

CFTC Letter No. 00-42**March 20, 2000****Interpretation****Division of Trading & Markets**

RE: Investment of FCM Assets: Commodity Futures Trading Commission
Regulation 1.17

Dear _____:

This is in response to your letter of _____ respecting investment of regulatory capital by _____ into the _____. Specifically, you requested confirmation that an investment of a portion of _____ capital in the Fund is not prohibited by Commission Regulation 1.17.

Based on your letter, documents describing the Fund and its portfolio, including its prospectus, and discussions with you, we understand the pertinent facts to be as follows.

The Fund is managed by _____, which is an Investment Advisor registered with the Securities and Exchange Commission ("SEC") and a Commodity Trading Advisor registered with the Commission. _____ I is an affiliate of _____. The parent of both firms is the _____. The minimum initial investment in the Fund is \$_____ and minimum additional investments are \$_____, although these minimums may be less for some investors.

Section 17(a) of the Investment Company Act of 1940 prohibits principal transactions between a fund and its investment advisor and its affiliates. Section 12(d)(3) generally prohibits mutual funds from buying shares or buying securities of affiliated firms. SEC Rule 12d 3-1 allows certain exemptions to the prohibition, but does not exempt the acquisition of securities issued by a fund's investment advisor or its affiliates.

Under the terms of the prospectus for the Fund and under provisions of SEC Rule 2a-7, the Fund must maintain a weighted average maturity of no more than 90 days, and generally may not invest in any securities with a remaining maturity of more than 397 calendar days. As of December 31, 1999, the Fund's holdings were comprised of domestic and foreign certificates of deposit, domestic and foreign commercial paper, floating rate notes, foreign time deposits and a repurchase agreement. The average maturity of the Fund's holdings as of December 31 was approximately 45 days.

A _____ investment in the Fund is readily redeemable. If _____ places a redemption order with the Fund by 5:00 p.m. on a business day, payment will be made in immediately available funds, normally on the same day. Although the Fund reserves the right to make redemptions over \$_____ in securities rather than cash, representatives of the Fund have advised _____ that this right has never been exercised. They further represent that, owing to the high liquidity of the Fund, they believe that the possibility of a non-cash redemption is remote.

Based on these representations the Division concurs that an investment by _____ in the Fund could be treated as a current asset for net capital purposes under Commission Regulation 1.17 regardless of whether the investment represents normal day-to-day operating balances. This confirmation is based on the following factors. First, the Fund is a "money market fund" that invests in diversified instruments with an average maturity of less than 90 days and with a maximum

maturity of 397 calendar days. Second, an investment in the Fund is readily redeemable. A redemption order placed by 5:00 p.m. on a business day will normally result in a payment on the same business day. Third, the Fund will not invest in any instruments of the parent of _____ or _____, or any affiliate of those firms.

The instant case differs from cases of investments of capital by an FCM in securities of affiliated entities or deposits of capital in accounts carried by affiliated entities including banks. In those cases, such investments or deposits could constitute a return of capital to the affiliated entity. In this case, the Fund would be investing in instruments of firms not affiliated with _____ and, therefore, such investments would not be precluded as adjusted net capital under Regulation 1.17.

Finally, any investment in the Fund will be subject to a "two percent haircut" as provided in CFTC Regulation 1.17(c)(5)(v) which refers to SEC Rule 15c3-1(c)(2)(vi)(D)(1). If you have any questions please call Tobey Kaczensky at 202-418-5460.

Very
truly
yours,

John C.
Lawton
Acting
Director