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FCStone Group, Inc.
Commodity Risk Intelligence
1251 NW Briarcliff Parkway
Suite 800
Kansas City, Missouri 64116
816-410-7120 office
800-255-6381 toll free
www.fcstone.com

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COMMENT

Received CFTC
Records Section
7/13/09

July 6, 2009

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, D.C. 20581

Re: Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers 74 Fed. Reg. 21290 (May 7, 2009)

Dear Mr. Stawick:

FCStone Group Inc. appreciates the opportunity to provide comments on the Commodity Futures Trading Commission's ("CFTC or Commission") Federal Register Release dated May 7, 2009 ("the Release"). The Commission is proposing to revise adjusted net capital requirements for Futures Commission Merchants and Introducing Brokers.

FCStone Group Inc. was originally formed as a cooperative of grain cooperatives, but is now a publicly held for-profit corporation. FCStone's chief operating subsidiary is FCStone, LLC ("FCStone"). FCStone is a registered Futures Commission Merchant ("FCM"). FCStone Group, Inc. and its subsidiaries provide commodity risk management consulting and transaction execution services to commercial commodity intermediaries, end-users and producers. FCStone and its subsidiaries assist primarily middle-market customers in optimizing their profit margins and mitigating exposure to commodity price risk.

FCStone is one of a limited number of FCMs that are dedicated to serve a core customer base of farmer owned cooperatives located in America's heartland.

The commodity futures industry has a strong agricultural history. It originally evolved to provide producers and consumers of agriculture products with a facility to manage exposure to price risk. Today, the use of the futures markets to hedge market risk has greatly expanded beyond the agricultural markets. Nevertheless, the futures markets continue to play a vital role in agriculture, both in America and worldwide.

FCStone strongly supports the Commission's oversight of the commodity futures industry, especially during the current global economic turmoil. It is a commendable achievement that not one dollar of customer segregated funds held in an operational FCM has been lost. In our view, the regulation and enforcement of segregated funds requirements by the Commission to protect customers has been an unqualified success.

FCStone believes, however, that some of the details of the Release present significant problems. In particular the provisions of the Release that will increase capital required to carry customer positions based on margin in customer accounts from eight percent to ten percent and non-customer accounts from four percent to ten percent will cause considerable hardship and result in certain unintended consequences.

In FCStone's view there are three major problems with the increased capital requirement as presented in the Release. First, the Release fails to distinguish between capital that should be required to carry hedging positions from capital that should be required to carry speculative positions. Second, the Release will impose unnecessary added costs and burdens on midsize producers, users and consumers of commodities, particularly in agriculture. Third, it will further reinforce the trend of undue concentration that currently threatens the breadth and diversity of the FCM community. Each point will be further discussed below.

**Hedge vs. Speculative Trading—One size does not fit all.**

FCStone strongly encourages the Commission to consider the type of transactional activity a FCM is performing in setting capital requirements. FCStone's core business remains risk management consulting and clearing and execution services to commercial commodity intermediaries. In excess of 50 percent of our risk based capital requirements are driven by our core commercial commodity intermediaries. We provide facilities for small producers to hedge their commodity activities, whether it is agriculture, energy, food services, financial products, or metals.

By their very nature, the hedging positions placed by our customers present less risk than similar speculative positions because any reduction of value in a futures position will be offset by an opposite movement in the value of the underlying physical position. Indeed the entire point of a hedge is to manage the risk of price movements to protect the financial position of the hedger.

The Commission has historically recognized the difference between positions established for speculation from those established for hedging purposes with the two tier margining system. Yet the Release does away with that distinction, and in so doing ignores the substantial difference in risk presented by the two kinds of positions. Simply stated, the speculative position is riskier to the FCM, and the capital requirements should take this into account.

Imposing a significant increase in capital requirements on a mid-sized FCM such as FCStone that primarily serves bona fide hedging activities is thus not only burdensome but is also unnecessary.

**The Increased Capital Requirements of the Release Will Harm Midsize Hedgers**

Of course, all regulation comes with a cost and an increase in capital requirements is no exception. In this case, however, the cost falls with particular impact on mid-size firms such as those served by FCStone generally and in agriculture in particular.

The need for the mid-size producer to hedge price risk is not at question. However, as working capital is constrained and credit facilities are limited, the capital requirement increase as set forth in the Release will increase the cost of capital of FCMs. These increased costs will likely be passed on to the customer.

The net capital revision as proposed in the Release will also reduce the number of FCMs that are accessible to the small or middle-size hedger. The lack of competition will surely lead to increased costs. Further, it has been our experience that dually-registered broker/dealer FCMs, including those affiliated with large financial institutions, will not offer hedging services to these mid-size producers. Thus, the lack of market access could potentially prevent producers from hedging these products thereby increasing their risk to price movements and ultimately increasing prices to the consumer.

The potential effect of the proposed capital increase may be the ultimate elimination from the commodity futures markets of the very market participants for whom this market was originally developed.

**The Increased Capital Requirements of the Release Will Increase Industry Concentration**

FCStone believes the Release as presented will lead to consolidation of current FCMs in order meet the requirements and to reduce capital costs. This will ultimately increase the concentration of business into fewer FCMs. As the Commission noted in the Release, the number of FCMs has fallen from 255 to 134 in less than 15 years. FCStone has noted approximately 18[1] of the 134 FCMs operate on a fully disclosed basis and a minimum 15 of these 134 FCMs deal in Forex transactions only. Therefore only about 100 of the 134 registered FCMs operate as traditional FCMs. We believe the increase in capital requirements will reduce the number of traditional operating FCMs even further.

As noted above FCStone believes fewer FCMs will lead to higher costs to the bona fide hedgers and fewer choices for the customer to execute trades, but perhaps even more importantly the changes will actually lead to increased systematic risk by reinforcing and accelerating the existing trend toward ever greater concentration in the commodities industry.

For the reasons stated above, FCStone Group, Inc. and its subsidiaries believe the Commission should re-consider various aspects of its proposed rule changes to the adjusted net capital requirements for FCMs.

Please contact the undersigned at 816-410-7120 if you have any questions.

Yours ~~Sin~~cerely,

Paul G. Anderson
Chief Executive Officer

cc: ~~Honorable Gary Gensler, Chairman~~
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Walter Lukken, Commissioner
Ananda Radhakrishnan, Director-Division of Clearing and Intermediary Oversight

[1] This information was provided to us by the National Futures Association.