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OFFICE OF THE SECRETARIAT

COMMENT

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

Re: Proposed Rules Concerning Intermediaries and Regulatory Reinvention

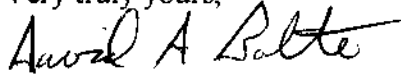
Dear Ms. Webb:

Please find enclosed the original comment letter of FC Stone L.L.C. ("FC Stone") regarding the above proposed rules. In addition, I am enclosing copies to be delivered to the Commissioners and selected senior staff members, and ask for your assistance in forwarding a single copy to each of the following:

- Honorable William J. Rainer
- Honorable Barbara Pederson Holum
- Honorable David D. Spears
- Honorable James E. Newsome
- Honorable Thomas J. Erickson
- C. Robert Paul, General Counsel
- John C. Lawton, Acting Director, Division of Trading and Markets
- John Mielke, Acting Director, Division of Economic Analysis
- Phyllis J. Cela, Acting Director, Division of Enforcement

Thank you for your assistance.

Very truly yours,


David A. Bolte
Corporate Counsel

Enclosures

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COMMENT

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

VIA EMAIL AND REGULAR MAIL

Re: Proposed Rules Concerning Intermediaries and Regulatory Reinvention

Dear Ms. Webb:

FC Stone L.L.C. ("FC Stone") is writing this comment letter in response to the Commodity Futures Trading Commission's ("CFTC") proposed New Regulatory Framework and, in particular, the proposed rules applicable to intermediaries.¹ FC Stone is a new futures commission merchant combining the futures business of Farmers Commodities Corporation ("FCC") and Saul Stone and Company L.L.C. ("Saul Stone"). Saul Stone, founded in 1924, is one of the nation's oldest clearing firms and is recognized as an industry leader in energy, meats and financial futures trading. FCC is one of the largest-volume commercial grain brokerage firms in the country, serving cooperative member-owners, substantial private companies, large-volume institutions and other major commodity traders in the U.S. and around the world. FC Stone holds seats and clearing memberships on the Chicago Board of Trade, the Kansas City Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, including the Comex Division, and the New York Board of Trade.

FC Stone generally commends the Commission on its regulatory reform proposal. The proposed rules would accord FC Stone more flexibility in its compliance efforts and, in some cases, reduce or eliminate unnecessary regulatory requirements. In particular, FC Stone supports: (1) the reduction of the scope of the definition of "principal"; (2) the revision of the ethics training requirement; (3) streamlined disclosure; (4) codification of the 1997 Advisory on electronic transmission of account statements; and (5) expansion of customer position close-out options.

The CFTC's efforts to provide regulatory relief to futures markets participants are welcome. However, FC Stone strongly disagrees with the CFTC's decision not to extend

¹ A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations, 65 Fed. Reg. 38,986 (Jun. 22, 2000).

comparable relief to the agricultural and energy markets. FC Stone would like to see a more balanced approach to regulatory relief across all futures and commodity industry sectors.

Aspects of the Proposal that FC Stone Supports

1. **Definition of Principals.** The CFTC proposes to reduce the scope of the “principal” definition. The definition currently includes, among other persons, all officers of a registrant. As proposed to be amended, the definition would include only those officers who hold specified offices (i.e., president, CEO, COO, CFO, and those in charge of a principal business unit, division or function subject to CFTC regulation). This change appropriately will focus the registration requirements on persons in a position to influence company policy and will expedite the registration process for futures commission merchants (“FCMs”).
2. **Ethics Training.** FC Stone supports having new APs take an ethics training course. However, the update courses that must be taken once every three years are of questionable value. The flexibility provided by the CFTC’s proposed revision of the ethics training requirement would benefit FCMs in several ways: it would reduce training costs; it would enable FCMs to train their APs in-house, thus reducing or eliminating the amount of time APs spend out of the office; and it would allow FCMs to structure ethics training for APs in a manner more directly related to their business.
3. **Unified Disclosure.** The CFTC would permit certain disclosures that currently must be separately distributed to be included in a customer agreement and acknowledged with one signature. This would allow FCMs to consolidate the amount of paper they send to their customers, streamlining the account opening process. The CFTC announced that it is also considering developing, at a later date and with industry input, a Statement of Acceptable Principles for disclosure to institutional customers. FC Stone would be pleased to participate in such discussions, but believes that the current approach permitting FCMs to determine appropriate disclosure for institutional customers has worked well in practice and needs no modification.
4. **Electronic Transmission of Statements.** The CFTC has proposed to codify its 1997 Advisory on electronic transmission of account statements. FC Stone has made use of the Advisory in the past and supports its codification. All efforts to increase the use of electronic communications are desirable, especially with respect to transmitting account statements. Providing account statements electronically is better for customers because the statements arrive more swiftly than statements sent via other means.
5. **Position Close Outs.** The CFTC’s proposal to permit customers to instruct their FCMs to close out such customers’ positions in a manner other than as Rule 1.46 currently requires (on a first-in, first-out basis across all customer accounts) would prove beneficial to FCM's customers, some of whom may wish to use a different close-out methodology.

