



Futures Industry Association

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November 18, 2005

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

Re: Alternative Market Risk and Credit Risk Capital Charges for Futures Commission Merchants and Specified Foreign Currency and Inventory Charges, 70 *Fed.Reg.* 58985 (October 11, 2005)

Dear Ms. Webb:

The Futures Industry Association (“FIA”)¹ is pleased to comment on the various amendments the Commodity Futures Trading Commission (“Commission”) has proposed in the above referenced *Federal Register* release. The proposed amendments address three issues. First, the Commission would amend rule 1.17 to conform its minimum net capital rules to the rules the Securities and Exchange Commission (“SEC”) adopted in June 2004, providing an alternative net capital computation for broker-dealers that voluntarily elect to be supervised on a consolidated basis (“Consolidated Supervised Entities Regulations”). Second, the Commission would amend its rules relating to the disclosure of non-public records to provide that certain financial information filed with the Commission is exempt from disclosure pursuant to the exemption set forth in section (b)(8) of the Freedom of Information Act. Third, the Commission would amend rule 1.17 to reduce the capital charges for uncovered inventory or forward contracts in specified foreign currencies, *i.e.*, euros, pounds, yen, Canadian dollars and Swiss francs.

Amendments to Net Capital Rules. FIA supports the Commission’s proposal to amend its net capital rules to conform to the SEC’s Consolidated Supervised Entities Regulations. In particular, we are pleased that the Commission’s proposal would not require qualified firms seeking approval to use the alternative net capital computation in computing their

¹ FIA is a principal spokesman for the commodity futures and options industry. Our regular membership is comprised of approximately 40 of the largest futures commission merchants (“FCMs”) in the United States. Among our approximately 150 associate members are representatives of virtually all other segments of the futures industry, both national and international, including US and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators and other market participants, and information and equipment providers. Reflecting the scope and diversity of our membership, FIA estimates that our members effect more than 90 percent of all customer transactions executed on US contract markets.

capital requirements under rule 1.17 to file any new information with the Commission in addition to that already required to be filed with the SEC.

Consistent with this approach, we request the Commission to reconsider its decision to require firms that have been approved to compute their net capital pursuant to SEC Regulation 15c3-1(e) or 15c3-1(g) to maintain the records required under Commission rule 1.14 and to file the reports required under Commission rule 1.15. With the adoption of the SEC's Consolidated Supervised Entities Regulations, qualifying broker-dealers and their affiliates will be subject to the comprehensive group-wide supervision of a financial regulator, *i.e.*, the SEC. In light of these changed circumstances, it may be appropriate for the Commission, in accordance with the provisions of section 4f(c)(9) of the Commodity Exchange Act, to exempt these firms from complying with the provisions of Commission rules 1.14 and 1.15. Records prepared in compliance with the SEC Consolidated Supervised Entities Regulations, of course, would be available for Commission inspection either at the firm's or at the SEC's offices.²

We have had a number of conversations with representatives of the Securities Industry Association's Capital Steering Committee concerning these rules and understand that the committee will be filing a comment letter with the Commission. We would welcome the opportunity to join with SIA in discussing our views in more detail with the Commission and its staff.

Confidential Financial Information. FIA strongly endorses the Commission's proposal to amend rules 1.10(g), 145.5(d) and (h), and 147.3(b) to provide that certain financial information filed with the Commission is exempt from disclosure pursuant to the exemption set forth in section (b)(8) of the Freedom of Information Act. Under the proposal, the Commission would treat as confidential all information submitted in connection with the proposed rules authorizing FCMs to use the alternative net capital computation as well as essentially all information filed in the Form 1-FR-FCM, Focus Reports. The only information that would be publicly available would be: (1) a firm's adjusted net capital; (2) a firm's minimum capital requirement; (3) a firm's excess net capital; (4) the amount of customer funds held in segregation; and (5) the amount held in the foreign secured account.³ In addition, the Commission will make available the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers and footnote disclosures thereof; the Statements of Segregation Requirements and Funds in Segregation for customers trading

² The Commission also will be receiving copies of the reports required to be filed under SEC Regulation 17a-5. These reports will give the Commission far more complete and current information about the market and credit risks being assumed by the broker-dealer/FCM than the Commission receives under existing rules. Based on the information in these reports, the Commission would be able to request additional information from the SEC or the relevant firm.

³ This information is currently posted on the Commission's website monthly.

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on US commodity exchanges and for customers' dealer options accounts, and the Statement of Secured Amounts and Funds held in Separate Accounts for foreign futures and foreign options customers in accordance with Commission rule 30.7.⁴

FIA believes that the proposed amendments strike a proper balance. We also note that the amendments will more closely conform to comparable requirements set forth in SEC Regulation 17a-5.

Foreign Currency Capital Charges. FIA supports the Commission's proposal to amend rule 1.17 to reduce the capital charges for uncovered inventory or forward contracts in specified foreign currencies, *i.e.*, euros, pounds, yen, Canadian dollars and Swiss francs. As the Commission notes, the proposed amendments are consistent with the SEC's capital charges for these currencies as well as the Instructions Manual for the Form 1-FR-FCM. Therefore, the amendments would simply codify existing practice.

FIA appreciates the opportunity to comment on these proposed amendments to the Commission's rules and encourages the Commission to promulgate final rules without delay. If you have any questions regarding this letter, please contact Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President

cc: Honorable Reuben Jeffery III, Chairman
Honorable Sharon Brown-Hruska, Commissioner
Honorable Walter L. Lukken, Commissioner
Honorable Fred Hatfield, Commissioner
Honorable Michael V. Dunn, Commissioner

Division of Clearing and Intermediary Oversight
Ananda K. Radhakrishnan, Director
Thomas J. Smith, Associate Deputy Director
Thelma Diaz, Special Counsel

⁴ As the Commission notes in the *Federal Register* release, pursuant to Commission rule 1.10(g)(4), all financial information that would be exempt from public disclosure would continue to be available for official use by any official or employee of the US or a State, by any self-regulatory organization of which the person filing the report is a member, by the National Futures Association in the case of an applicant, and by any other person to whom the Commission believes disclosure of such information is in the public interest.