February 22, 2013

VIA E-MAIL

Ms. Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, D.C. 20581

Re: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivative Clearing Organizations, RIN 3038-AD88

Dear Ms. Jurgens:

This letter is submitted on behalf of the Federal Reserve Banks of New York and Chicago (the "Reserve Banks")[1] in response to the request for comment by the Commodity Futures Trading Commission ("CFTC") on the proposed rules concerning, among other issues, acknowledgment letters by depository institutions that hold customer segregated funds under the CFTC's proposed Regulation 1.20.[2] Our interest in these proposed rules results from the authority provided to the Board of Governors of the Federal Reserve System (the "Board") by section 806(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") to authorize the Reserve Banks to maintain accounts for systemically important derivatives clearing organizations ("SIDCOs") that have been designated by the Financial Stability Oversight Council ("FSOC") as systemically important financial market utilities ("Designated FMUs"). Absent clarification, the Reserve Banks must assume that we would be treated as depository institutions under the proposed rules if we were to hold Designated FMU customer funds. While the Reserve Banks share many of the concerns expressed by depository institutions regarding the effect of the proposed form acknowledgment letter on a depository's security, operations, and liability, the Reserve Banks also have concerns that are unique to them, the most significant of which we identify below.

The proposed form acknowledgment letter requires a depository institution to immediately act on instructions from the CFTC with respect to segregated customer funds held with the depository. The CFTC acknowledges that these instructions would be given in "exceptional circumstances," such as a prospective insolvency of the SIDCO that threatens customer funds. Given the importance of a Designated FMU to the financial markets, its prospective insolvency would likely be part of a larger systemic event requiring coordination by the FSOC. The Reserve Banks suggest that the CFTC's final rule recognize the unique role in

[1] Based on the designations made by the Financial Stability Oversight Council in July 2012, the Federal Reserve Banks of Chicago and New York are presently the only Reserve Banks that might hold accounts for designated financial market utilities.
[2] 77 FR 67866 (Nov. 14, 2012).

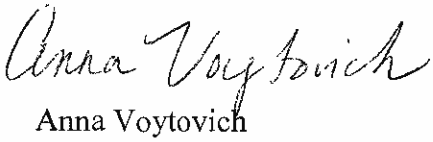
the markets performed by Designated FMUs, including potentially the accounts they might open at the Reserve Banks, and the possible need for coordination by FSOC during a systemic event.

The Reserve Banks also differ from other depository institutions in that we engage in supervisory activities, and those activities are conducted within the same corporate entity that provides financial services. This is important because the form acknowledgment letter states that a depository may presume the legality of any withdrawal from a segregated customer funds account, provided the depository has "no notice of or actual knowledge of, or could not reasonably know of, a violation of" the Commodity Exchange Act ("CEA") or other provision of law by the SIDCO. Legal knowledge standards usually impute knowledge to a legal person as a whole. Consequently, if a Reserve Bank were to have negative supervisory information about a Designated FMU, that Reserve Bank might be deemed to have knowledge of a violation of the CEA or other provisions of law.[3] The problem is that the Reserve Banks are generally prohibited by Board policy from sharing supervisory information with Reserve Bank personnel performing financial services, including the personnel who would be managing withdrawals from or balances in the SIDCO's account. This would put the Reserve Banks in the untenable position of not being able to rely on the presumption of legality under the proposed rules, but also not being able to act on the adverse supervisory information they might have.

In allowing Designated FMUs to hold accounts with the Reserve Banks, we believe Congress intended to mitigate the risks that Designated FMUs have when holding balances with other depository institutions. The Reserve Banks are willing to consider serving in this important risk-reduction function and to structure the segregated customer funds accounts so that the interests of the Designated FMU customers are superior to our own. We do not, however, believe that we can accept all of the proposed terms that are in the CFTC proposal and reflected in the form acknowledgment letter. We believe that Designated FMUs face a lower risk profile with respect to accounts at Reserve Banks, particularly in terms of credit risk and the public objectives of the Reserve Banks' activities. We respectfully ask, therefore, that, in addition to addressing the concerns raised by other commenters, the CFTC tailor its final rule to recognize the unique nature of the Reserve Banks and of Designated FMUs and to better reflect the ways in which the Reserve Banks operate. We would be happy to work with you in developing an appropriate solution.

Respectfully yours,

Stephanie Heller
Deputy General Counsel
Federal Reserve Bank of New York



Anna Voytovich
Associate General Counsel
Federal Reserve Bank of Chicago

[3] It is also important to note that, under DFA section 807, the Board has supervisory responsibilities regarding, among other things, SIDCOs that are Designated FMUs and supervised by the CFTC. In the course of fulfilling those responsibilities, the CFTC might share negative supervisory information regarding a Designated FMU with the Board and the Reserve Bank involved in the review of that Designated FMU.