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April 22, 2003

COMMENT

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21ST Street NW
Washington DC 20581

Re: Proposed Amendments to Rule 1.35(a-1)(5)—Post-Execution Allocation of Bunched Orders, 68 Fed.Reg. 12319 (March 14, 2003)

Dear Ms. Webb:

J.P. Morgan Futures Inc. ("JPMFI") welcomes the opportunity to comment on the Commodity Futures Trading Commission's ("Commission's") proposed amendments to rule 1.35(a-1)(5), 68 Fed.Reg. 12319 (March 14, 2003).¹ The amendments modify the terms and conditions by which account managers may allocate by the end of the trading day futures and options contracts executed through bunched orders on behalf of multiple clients.

JPMFI commends the Commission for promulgating these amendments. For the reasons detailed in the comment letter of the Futures Industry Association ("FIA") dated April 18, 2003, JPMFI recommends that the Commission adopt the amendments as proposed.

JPMFI believes the proposed amendments appropriately modify the terms and conditions of the existing rule that are unnecessarily cumbersome, while maintaining requirements that will allow the Commission and self-regulatory organizations to meet their responsibilities of assuring client protection.

The proposed amendments respond to the concerns about the terms and conditions of the current rule that the FIA and the futures industry had previously raised with the Commission, and reflect more accurately the changing market environment. The amendments are also consistent with the "Recommendations for Best Practices in Order Entry and Transmission of Exchange-Traded Futures and Options Transactions", issued by the National Futures Association and Futures Industry Institute in February of 2001.

As stated, the proposed amendments will continue to provide for client protection. For instance, the rule requires that the "allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors". Additionally, the record keeping requirements to which account managers and FCMs will be subject will permit the relevant regulatory and self-regulatory authorities to conduct audits of account managers to confirm that they are conducting their trading activities in accordance with the requirements of the rule.

¹ JPMFI is one of the largest futures commission merchants ("FCMs") in the United States, and maintains an exclusively institutional client base. Through its own memberships and its extensive network of affiliates, JPMFI offers clients access to the leading futures exchanges around the world.



Further, in addition to the other requirements to which FCMs generally are subject, FCMs are required to "maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated." Therefore, the records required to be maintained by the proposed amendments will allow the relevant regulatory and self-regulatory authorities to conduct audits to assure compliance with the rule for the protection of account managers' clients.

The proposed amendments also address various aspects of the current rule that account managers have found inhibit the fair and efficient execution of orders, without diminishing client protection. For example, the class of eligible account managers has been expanded to include managers that are excluded or exempt from registration with the Commission or the applicable securities regulatory authority. Additionally, foreign advisors with no U.S. clients, if eligible, previously would have needed their foreign regulators to provide certain certifications to a Commission registrant.

The proposed rule also eliminates the certification from eligible account managers to FCMs clearing a trade which is required to state that account managers are aware of and will remain in compliance with the requirements of the rule. The purpose of the certification was to assure that account managers, who have overall responsibility for compliance with the eligible order provisions, were cognizant of and would comply with the provisions. The elimination of the certification does not change account managers' obligations in this regard, and should have no adverse effect on client protection. However, it does confirm that the obligation to assure that allocations are fair and equitable rests with account managers and not with the FCMs that clear client accounts. Although FCMs do have an obligation to monitor client accounts for unusual account activity, in the absence of such activity, FCMs do not have the ability to assess whether account managers are treating their clients fairly. An FCM has an incomplete picture of account managers' trading activities on behalf of their clients, and has no ability to make judgments with respect to the fairness of such trading. Given the widespread use of give-up agreements, electronic trading and client accounts cleared through multiple FCMs, only the account managers, fiduciaries of the clients, have all of the records and other information that permit such an analysis.

JPMFI believes that the proposed amendments permit the Commission and self-regulatory organizations to assure client protection, while modifying the terms and conditions of the existing rule that are unnecessarily cumbersome. JPMFI, therefore, encourages the Commission to adopt the amendments as proposed. If the Commission has any questions concerning the comments in this letter, please contact David Sturm, JPMFI's Manager of Legal and Compliance, at (212) 623-3391.

Sincerely,

Richard Berliand
Chairman of the Board
J.P. Morgan Futures Inc.