



SILVER USERS ASSOCIATION 1730 M ST., N.W. WASHINGTON, D.C. 20036 (202) 785-3050

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April 6, 2001

Commodity Futures Trading Commission  
Attn: Office of the Secretariat  
Three Lafayette Center  
1125 21<sup>st</sup> Street, NW  
Washington, DC 20581

COMMENT

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Reference: Regulatory Reinvention

Dear Commissioners:

This letter is provided in response to the *Federal Register* notice of March 9, 2001, on the referenced subject.

It is recognized that the Commission has been under serious pressure to respond to changing needs in the trading of commodities in order for that domestic market to be competitive while the public interest continues to be safeguarded. The Silver Users Association (SUA) supported a reasonable approach to the deregulation scheme proposed by the CFTC's "New Regulatory Framework (NRF)", published in June 2000. At that time SUA concerns were expressed in a letter to CFTC and by a release to the public. (See enclosures.)

**Fraud and Manipulation**

Then, in its closing days, the 106<sup>th</sup> Congress without a public hearing to receive industry views exempted silver and other metals from close CFTC jurisdiction. This critical change in the proposed NRF intensified SUA concerns that the protection against fraud and market manipulation was seriously threatened. We acknowledge that in the Commodity Futures Modernization Act of 2000 (CFMA) antifraud tools of the CFTC remain; however, it is unclear that timely access to certain trading records would be forthcoming without a "special call".

In the floor debate on H.R. 5660 as recorded in the December 15, 2000, *Congressional Record* (p. S11926 and H12489) the intent of the Congress was clear that the CFTC would retain broad powers to protect against fraud and manipulation. Interestingly, the citation from court records referred to in the debate dealt with the fraudulent sale of precious metals. SUA recommends that CFTC adopt a more comprehensive antifraud rule to give legal certainty to Congressional intent on this important item, especially in view of the rapid growth of new delivery entities.



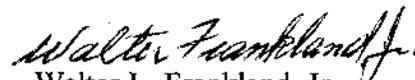
**Disclosure**

As new forms of futures trading facilities expand and as the various levels of regulation become a reality, there is a need through rulemaking so that participants and the public can discern easily the degree of federal regulatory authority, if any, that applies to a given trading situation. Similar information should be required for the products traded on the various facilities as well. A formalized disclosure system would be clearly in keeping with the spirit of CFTC's new framework.

In summary, SUA's concerns as expressed in its response to the proposed NRF last August became more serious when silver and the metals were exempted from the full jurisdiction of the CFTC and the CEA as amended, December 29, 2000. In the debate on this legislation, reference is made more than once to unanimous recommendations of the PWG; however, Congress completely disregarded one unanimous recommendation of that group. The report states in part, "Due to characteristics of markets for non-financial commodities with finite supplies, however, the Working Group is unanimously recommending that the exclusion not be extended to agreements involving such commodities. . . . There have also been several well-known efforts to manipulate the prices of certain metals by attempting to corner the cash or futures markets. Moreover, the cash market for many non-financial commodities is dependent on the futures market for price discovery. . . ." (Underlining added by SUA.)

The Association offers its assistance as the Commission restructures to conform with CFMA 2000.

Sincerely,

  
Walter L. Frankland, Jr.  
Executive Vice President

Enclosures



Contact: Walter Frankland

NEWS FROM **SILVER USERS ASSOCIATION** 1730 M ST., N.W. WASHINGTON, D.C. 20036 (202) 785-3050

### **Silver Users Cautions Pace of Futures Trading Deregulation**

Washington, D.C., August 22, 2000 — In its response to the federal government's plan to change the regulatory framework for domestic futures trading, the Silver Users Association (SUA) expressed concern over altering current procedures which have successfully helped provide competitive silver trading conditions with adequate liquidity and price transparency.

By letter to the Commodity Futures Trading Commission (CFTC) the Association commended the agency for its past monitoring of futures trading and for proposing a New Regulatory Framework to respond to innovative changes within the commodity trading industry. At the same time, SUA cited the unanimous position of the President's Working Group (PWG) on derivatives trading which recommended that agriculture and certain metal commodities including silver be handled differently from other commodities.

Other points cited in the letter include:

- Secure trading conditions, a hallmark of current domestic futures trading, remain a major concern with any growth of electronic trading platforms.
- Silver, trading currently on authorized contract markets, should be appropriate for Recognized Futures Exchanges (RFE's) and the guidance of the 15 Core Principles cited in the New Regulatory Framework developed by the CFTC.
- History has shown silver as a commodity susceptible to manipulation and for which there is a cash market, thus meeting provisions in the amended CEA for initially not qualifying for trading on a Derivatives Transaction Facility (DTF).
- Any alteration to the present regulatory structure for silver must provide a clear assignment of accountability by operators of trading facilities and clarify procedures for obtaining redress in case of improper actions.
- Provisions for making public timely alternate pricing data from electronic trading platforms must be in place should trading volumes on RFE's be reduced dramatically by the expansion of those electronic facilities.

