December 3, 2010

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

Re: **RIN 3038–AC15** -- Investment of Customer Funds

Dear Mr. Stawick:

The Committee on the Investment of Employee Benefit Assets (“CIEBA”) appreciates this opportunity to provide comments to the Commodity Futures Trading Commission (the "CFTC" or "Commission") regarding the investment of customer funds under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and the Commodity Exchange Act ("CEA").

CIEBA represents more than 100 of the country’s largest pension funds. Its members manage more than $1 trillion of defined benefit and defined contribution plan assets, on behalf of 15 million plan participants and beneficiaries. CIEBA members are the senior corporate financial officers who individually manage and administer ERISA-governed corporate retirement plan assets.

We are writing today on behalf of our members and the plans that they maintain under the Employee Retirement Income Security Act of 1974 ("ERISA"). Derivatives play a critical role for our members' plans. Many ERISA plans use derivatives to hedge or mitigate the risks endemic to plan liabilities and investments. (In this regard, it is very important that any clearing requirement not result in (1) any loss of the flexibility to negotiate customized swaps to hedge individualized risk or (2) any loss of the collateral protections that plans have carefully negotiated in the over the counter (“OTC”) context.)

CEA Requirements for the Investment of Customer Segregated Funds

Just as before Dodd-Frank, the CEA limits the ability of a futures commission merchant ("FCM") to invest money, securities, and property that the FCM receives from a customer to margin, guarantee or secure the customer's trade or contract. CEA Section 4d(a)(2). Dodd-Frank extends these limitations to any FCM who accepts money, securities, or property on behalf of a swaps customer to margin, guarantee or secure a cleared swap. Dodd-Frank Section 724

(adding new CEA Sections 4d(f)(1) and 4d(f)(4)). FCMs and designated clearing organizations ("DCOs") who receive funds from FCMs as margin for customer futures and swaps positions may only invest such customer funds in accordance with the CFTC's rules in:

- Obligations of the United States;
- General obligations of any State or political subdivision thereof; and
- Obligations fully guaranteed as to principal and interest by the United States; and
- Other instruments determined by the CFTC to be acceptable.
  CEA Sections 4d(a)(2), 4d(f)(4).

As stated explicitly in both the CFTC's current and proposed Rule 1.25(b), FCMs and DCOs must manage permitted investments consistently with "*the objectives of preserving principal and maintaining liquidity.*"

Dodd-Frank Requirements to Reduce Reliance on Credit Ratings

Dodd-Frank requires the CFTC to review any of its regulations "*that require[] the use of an assessment of the credit-worthiness of a security or money market instrument; and any references to or requirements in such regulations regarding credit ratings.*" Section 939A(a). Dodd-Frank also requires the CFTC to remove from such regulations "*any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as [the CFTC] shall determine as appropriate for such regulations.*" Section 939A(b).[1]

Our Comments on the CFTC's Proposed Rules

We commend the CFTC for its continued resolve "that customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers and DCOs and to enable investments to be quickly converted to cash at a predictable value in order to avoid systemic risk." 75 Fed. Reg. 67643

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[1] Dodd-Frank Section 939A, in full provides:
"REVIEW OF RELIANCE ON RATINGS.
(a) AGENCY REVIEW.—Not later than 1 year after the date of the enactment of this subtitle, each Federal agency shall, to the extent applicable, review—
(1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and
(2) any references to or requirements in such regulations regarding credit ratings.
(b) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under subsection (a) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.
(c) REPORT.—Upon conclusion of the review required under subsection (a), each Federal agency shall transmit a report to Congress containing a description of any modification of any regulation such agency made pursuant to subsection (b)."

(November 3, 2010). We support many of the Commission's proposed changes to Rule 1.25, including:

- Eliminating investments in obligations of any U.S. government corporation or enterprise sponsored by the U.S. government unless fully guaranteed as to principal and interest by the United States;
- Eliminating investments in commercial paper unless fully guaranteed as to principal and interest by the United States under the TLGP as administered by the FDIC;
- Eliminating investments in corporate notes and bonds unless fully guaranteed as to principal and interest by the United States under the TLGP as administered by the FDIC;
- Eliminating investments in foreign sovereign debt; and
- Eliminating in-house transactions.

There are three issues on which we suggest the CFTC provide additional protection.

First, we are concerned that the proposed changes do not sufficiently protect plans against the risk of having margin invested in credit-sensitive instruments, thus harming plans by exposing them to bad credit. In the OTC market, for example, plans have been able to negotiate for very conservative investment of collateral and individually segregate collateral; clearing should not expose plans to greater risk. Accordingly, we request that the Commission consider (i) imposing a requirement that a substantial amount of the DCOs' and FCMs' investments of customer funds consist of short-term Treasuries, and (ii) eliminating investments in municipal securities and CDs as well as any other credit-sensitive instruments.

Second, we are concerned about the significant volatility of instruments with maturities extending beyond five years. We request that the Commission require an adjustment for this volatility which could be achieved through imposing a concentration limit on such longer-term instruments. We are also generally concerned that the instrument-based concentration limits proposed by the Commission are too high and may not reflect prudent diversification principles.

Finally, with respect to money market mutual funds, we support limiting the interests in these funds to funds comprised of investments which are permitted under Rule 1.25.

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We thank the CFTC for the opportunity to comment on the proposed rule on the investment of customer funds. If you have any questions, please do not hesitate to call Judy Schub (301-961-8682, CIEBA).

Committee on the Investment of Employee Benefit Assets