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R.J.O'Brien

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COMMENT

July 6, 2009

VIA E-MAIL (secretary@cftc.gov)

Mr. David A. Stanwich
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Re: RIN 3038-AC66; Revised Adjusted Net Capital Requirements for Futures Commission Merchants and Introducing Brokers, 74 Fed. Reg. 21290 (May 7, 2009)

Dear Mr. Stanwick:

R.J. O'Brien & Associates, LLC ("RJO") welcomes the opportunity to comment on the Commission's proposed changes to its net capital requirements for futures commission merchants ("FCMs") and independent introducing brokers ("IIBs"). RJO is one of the largest independent FCMs and also one of the oldest, dating back to 1914. RJO is a full clearing member of the Chicago Mercantile Exchange Group (and a founding member of CME); Intercontinental Exchange; NYSE Liffe; and the Chicago Climate Exchange and services a global network of approximately 300 Introducing Brokers as well as some of the world's largest financial, industrial and agricultural institutions.

RJO is a member of the Futures Industry Association ("FIA"). RJO participated in the discussions resulting in the FIA's comment letter regarding the above-reference proposal. Thus, RJO supports the positions set forth in that comment letter. RJO would like to emphasize a number of those points in particular.

RJO supports the proposed increased minimum capital requirements for both IIBs and FCMs as undercapitalized firms put our markets at risk. RJO also supports the Commission's proposals to (i) include customer and non-customer positions (including cleared over-the-counter ("OTC") instruments) in the calculation of a FCM's risk-based adjusted net capital and (ii) to apply the same percentage levels to customer and non-customer accounts in calculating risk-based capital requirements. RJO shares the Commission's views that the risk associated with a non-customer account is not necessarily always less than the risk associated with customer accounts. However, like the FIA and the National Futures Association ("NFA"), we oppose the proposal to increase the relevant percentage to 10%. We share the views articulated in the NFA's and FIA's comment letters that, even in the turbulent times we recently experienced, we are not aware of any situation in which the current risk-based capital requirements have been insufficient to protect FCMs and their customers. In addition, we share the concern articulated in the NFA letter that capital requirements for cleared OTC positions be coordinated among regulators to prevent regulatory arbitrage.

Lastly, RJO requests the commission to consider providing capital relief for offsetting fungible products regardless of the relevant clearing house (e.g., offsetting ICE and NYMEX positions in fungible products). In our opinion, Centrally-cleared fungible products do not present additional systemic or market risk simply because the positions are held in separate clearing houses.

RJO thanks the Commission for the opportunity to comment.

Very truly yours,

Tom Anderson
Chief Financial Officer

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