A copy of the SUA letter to the CFTC is enclosed.



This mark is a mediaeval alchemist's symbol for silver. The modern chemical symbol is Ag, the atomic number is 47.



**SILVER USERS ASSOCIATION** 1730 M ST., N.W. WASHINGTON, D.C. 20036 (202) 785-3050

August 7, 2000

Commodity Futures Trading Commission  
Attn: Office of the Secretariat  
Three Lafayette Center  
1125 21<sup>st</sup> Street, NW  
Washington, DC 20581

Reference: Regulatory Reinvention

Dear Commissioners:

This letter is provided in response to the Federal Register notice of June 22, 2000, on the referenced subject.

These comments afford an appropriate opportunity to commend once again the work of the Commodity Futures Trading Commission in establishing and maintaining a futures trading atmosphere which has helped ensure that domestic markets are competitive and yet protective of the public interest. Members of the Silver Users Association (SUA) recognize that this accomplishment has not been a simple task. The CFTC through its remarkably evolving regulatory structure to date has played a major role in keeping fraud and manipulation to a minimum while domestic market participants conducted their respective trades with adequate liquidity and price transparency.

It is with trepidation that SUA considers proposals for changing these successful operations. At the same time, the Association is well aware of the changing nature of futures transactions especially with the electronic innovations of late. Regardless of how far this technology has come or how large it may grow, the need for safe and secure trading conditions, a hallmark of domestic futures trading, remains or even may be of more concern because of that very growth rate.

As in the past, the Commission has demonstrated its readiness to respond to changing conditions by developing in cooperation with the President's Working Group (PWG) its "New Regulatory Framework". The Silver Users Association regrets that with the August 7 deadline the time permitted for comments has been only 31 business days. Nevertheless, the proposals contained in the referenced documents seem a reasonable approach for transitioning from the current regulatory structure to one needed to meet future conditions, many of which will continue to evolve. With that statement the Association would offer the following comments:



- SUA supports the findings of the PWG regarding CFTC exemption authority on OTC derivatives which states in part, “Due to the characteristics of markets for non-financial commodities with finite supplies, however, the Working Group is unanimously recommending that the exclusion not be extended to agreements involving such commodities. For example, in the case of agriculture . . . . There have also been several well-known efforts to manipulate the prices of certain metals by attempting to corner the cash or futures markets. Moreover, the cash market for many non-financial commodities is dependent on the futures market for price discovery. . . .”

The recommendations of the PWG on swap agreements continues,

- ▶ “. . . the Working Group is recommending that clearing of swap agreements be permitted, subject to appropriate regulatory oversight of the clearing function. . . .
  - ▶ “The exclusion should not extend to any swap agreement that involves a non-financial commodity with a finite supply.
  - ▶ “The exclusion should only cover swaps between eligible swaps participants (defined in a manner similar to the definition in the current Swap Exemption). Thus, the exclusion should only be available for regulated financial institutions, business enterprises that meet certain tests relating to total assets or net worth, certain pension funds, state and local governments, and individuals with significant assets. Consideration should be given to further restricting the extent to which individuals qualify for the exclusion by not making it available to natural persons who own and invest on a discretionary basis less than \$25 million in investments.”
- Currently trading on an authorized contract market, silver should continue to be treated as a commodity traded only on Recognized Futures Exchanges (RFE's). The fifteen Core Principles cited in the referenced documents appear to set forth a structure designed to continue a market climate that should be satisfactory to industrial users and producers alike. Even so, close monitoring by a registered futures association with adequate enforcement authority is essential to help avoid price manipulation and to provide customer protection and financial safeguards during transition to electronic platforms.
  - As market history has shown, silver has been a commodity susceptible to manipulation because of its attractiveness to investors and a nearly exhaustible deliverable supply. Also, there is an underlying cash market; therefore, in accordance with the New Regulatory Framework this commodity should not be exempted from the provisions of the Commodity Exchange Act nor initially qualify for trading on a Derivatives Transaction Facility (DTF).

- Any change in the regulatory structures under which silver is currently traded must provide a clear assignment of accountability by the operators of trading facilities as well as the procedures for market participants to follow in order to obtain redress for improper actions.
- For silver futures trading to serve the important price discovery function of RFE's, liquidity is an essential element. So long as the RFE such as COMEX remains a viable trading arena with adequate participants, liquidity should be no problem; however, if interest in electronic platforms causes a serious reduction in RFE trading volume, procedures must be in place for pricing data from transactions on the alternate platforms to be available to the public in a timely manner.

The Association is prepared to continue working with the Commission as it develops a New Regulatory Framework.

Sincerely,

*W.L.F.*

Walter L. Frankland, Jr.,  
Executive Vice President