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April 28, 2003

COMMENT

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21ST Street NW
Washington DC 20581

Re: Proposed Amendments to Commission Rule 1.35(a-1)(5)—Post-Execution Allocation of Bunched Orders 68 *Fed.Reg.* 12319 (March 14, 2003)

Dear Ms. Webb:

On behalf of Goldman Sachs & Co. ("Goldman Sachs"), we are pleased to submit this letter in support of the Commodity Futures Trading Commission's ("Commission's") proposed amendments to Rule 1.35(a-1)(5). A wholly owned subsidiary of The Goldman Sachs Group Inc., Goldman Sachs is a leading global investment banking, securities and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes pension funds, corporations, financial institutions, governments, hedge funds and investment advisers and high-net-worth individuals. The company is registered with the Commission as a futures commission merchant ("FCM"), commodity pool operator and commodity trading advisor and is registered with the Securities and Exchange Commission as a broker-dealer and an investment adviser.

Goldman Sachs or its affiliates are members of all major securities and futures exchanges worldwide and act as dealers and market makers in a wide range of financial instruments. Among other activities, Goldman Sachs executes and clears transactions in the full range of derivatives products, including financial and commodity futures and options on futures contracts on behalf of institutional customers whose accounts are directed by investment advisers, commodity trading advisors and major financial institutions (collectively, "account managers").

As a member of the Futures Industry Association ("FIA"), we participated in preparing the comment letter that FIA recently filed with the Commission encouraging the adoption of the proposed amendments.¹ We endorse FIA's analysis supporting the

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amendments and, in particular, its description of the dramatic changes in the regulatory and market environment that demand a different approach to regulations governing post-execution allocation procedures for bunched orders. We also agree that the rule, as amended, will not diminish the protections afforded to customers whose transactions are subject to post-execution allocation procedures. For example, by extending the benefits of post-execution allocation to all market participants, the proposed amendments eliminate the potential disparity in quality and timing of execution that non-eligible clients currently face.

The proposal to remove the required certifications by investment managers also has no adverse effect on customer protection. The sole purpose of the certification was "to assure that the account manager, who has overall responsibility for compliance with the eligible order provisions, was cognizant of, and would comply with, the provisions." The elimination of the certification does not alter the account manager's continuing obligation in this regard. It does, however, confirm that the obligation to assure that allocations are fair and equitable rests with the account manager and not with the FCMs that clear the clients' accounts. This is particularly true today. The wide use of give-up arrangements means that an account manager's transactions on behalf of its clients frequently are executed through one FCM and later cleared through several different FCMs. Moreover, with the increased use of electronic order entry systems, account managers are able to place trades directly for execution. An FCM, therefore, may have no reason to know that an order has been executed for a client's account until the transaction has been executed and cleared.

As noted above, Goldman Sachs participated in preparing the comment letter that FIA has filed on the proposed amendments and endorses the views set forth in that letter. For this reason, we elected to expand only on a portion of the comments made by FIA. We wish to emphasize that our decision not to discuss other provisions of the proposed amendments does not mean that we do not support these aspects of the Commission's proposal with equal enthusiasm. Goldman Sachs encourages the Commission to adopt the amendments to Rule 1.35(a-1)(5) as proposed.

We appreciate the opportunity to submit these comments on the proposed amendments and stand ready to provide any further assistance that the Commission may find helpful in its consideration of this issue.

Very truly yours,



Bonnie S. Litt

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