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

August 7, 2000

COMMENT

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OFFICE OF THE SECRETARIAT

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

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,

Walter L. Frankland, Jr.,
Executive Vice President

SILVER USERS ASSOCIATION

List of Members

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August 4, 2000