

**CFTC letter No. 04-21**

**August 16, 2004**

**No-Action**

**Division of Clearing and Intermediary Oversight**

Mr. Joseph D. Sanguedolce  
Chairman, Joint Audit Committee  
C/O New York Mercantile Exchange  
One North End Avenue, 14<sup>th</sup> Floor  
New York, NY 10282-1101

Dear Mr. Sanguedolce:

This is in response to your letter dated July 30, 2004, on behalf of the Joint Audit Committee (the “JAC Request Letter”) to the Division of Clearing and Intermediary Oversight (the “Division” or “DCIO”) of the Commodity Futures Trading Commission, in which you request the staff of DCIO to issue a no-action or interpretative letter confirming that FCMs that are non-public entities may temporarily continue to treat as equity capital mandatorily redeemable interests that otherwise would be required to be reclassified as liabilities under Statement of Financial Accounting Standards No. 150 (“FAS 150”).

In the JAC Request Letter, you appropriately note that the Division of Market Regulation of the Securities and Exchange Commission has issued such a no-action letter applicable to its non-public registered broker-dealers through the end of the first annual period beginning after December 15, 2003 [\[1\]](#), in order to provide such broker-dealers adequate time for any necessary amendment of agreements and capital structures that provide mandatorily redeemable interests. As you have stated, without equivalent relief for non-public futures commission merchants the existence of mandatory redemption provisions may cause equity to be reclassified as debt under FAS 150, which may then cause such entities to be in non-compliance with Commission minimum capital and debt-equity ratio standards.

The Division agrees that this issue, identified by the Securities Industry Association with respect to broker-dealers, may be equally applicable to non-public futures commission merchants. Accordingly, the Division will not recommend enforcement action to the Commission with respect to any non-public futures commission merchant that does not reclassify as debt mandatorily redeemable interests under FAS 150 for the first annual period beginning December 15, 2003, for the purpose of Commission regulatory minimum capital computations and debt-equity ratios. This temporary relief shall no longer apply for fiscal periods beginning after December 15, 2004. In addition, this temporary relief shall only apply to entities’ regulatory computations of net capital and debt-equity ratios and not to any other financial statements of the entity prepared in accordance with generally accepted accounting principles. In addition, any non-public futures commission merchant that intends to rely on this no-action relief with respect to its computation of minimum net capital and debt-equity ratios should inform its designated self-regulatory organization of its intention.

The position taken herein is based upon the representations that have been made to DCIO. Any different, changed, or omitted facts or conditions might require DCIO to reach a different conclusion. Further, this letter represents the position of DCIO only and does not necessarily represent the views of the Commission or any other division or office of the Commission.

If you have any questions concerning this correspondence, please contact Jennifer C.P. Bauer or Thelma Diaz, attorneys on my staff, at (202) 418-5430.

Very truly yours,

Thomas J. Smith  
Associate Deputy Director  
and Chief Accountant

---

[\[1\]](#) Letter from Michael A. Macchiaroli, Division of Market Regulation, to Marshall J. Levinson, Securities Industry Association, dated Feb. 19, 2004.