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FCM CAPITAL REQUIREMENTS – DISCUSSION POINTS

1. KEY GOALS OF THE FCM CAPITAL REQUIREMENTS

- Require a minimum level of liquid assets in excess of the FCM's liabilities in order to provide resources for the FCM to meet its financial obligations.
- Ensure that the FCM maintains sufficient liquid assets to wind-down its business by transferring client accounts in the event it is necessary to cease operating as an FCM.

2. APPLICATION OF REG. 1 .17 TO CLEARED SWAPS

(a) The requirements of the DFA will significantly alter the cleared swaps market, resulting in many more swaps being subject to clearing. The analysis of whether Reg. 1.17 should apply to swaps as it does to futures should therefore be revisited.

(b) **8% requirement does not provide the best measurement of FCM risk.**

- Margin requirements for swaps will be much higher than for futures due to (i) swap tenors, (ii) longer close-out periods and (iii) potential adoption of the Complete Legal Segregation model[1].
- More margin collected from clients reduces risks to FCMs and should lower capital requirements.
- Larger FCMs will have diverse client and product bases, also reducing associated risks.

(c) **Wind-down of an FCM's cleared swaps business will likely be more straightforward for a client following other recently proposed CFTC rules.**

- DCOs required to collect gross margin for swaps, facilitating the porting of client positions/margin.
- Potential adoption of the Complete Legal Segregation model will facilitate the porting of client positions/margin, as DCOs will not be able to access margin of non-defaulting clients.

(d) Confirm that any portfolio margining proposals approved by the CFTC/SEC (such as for swaps and security-based swaps) should be reflected in an FCM's calculation of its risk-based capital requirement.

(e) Discuss the treatment of guaranty fund contributions in light of Reg. 1.17(c)(2)(viii), particularly given the amounts for swaps and potential increases due to possible adoption of Complete Legal Segregation.

3. POSSIBLE ALTERNATIVES

(a) Sliding-scale approach.

(b) Reducing the 8% requirement.

(c) Seeking to define "risk margin" in a manner that more closely reflects potential risks to the FCM.

[1] Commenters have estimated that DCOs will require approximately 70 percent more initial margin under the complete legal segregation model.