BNY MELLON

Liquidity Services

December 6, 2010

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: RIN 3038–AC15—Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 75 Fed.Reg. 67642 (November 3, 2010)

Dear Mr. Stawick:

The Bank of New York Mellon ("BNYM")[1] welcomes the opportunity to submit these comments on the proposed amendments to Commodity Futures Trading Commission ("Commission") Rule 1.25, which governs the permitted investment of customer funds held by a futures commission merchant ("FCM") or derivatives clearing organization ("DCO") in accordance with the provisions of section 4d(a)(2) of the Commodity Exchange Act and the Commission's rules thereunder.[2] Our comments are limited to the proposed amendments to Rule 1.25(b)(3) that would prohibit an FCM from investing more than 10 percent of total assets held in segregation in money market mutual funds and more than two percent of the of total assets held in segregation in any one family of money market mutual funds.[3] Rule 1.25 currently permits 100 percent of customer segregated funds to be invested in money market mutual funds. BNYM respectfully opposes the proposed amendments.

1 BNY Mellon is a global financial services company focused on helping clients manage and service their financial assets, operating in 34 countries and serving more than 100 markets. BNY Mellon is a leading provider of financial services for institutions, corporations and high-net-worth individuals, providing superior asset management and wealth management, asset servicing, issuer services, clearing services and treasury services through a worldwide client-focused team. It has $24.2 trillion in assets under custody and administration and $1.14 trillion in assets under management, services $11.9 trillion in outstanding debt and processes global payments averaging $1.6 trillion per day.

2 The Commission has also proposed to amend Commission Rule 30.7 to provide that a futures commission merchant that invests customer funds held in connection with foreign futures and foreign options transactions must invest such funds in accordance with the requirements of Rule 1.25.

3 For the purposes of determining compliance with these concentration limits, customer-owned securities posted as margin collateral are not included in total assets held in segregation. Commission Rule 1.25(b)(3)(iv).

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BNYM's Interest in the Proposed Rules

Because BNYM is neither an FCM nor a DCO,[4] the proposed amendments initially did not appear to affect BNYM's activities. However, at a meeting held on November 19, 2010, the Commission approved for publication in the Federal Register proposed rules regarding the protection of collateral of counterparties to uncleared swaps.[5] The proposed rules are designed to implement the provisions of section 724(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which provides that a swap dealer or major swap participant that engages in uncleared swap transactions must notify each counterparty at the beginning of a swap transaction that the counterparty has the right to require the segregation of funds or other property it deposits to margin, guarantee or secure its obligations. At the request of the counterparty, the swap dealer or major swap participant must segregate such funds or other property with an independent custodian.

Among other requirements, the proposed rules provide that initial margin that is segregated in an account at an independent custodian "may only be invested consistent with" the standards of Commission Rule 1.25.[6] Consequently, if the amendments to Rule 1.25 and Rule 23.603(a) are adopted as proposed, no more than 10 percent of any swap counterparty's assets held in a segregated independent custodial account may be invested in money market mutual funds.

BNYM has significant experience providing the type of custodial services contemplated under the Dodd-Frank Act and the Commission's proposed rules. Based on this experience, we believe that the proposed limitations on the use of money market mutual funds with respect to the investment of margin deposited in connection with uncleared swap transactions are unnecessary and not in the best interest of the counterparty, which knowingly elects to invest such margin in money market mutual funds, or the swap dealer (or major swap participant), which is a secured party with respect to such margin.

Money Market Mutual Funds are Consistent with Rule 1.25

Before turning to a discussion of BNYM's custodial and investment services, we note that we have had an opportunity to review the comment letter filed by the Investment Company Institute ("ICI") in connection with this proposed rulemaking. The ICI letter fully describes the recent revisions to Securities and Exchange Commission ("SEC") Rule 2a-7, which further enhance the safety and liquidity of money market mutual funds. As the ICI notes, money market mutual funds provide FCMs and DCOs with access to professional investment managers that many of them could not duplicate. Moreover, because money market mutual funds actively participate in

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4 However, BNYM's affiliate, BNY Mellon Clearing LLC, is registered with the Commission as an FCM and is a clearing member of the Chicago Mercantile Exchange and the International Derivatives Clearing House.