Aspects of the Proposal that FC Stone Does Not Support

Although many aspects of the proposal are commendable, FC Stone is disappointed with several other aspects.

1. **Agricultural Commodities.** FC Stone is particularly disappointed that the proposal did not make contracts on the agricultural commodities enumerated in Section 1a(3) of the CEA (the “Enumerated Agricultural Commodities”) eligible for trading on exempt multilateral transaction execution facilities (“MTEFs”) or derivatives transaction facilities (“DTFs”). While FC Stone would be eligible to be an intermediary on a DTF, in practice, this would not be particularly useful because a large portion of FC Stone’s business is acting as an FCM to agricultural customers. As currently proposed, neither FC Stone nor its customers could execute transactions involving the Enumerated Agricultural Commodities on an exempt MTEF or a DTF.

There is no compelling basis for precluding institutional customers from executing agricultural transactions on a DTF. Commercial agricultural companies have substantial risk management experience and expertise. They are fully capable of deciding for themselves whether the benefit of access to lower cost transactions on a DTF exceeds any risks of conducting business on facilities subject to less government regulation. FC Stone requests that the CFTC permit contracts on the Enumerated Agricultural Commodities to trade on DTFs and MTEFs on a one-year pilot program basis. In this way, the CFTC could examine the development of markets in such products and evaluate whether the concerns that the CFTC has regarding less regulated trading of contracts on the Enumerated Agricultural Commodities are warranted.

2. **Energy Commodities.** Similarly, the CFTC should permit contracts based on a notional quantity of energy (“Energy Contracts”) to be traded on an exempt MTEF. The apparent rationale for precluding Energy Contract trading on exempt MTEFs is that they are subject to manipulation due to the fact that there is a finite supply of the commodity underlying the derivatives contract. However, the proposed rules would reserve the CFTC’s antimanipulation authority over exempt MTEF markets. As a result, there does not appear to be a convincing reason for the CFTC to bar exempt MTEFs from trading Energy Contracts. Although FC Stone suggests that the CFTC include Energy Contracts outright in the list of permitted exempt MTEF products in the final rules, the CFTC should at the very least permit trading in Energy Contracts on exempt MTEFs on a one-year pilot program basis. A pilot program would enable the CFTC to observe the development of markets in Energy Contracts on exempt MTEFs and determine whether its reservations regarding such markets are warranted.

3. **Core Principles.** Although the proposal would adopt a number of core principles and reduce regulatory requirements in many ways, the proposal is not as far reaching as the separate proposal to “replace the current ‘one-size-fits-all’ regulation for futures markets with broad, flexible ‘Core Principles.’”² Granting similar, across-the-board relief to intermediaries also is likely to “promote innovation.”³ If futures markets are indeed “poised to undergo rapid change

² Id.

³ Id.

as they continue to meet competitive challenges posed by technological advances," the markets would benefit from the participation of intermediaries able to rapidly respond to structural and technological shifts in the market without waiting for regulation to catch up.⁴ Core principles covering the relationship between intermediaries and their customers should be disclosure-based rather than "merit regulation" and should be "tailored . . . to the sophistication of customers."⁵ Because much of the CFTC regulation of intermediaries is geared toward customer protection, core principals replacing such regulation should be based on the type/sophistication of intermediaries' customers rather than the markets, products or commodities which such customers trade. In particular, the regulatory structure should recognize in some manner that many commercial entities using the agricultural and energy markets, including those that will use recognized futures exchanges, are sophisticated and do not need all of the customer protection safeguards currently in place.

4. Large Trader Reporting. Reduced large trader reporting should be available to all FCMs with only institutional customers, not just to those trading on DTFs, subject to special calls for such reports.

FC Stone appreciates the opportunity to comment on the CFTC's proposed rules concerning intermediaries. Please contact me or David A. Bolte, Corporate Counsel, at 1-800-422-3087 if you would like to discuss or have any questions about FC Stone's comments.

Respectfully submitted,



Pete Anderson
President and Chief Executive Officer

cc: Honorable William J. Rainer
Honorable Barbara Pederson Holum
Honorable David D. Spears
Honorable James E. Newsome
Honorable Thomas J. Erickson
C. Robert Paul, General Counsel
John C. Lawton, Acting Director, Division of Trading and Markets
John Mielke, Acting Director, Division of Economic Analysis
Phyllis J. Cela, Acting Director, Division of Enforcement

⁴ Id.

⁵ Id.