

**BEAR  
STEARNS**

**Received CFTC  
Records Section**

9/14/06

06-4  
33

**Bear, Stearns & Co. Inc.**  
383 Madison Avenue  
New York, New York 10179  
www.bearstearns.com

**Ronald M. Hersch**  
Senior Managing Director  
Tel 212-272-9866  
Fax 212-272-5638  
rhersch@bear.com

September 13, 2006

**COMMENT**

RECEIVED  
C.F.T.C.  
2006 SEP 14 PM 3:30  
OFFICE OF THE SECRETARIAN

VIA OVERNIGHT (UPS # 1Z10X6190195917773) and E-MAIL

Ms. Eileen Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, D.C. 20581

**Re: Comment Letter on "Regulatory Governance," Proposed  
Acceptable Practices, 71 Fed. Reg. 38740 (July 7, 2006)**

Dear Ms. Donovan:

Bear, Stearns & Co. Inc. ("Bear Stearns") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission" or "CFTC") Proposed Acceptable Practices for compliance with section 5(d)(15) of the Commodity Exchange Act ("CEA"). Bear Stearns agrees with the Commission that the Proposed Acceptable Practices safe harbor under section 5(d)(15) would strengthen and modernize self-regulation, and would enhance the regulatory environment for futures trading in the United States.

Bear, Stearns & Co. Inc. is both a registered futures commission merchant ("FCM") and a broker/dealer ("BD"), engaged in securities trading and brokerage, institutional equities, fixed income sales and trading. Its affiliates also engage in OTC derivatives, foreign exchange and precious metals trading. Its financial services businesses are conducted on a global basis. With respect to the issues addressed in its Comment Letter, Bear Stearns brings not only its experience as a registered futures commission merchant with clearing memberships in the major futures exchanges affected by the Commission's proposed "Acceptable Practices", but also its extensive experience as a broker/dealer in the securities business.

Bear Stearns believes that participants in futures and securities markets are best served if there is a shared expectation of the regulatory landscape. We also recognize that the United States markets do not stand alone; United States exchanges and their participants function in a global marketplace where markets for all kinds of financial instruments often interact and a

common regulatory landscape and shared expectations are both useful and necessary. Frequently a transaction on a futures exchange is a hedge or a component of a strategy that also involves transactions on a securities exchange. The efficiency of the marketplace and the ability of a participant in the global marketplace to engage in different lines of business are each enhanced when there is a shared regulatory framework and common expectations.

Over the past several years, the securities exchanges and their regulators, driven by their concern for principles of fair, impartial, and effective self-regulation, have focused on such issues as (i) conflicts of interest, (ii) sufficient representation of public directors on the governing boards of exchanges, (iii) the structure of the regulatory arm of exchanges and their disciplinary panels, and (iv) the emphasis on accepting a risk-based analysis of business. The same principles that drove the examination of the securities exchanges and their rule-making processes led to a review of the composition of boards of directors in general, focusing particularly on perceived conflicts of interest. Even broker/dealers were asked to conduct the same analysis internally. By minimizing perceived conflicts of interest, the regulators expect to encourage a fair and equitable marketplace and to engender that perception by the public (including broker/dealers). In a letter submitted to the Commission, dated August 28, 2006, the Futures Industry Association ("FIA") expressed its support for these same goals for the futures industry. Bear Stearns completely agrees with this position.

We would also note that Bear Stearns is satisfied that the FIA's comments present a very balanced view, as they were developed after considerable consultation with diverse industry participants.

In addition to Bear Stearns' general support of the FIA's Comment Letter, Bear Stearns wishes to specifically emphasize its support of the FIA's view concerning the Commission's authority to adopt "Acceptable Practices" as a safe harbor under Core Principle 15. The concept of core principles falls within the framework that was adopted as part of the CEA. It also parallels the direction adopted by the regulators of certain respected foreign markets, such as the FSA regime in the U.K, where Bear Stearns and other major U.S. market participants conduct a significant amount of business. It would appear that certain regulators are embracing a risk-based analysis of business within the context of core principles. It is wise for the Commission to embrace the Safe Harbor Concept.

The FIA also gave its support for governing boards of designated contract markets to be comprised of at least 50% public directors. Bear Stearns agrees that this element of the proposed Acceptable Practices is essential if one is to adequately address the issue of conflict of interest, real or perceived. Additionally, it is a critical element if one is interested in adopting a regulatory framework that is synchronized with the securities markets in the United States. The performance by the exchanges of their self-regulatory responsibilities would be enhanced by this diversity.

Bear Stearns also specifically supports the FIA on the issue of the composition of disciplinary panels. The mere perception of conflict and lack of fairness and impartiality is serious. To avoid this, certain securities exchanges now separate discipline from other exchange

Ms. Eileen Donovan  
August 28, 2006  
Page 3

business. It is important to note also that this already has proven to be successful in the securities industry where the arbitration panels of the NASD-R and the New York Stock Exchange now require a majority of public arbitrators with one industry participant. Persons appearing before these panels appreciate and respect decisions that result from the expertise of an industry participant balanced by the fresh and independent views of public arbitrators. The effort to establish more impartial and balanced disciplinary panels in the futures industry by introducing non-members to the disciplinary process should be lauded and supported. It is essential that all participants in the marketplace perceive that the market they enter is fair and reasonable at all levels including the disciplinary level.

The issue of exchange self-regulation is complicated. The Commission had dedicated considerable time and effort to analyzing the entire landscape of these issues. The proposed Acceptable Practices are an extremely fair and positive result of a compendium of comment, input and study. Bear Stearns supports the adoption by the Commission of its Acceptable Practices.

Sincerely yours,



Ronald M. Hersch  
Senior Managing Director

RMH/bp

cc: Reuben Jeffery III, Chairman  
Walt Lukken, Commissioner  
Fred Hatfield, Commissioner  
Michael Dunn, Commissioner