5 The proposed rules were made available on the Commission's website during the week of November 22, and were published for comment in the Federal Register today. 75 Fed.Reg. 75432 (December 3, 2010). BNYM may submit additional comments on these latter rules after it has had an opportunity to analyze them.

6 Proposed Rule 23.603(a).

the short-term credit markets, they provide FCMs and DCOs with better investment opportunities and trade execution than many of them could obtain on their own. We endorse ICI's arguments opposing the proposed limitations on the investment of customer funds in money market mutual funds and commend the ICI letter to the Commission's attention.

These same arguments support the broad use of money market funds in investing margin held in connection with uncleared swap transactions, and we are concerned that the proposed revisions to Rule 1.25 may have unintended consequences impacting BNYM's activities. If anything, the benefits of money market mutual funds are of even greater value in these circumstances, since each counterparty's account must be segregated and managed independently, and the parties cannot take advantage of the efficiencies available to FCMs or DCOs managing a pooled omnibus account.

In addition, we agree with our affiliate The Dreyfus Corporation that the proposal unfairly marginalizes money market funds' role as a liquidity vehicle and casts money market funds with a higher relative risk of principal loss upon redemption than is warranted. When comparing the relative credit, interest rate, market, and liquidity risks of money market funds and other permitted investments, and assessing risk of loss (*i.e.*, the likelihood that the investment can be sold, at minimum, at its acquisition cost), we do not agree that 10 percent and 2 percent restrictions reflect a fair representation of money market funds' risk relative to other permitted investments measured against the other proposed concentration limits. We respectfully ask that the Commission re-assess its proposal.

The Margin DIRECT Program

Among its many services custodial and investment services, BNYM offers institutional investors, including investors that post collateral in connection with over-the-counter swap transactions, an innovative liquidity tool that helps investors manage margin positions and reduce counterparty risk. BNYM's Margin DIRECT program combines BNYM's custodial services with MoneyFunds DIRECT, a BNYM program that offers investors a wide range of industry-leading money market funds.[7] These money market mutual funds are managed to provide daily liquidity, while preserving capital and maximizing yield. MoneyFunds DIRECT allows an investor, from a single source, to access a global network of analysts, traders and portfolio managers that deliver solutions for institutional cash management.

In this latter regard, it is important to understand that, under the Margin DIRECT program, it is the investor, not the swap dealer (or major swap participant) and not BNYM that selects the money market mutual funds in which the margin is invested. This is because it is the investor that maintains the account with BNYM, with the swap dealer (or major swap participant) as a secured party.

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7 Investors are able to select from money market mutual funds offered by approximately 20 investment companies.

As required by the Commodity Exchange Act, each of these investors is an eligible contract participant, and is able to assess the risks and benefits of investing in money market mutual funds. Although these investors have the choice of investing directly in US Treasury securities, they have overwhelmingly elected to invest in money market mutual funds. Ninety-two percent of investors in the Margin DIRECT program elect to invest in money market mutual funds.

Simply stated, money market funds are more efficient than direct investments in US Treasury securities. Investing in money market mutual funds is highly automated, allowing investors to purchase or sell mutual fund shares as late as 4:30 pm. In addition, settlement risk is limited and fees are smaller. In contrast, direct investments in Treasury securities is more manual, settlement risk and market price risk are increased and fees are higher, as are supporting custody and clearing fees.

Conclusion

For all of the above reasons, we respectfully submit that the proposed limitations on the use of money market funds are unnecessary. BNYM thanks the Commission in advance for considering its comments and welcomes the opportunity to discuss these issues at the Commission's convenience. For more information, I can be reached at (212) 635-8585 or by email at jonathan.spirgel@bnymellon.com. Alternatively, you can contact Deborah Kaye, Senior Managing Counsel & Managing Director, at (212) 635-6612 or by email at deborah.kaye@bnymellon.com.

Very truly yours,

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