

**Weather
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August 7, 2000

VIA EMAIL AND HAND DELIVERY

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

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COMMENT

Re: A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries, and Clearing Organizations; 65 Fed. Reg. 38986; (June 22, 2000)

Dear Ms. Webb:

We are pleased to submit the following comments on the Commodity Futures Trading Commission's ("Commission's") proposed regulations, "A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries, and Clearing Organizations" (hereafter, collectively the "Proposed Regulations"). The Weather Risk Management Association ("WRMA" or the "Association") represents approximately fifty members of the weather risk management industry, including brokers, utility and energy companies, insurance companies and financial institutions. Weather risk management financial products include caps, floors, collars, and swaps, all with payouts typically tied to a Heating Degree Day or other temperature or precipitation-based measurements.

In general, WRMA supports the Proposed Regulations and commends the Commission's move toward regulation based upon "broad performance standards in the form of core principles." Proposed Regulations, 65 Fed. Reg. 38986, 38987. We support the Commission's goal of "provid[ing] greater flexibility in meeting technological and competitive challenges." *Id.* The Association offers these comments in furtherance of that goal.

WRMA agrees with the Commission's observation in the Proposed Regulations (at 65 Fed. Reg. 38989) that contracts based on weather-related indices (such as contracts based on temperatures or precipitation data) should be included in the category of contracts that can be traded on an Exempt Multilateral Transaction Facility ("Exempt MTEF")

because they are based on "an occurrence, extent of an occurrence, or contingency beyond the control of the counterparties to the transaction." Proposed Regulation §36.2 (b)(6). The Association requests, however, that weather-related contracts be expressly listed in Section 36.2 (b). An express listing would make clear that an Exempt MTEF, rather than a Commission-registered facility such as a DTF or RFE, is an appropriate vehicle for trading weather derivatives. As a result, WRMA members would not need to analyze the regulatory risk of trading weather derivatives on an Exempt MTEF.

The Association is also concerned that the participation of brokers, who are vital to the functioning of the weather derivatives market, will be inappropriately limited by a provision of the Proposed Regulations. Pursuant to Section 36.2(a) of the Proposed Regulations, eligible participants, "either trading for their own account or through another eligible participant," may trade on an Exempt MTEF. Thus, it appears that brokers, if they are eligible participants, will be able to trade on an Exempt MTEF for the accounts of their clients (if the client is also an eligible participant).

However, the proposed definition of "eligible participant" appears to preclude many brokers from taking advantage of one of the main provisions for qualifying as an eligible participant. Proposed Regulation § 35.1(b) defines "eligible participant" as, among other things, a corporation, partnership, proprietorship or other entity which either (i) has total assets of at least \$10,000,000, (ii) is guaranteed by another eligible participant, or (iii) has a net worth of \$1,000,000 and either "enters into the agreement in connection with the conduct of its business" or "enters into the agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business."

The Commission has not articulated a reason why brokers are allowed to meet the first two tests (total assets of \$10,000,000 or guaranteed by another eligible participant) but apparently are precluded from meeting the third. It is not clear whether brokers, who do not enter trades for their own account, can be viewed as "enter[ing] into the agreement" or "manag[ing] the risk of an asset or liability owned or incurred in the conduct of [their] business." The Commission should modify this provision to make it clear that brokers are not precluded from qualifying under § 35.1(b)(iii) for purposes of trading on an Exempt MTEF. WRMA also believes the net worth threshold in the test -- \$1,000,000 -- is too high. The credit worthiness of brokers is not relevant in this context because brokers do not incur credit risk, but merely act as intermediaries.

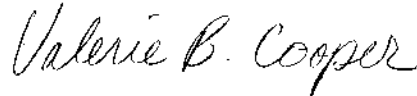
Under Section 36.2(c) of the Proposed Regulations, if a contract on an Exempt MTEF is cleared, it must be cleared using a recognized clearing organization under Part 39. Requiring the use of a regulated clearing organization for products traded on an Exempt MTEF is inconsistent with the spirit and intent of the new regulatory framework. The Commission has stated that commodities traded on an Exempt MTEF, "when traded between or among eligible participants, need not be subject to the regulatory scheme of the Act." Proposed Regulations, 65 Fed. Reg. 38988. Clearing is essentially a financial function which should not necessarily be regulated by the Commission. In addition, regulation of clearing organizations makes more sense for regulated products, such as

those traded on RFEs, than for the exempt products traded on Exempt MTEFs, where trading is primarily by institutional customers and regulation may create unnecessary costs.

WRMA fully supports Proposed Regulation § 36.3(b), which provides that counterparties to contracts traded on an Exempt MTEF can not claim that such contracts are void or unenforceable due to a failure to comply with the regulations. It is unclear, however, why the Commission should still apply the anti-fraud and manipulation provisions of the Act to weather derivatives when the Commission has already acknowledged that such products may not be susceptible to manipulation.

The Association appreciates the opportunity to submit these comments on the Commission's Proposed Regulations. If you have any questions regarding our comments, please contact me at (202) 289-3800.

Sincerely,



Valerie Cooper
Executive Director

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
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