



November 21, 2005

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038-AC19 -- Alternative Market Risk and Credit Risk Capital
Charges for Futures Commission Merchants and Specified Foreign
Currency Forward and Inventory Capital Charges

Dear Ms. Webb:

The Securities Industry Association¹ Capital Steering Committee (“the Committee”) is pleased to offer you our comments on the above referenced release.

Overview

The Committee very much appreciates the efforts of the Commodity Futures Trading Commission (“CFTC”) to harmonize its capital rules with the regulatory capital regime of the Securities and Exchange Commission (“SEC”) under the new regulatory framework in effect for Consolidated Supervised Entities (“CSE”)².

We believe that the proposed amendments do an excellent job in conforming CFTC regulations to the new framework for CSE registrants that have entities that are dually-registered as a futures commission merchant (“FCM”) and broker-dealer (“B/D”) and commend the CFTC staff on their efforts. However, it is the Committee’s view that other CFTC regulations should be amended in light of CSE, specifically Rules 1.14 and 1.15,³ which respectively address the risk assessment recordkeeping, and risk assessment reporting requirements for FCMs relating in large measure to their Material Associated Persons (“MAPs”).

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

² Exchange Act Release No. 49830 (June 8, 2004); 69 FR 34428 (June 21, 2004).

³ 17CFR Ch. I (2005).

Logic of MAP Reporting

At the time that the CFTC and SEC adopted rules to permit them to receive information concerning the MAPs of firms registered with them as either an FCM and/or B/D⁴, no framework existed for the comprehensive supervisory oversight of large securities firms with diverse lines of business that were active in the futures and securities markets. Understandably, both agencies wished to establish some mechanism that would provide them with some insight into the potential financial impact of MAPs upon the firms they regulated. Sensitive to minimizing the regulatory burden on firms and aware of the need to avoid duplication of effort, both agencies generally provided that a firm would be in compliance with the risk assessment requirements of one agency if it met the risk assessment requirements of the other.⁵

Impact of CSE Framework

In the Committee's view, the creation of the CSE framework profoundly alters the logic and rationale of the MAP recordkeeping requirements for *both* agencies. The five financial firms that are/will be registered under CSE by year end 2005 will be subject to supervisory oversight by a financial regulator with respect to *all* otherwise functionally unregulated affiliates of the registrant.⁶ The SEC will be playing an overall supervisory role for these CSE registrants that have an FCM affiliate. The SEC has recognized the implications of this change and has exempted the SEC registered b/d affiliates of these CSEs from the 17h requirements.⁷ We believe that the CFTC should likewise exempt these same affiliates from the conventional application of 1.14 and 1.15 in light of the new framework. The Committee strongly recommends that FCMs affiliated with one of these CSE registrants should be deemed to have met their obligations if they make available for inspection by the CFTC appropriate filings pursuant to the CSE framework. Alternatively, the CFTC could request the information from the SEC.

Existing Precedent

While not an exact parallel to what the Committee proposes, we believe that a relevant precedent for what the Committee is proposing currently exists in CFTC rules. We note that MAPs subject to supervision by a Federal banking agency are deemed in compliance with 1.15 (a)(2) if they maintain copies of reports filed with the banking agency. As such an entity and any interaction with its affiliated FCM is subject to oversight by that banking regulator, such an exemption is understandable and appropriate. We believe that a similar exemption should be available to the five CSE registrants and their SEC registered b/d affiliates. Members of the Committee would be

⁴ In the case of the CFTC, Rules 1.14 and 1.15; for the SEC, Rules 17h-1T and 17h-2T.

⁵ See, §1.14(b); Rule 17h-2T(c).

⁶ The five firms are Bear Stearns, Goldman Sachs, Lehman Brothers, Merrill Lynch, and Morgan Stanley. All the firms are represented on the Committee.

⁷ Exchange Act Release No. 49830; 69 FR 34428, at 34450. The 17h exemption is not available for CSEs that have an ultimate holding company that has a principal regulator.

pleased to work with CFTC staffers in fashioning such an exemption, and in addressing any interim relief that may be necessary until a permanent amendment is in place.

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If you have any questions about our letter or wish to contact us for further elaboration, please do not hesitate to contact our staff adviser, Jerry Quinn (212-618-0507; jquinn@sia.com) or me (212-272-0531; mlevinson@bear.com).

Sincerely,
/s/ Marshall J. Levinson
Chairman,
Capital Steering Committee