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Ms. Jean A. Webb
Secretariat
Commodity Futures Trading Commission
Three Lafayette Center,
1155 21st Street, NW
Washington, DC 20581

COMMENT

Re: Rule Proposal Regarding Requests for Exemptive No-Action

Dear Ms. Webb:

FIMAT USA, Inc. is pleased to submit its views and comments regarding proposed Commodity Futures Trading Commission Regulation § 140.99. In general, we support the Commission's efforts to rationalize and routinize the process by which it grants exemptive, no-action and interpretive letters (collectively, "Letters"). However, we caution the Commission against adopting too formal rules that could chill the desire of potential applicants to request clarification on important issues, as well as make it virtually impossible to apply for such letters except with the assistance of specialized outside counsel. In addition, at the same time that the Commission formalizes the process by which persons request Letters, the Commission should adopt a schedule of ordinary response times to requests for Letters, as well as agree to publish in an orderly fashion (including on the CFTC's world wide web site with a suitable index) all Letters that it issues.

As background, FIMAT USA is a wholly owned subsidiary of FIMAT International Banque, SA, which itself is a wholly owned subsidiary of Societe Generale. The FIMAT Group, which comprises FIMAT Banque and all its subsidiaries and branches, is present on more than 30 derivatives exchanges in 14 countries. FIMAT USA is registered with the CFTC and the Securities and Exchange Commission as a futures commission merchant and a broker dealer, respectively.

As stated above, we have no objection to the Commission's desire to rationalize and routinize the process by which it grants exemptive, no action and interpretive letters. However, we are concerned, as more specifically stated below, that the particular language of proposed CFTC Regulation § 140.99 might discourage potential applicants from seeking clarification on important industry issues as a matter of principle or practicality, as well as out of reluctance to engage specialized counsel to draft a request for a Letter that meets with the many technical requirements of the proposed rule.

Our specific comments are as set forth below:

140.99(c)(3)(i)

The proposed rule requires requests for a Letter to be accompanied by a certification that representations in the request are "true and complete." It is unclear what "complete" means as this is entirely subjective. The better standard would be the proposed language of the certification in the text of the Federal Register release accompanying the proposed

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rule, i.e., "true and accurate," which is different than the text in the actual proposed rule. See 63 Federal Register No. 14 @ 3286 (January 22, 1998).

140.99(c)(3)(ii)

This proposed section requires an undertaking by the person submitting a request for a Letter promptly to submit a written supplement reflecting all material changed circumstances. Presumably this requirement expires at the time the Commission grants a requested Letter. The rule should make this clear.

140.99(c)(5)

The Commission proposes that a request for a Letter must contain references to "all" relevant authorities, including, but not limited to, statutory authorities and policy statements. This is probably overkill, as many authorities are redundant. Moreover, others may not be publicly available because they were not widely published or may be outdated. Accordingly the rule should be amended to require, at most, reference to material relevant authorities.

In addition, the requirement of this section suggests that the Commission requires a virtual legal brief in connection with each request for a Letter -- one that cites a plethora of supporting and adverse legal authority. This requirement will discourage the submission of requests for Letters except from the most financially able applicants as the draft of such a request for a Letter would typically require the assistance of specialized counsel. This appears to be an unfair burden to impose on the industry, except in the most extraordinary of circumstances.

140.99(c)(6)

The Commission proposes that a request for a Letter "identify prior Letters issued by Commission staff." Again, as stated above, the Commission has not routinely published all prior Letters. Accordingly, this requirement could, practically, be difficult to meet.

However, the Commission should take this opportunity to commit to widely publicize all Letters it will issue from this time forth, including posting all its Letters in an organized and easily accessible fashion on its world wide web site at WWW.CFTC.GOV.

140.99(d)

The Commission, by its proposed rule, appears to be discouraging the submission of so-called "draft" requests for Letters in the first instance. In the past, the submission of such "draft" letters has been a useful device for Commission staff to preliminarily assess whether a formal request for a Letter was beneficial. The Commission should clarify that such a process is not being discouraged, although no formal Letter will be issued in connection with the submission of a "draft" letter.

140.99(e)

The proposed rule states that failure by Commission staff to respond to a request cannot be construed as approval. This, frankly, makes sense. However, at the same time that the

Commission proposes to impose strict burdens on the industry to submit a request for Letters, it should commit to respond to such requests ordinarily within scheduled times. Particularly where the Commission seeks to discourage requests for Letters based on hypothetical facts, it must be cognizant that applicants submitting requests for Letters are seeking clarification of issues relevant to real proposed transactions, where unreasonable delay would render the need for clarification moot.

140.99(f)

The Commission proposes to restrict the ability of an applicant to withdraw a Request for a Letter except where an applicant has determined not to proceed with a proposed transaction, or intervening events have rendered the request moot. Particularly where the Commission does not commit to respond to requests for Letters within a fixed time frame, this provision is too harsh. As a matter of practicality, if the Commission takes too long in responding to a request for a Letter regarding a particular transaction, the applicant may determine to rely solely on the advice of counsel or otherwise to proceed with the transaction; there would be no benefit, in such circumstance, for the Commission to issue its Letter after the fact. An applicant should be able to withdraw its request at any time for any reason (other than for nefarious reasons)¹ if the Commission's response is not timely.

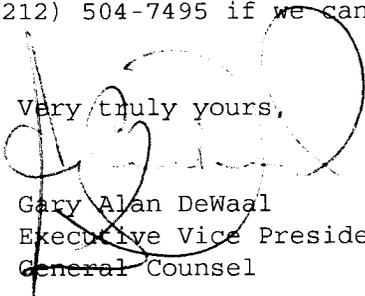
Indeed, the Commission's proposed rule appears particularly harsh where the Commission itself is appropriately retaining the authority to decline to respond to any request for a Letter where legal, policy or practical considerations make it inappropriate, in its view, to respond to the merits of a request.

Additionally, as an aside, it would be beneficial for the Commission to permit the submission of requests for Letters electronically, provided a separate signed request for a Letter is also submitted (or a procedure can be adopted to permit electronic submission of signatures). At a minimum, such practice would permit Commission staff to incorporate all or part of the submitted letter in its response, minimizing some typing needs.

Again, efforts by the Commission to rationalize and routinize the process by which applicants request Letters makes perfect sense. However, the Commission should be mindful to ensure that its process is not unnecessarily burdensome nor discourages applicants except those who can afford to retain specialized outside counsel.

¹ Under certain circumstances, it might be disingenuous for an applicant to withdraw a request for a Letter because it is aware that a response by the Commission would be adverse.

Feel free to contact the undersigned at (212) 504-7495 if we can provide you any further guidance.

A handwritten signature in black ink, appearing to read "Gary Alan DeWaal", is written over a circular stamp or seal. The signature is fluid and cursive.

Very truly yours,
Gary Alan DeWaal
Executive Vice President and
General Counsel

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