, RJO recommends investments in MMF for up to 50% of assets held in segregation. Additional limits are recommended whereby an FCMs investment in any one MMF may not exceed 5% of assets held in segregation and that no more than 15% of assets held in segregation be invested in any one family of funds.

8. Comment on all aspects of the proposed concentration limits, including whether asset-based concentration limits are an effective means for facilitating investment portfolio diversification and whether there are other methods that should be considered. Are the levels appropriate for the categories of investments to which they are assigned and whether there should be different standards for FCMs and DCOs?

We support the FIA's position on this issue.

9. Comment whether MMFs' investments should be limited to Treasury MMFs or to the MMFs that have portfolios consisting only of permitted investments under Reg 1.25.

Treasury-only MMFs are traditionally smaller in size and less liquid than their Prime Money Market counterparts. Treasury-only MMF's tend to lag interest rate movements for significant periods of time. Thus, they are likely not viable options for FCMs in upward interest rate environments or over long periods of time. On the other hand, Prime MMFs tend to have shorter durations and higher liquidity standards due to the type of clients that have been historically interested in these products.

RJO supports the use of Prime MMFs with asset holdings under 2a-7 regulations and encourage the Commission to adopt such products along with Treasury-only MMFs .

* * *

RJO wishes to, again, thank the Commission for this opportunity to provide comments on the Proposed Amendments. Should the Commission or Staff have any questions for us, please do not hesitate to contact Eric Gurdian at 312-373-5296 or Jim Falvey at 312-373-5174.

Sincerely,

/s/

Gerald F. Corcoran
Chief Executive Officer

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner

Division of Clearing and Intermediary Oversight
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