

# Fimat

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April 28, 2003

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20058

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

Dear Ms. Webb:

Fimat USA, Inc. ("Fimat") is pleased to submit this letter supporting the Commodity Futures Trading Commission's ("Commission's") proposed amendments to Commission Rule 1.35(a-1)(5). 68 *Fed.Reg.* 12319 (March 14, 2003). Fimat is registered with Commission as a futures commission merchant ("FCM") and is a part of the Fimat Group. The Fimat Group has a global network of 22 offices and is a member of nearly 40 of the world's largest derivative exchanges and 10 stock exchanges. The Group provides global clearing and execution services to institutional users of derivatives and securities markets worldwide. Companies of the Fimat Group cover markets that account for 80 percent of the volume of all major exchanges. They offer clients access to over 500 individual interest rate, bond, currency and equity products as well as 220 individual commodity contracts, covering the full spectrum of metals, energy, grains and soft commodity products.

Fimat is also a member of the Futures Industry Association ("FIA") and is one of several FCMs that took part in drafting the extensive comment letter that FIA submitted in support of the proposed amendments. Letter from John M. Damgard, President, Futures Industry Association, to Jean A. Webb, Secretary, Commodity Futures Trading Commission, dated April 18, 2003. FIA's letter eloquently describes the many changes that have taken place in the futures industry in the more than 20 years since the Commission first approved and established procedures governing the use of bunched orders by account managers. As a result of these changes, the current procedures set forth in Rule 1.35(a-1)(5) and in the Commission's 1997 Interpretation<sup>1</sup> no longer assure fair and equitable treatment among clients.

Fimat USA, Inc. 62 Fed.Reg. 25470 (May 8, 1997).  
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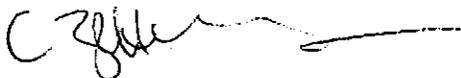
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The proposed amendments address the shortcomings of the current procedures that have become evident since Rule 1.35(a-1)(5) was adopted in 1998. In particular, the amendments extend the benefits of post-execution allocation procedures to essentially all account managers and their clients, subject to the conditions set forth in the rule. As such the amendments eliminate the potential disparity in quality and timing of execution that clients whose accounts currently are not eligible for post-execution allocation face.

Consistent with the *Recommendations for Best Practices in Order Entry and Transmission of Exchange-Traded Futures and Options Transactions*, which the National Futures Association and Futures Industry Institute issued in February 2001, the amendments continue to assure customer protection. In this regard, for example, the amendments provide that an account manager's allocation methodology must be "sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors." Further, the manager must maintain records that are "sufficient to demonstrate that all allocations meet the standards of . . . this section and to permit the reconstruction of the handling of the order from the time of the handling of the order from the time of placement by the account manager to the allocation to individual accounts." Under the proposed amendments, therefore, appropriate regulatory and self-regulatory authorities, as well as the account manager's own independent auditor, will have the records necessary to verify that the manager is treating its clients fairly and equitably and is not acting arbitrarily to the detriment of one or more clients.

For all of the above reasons and for the reasons set forth in detail in FIA's comment letter, Fimat encourages the Commission to adopt the amendments to Commission Rule 1.35(a-1)(5). If the Commission has any questions concerning this letter, please contact me at (312) 578-5201.

Sincerely,



Cynthia Zeltwanger  
President and Chief Executive Officer