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Office of the
Secretariat

October 30, 2012

Mr. David A. Stawick
Secretary of the Commmission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

COMMENT

Re: Comment Letter
17 CFR Parts 3, 32 and 33 (Commodity Options)
RIN No. 3038-AD62

Dear Sirs:

INTL FCStone Inc. (NASDAQ: INTL) provides risk management solutions to thousands of small to mid-size commercial enterprises. These risk management solutions, which are offered through FCStone LLC and INTL Hanley LLC, include exchange-traded futures, options, and OTC swaps.

A sector of our client base includes small energy consumers such as taxi cab companies, beer distributors, soft-drink distributors, municipalities, and farmers who, given the size of exchange-traded instruments, effectively cannot use the futures markets to hedge their energy price risk.[i] These customers likewise lack (and could not economically construct) physical storage facilities to buy and store substantial quantities of fuel in advance, although fuel price fluctuation is a core risk associated with their businesses.

Because exchange-traded instruments are not effective risk management tools for these customers, they have historically relied on the Commission's Part 32 Trade Option exemption and OTC markets to provide a solution: namely, financially settled options, which allow them to hedge their gasoline/diesel requirements six to eighteen months out. At least 75 INTL FCStone customers have used financially settled trade options to hedge commercial risk in the past year. Not all of these customers qualify as Eligible Contract Participants ("ECP") under the Commission's rules. However, all are "commercial user(s)" or "merchant(s) handling the commodity," and are "entering into the transaction solely for purposes related to [their] business as such."

The Commission's Interim Final Rule relating to Trade Options, issued on April 27, 2012, severely curtails these customers' access to the OTC markets. First, it limits the Trade Option exemption to

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physically (rather than financially) settled options. Second, it limits access to financially settled OTC options to ECP-only transactions.

In the Rule release, the Commission has requested comment on a number of questions, including the following:

> *1.Generally, does the interim final rule issued herein provide an appropriate regulatory framework for trade options?*
>
> *2. Regarding the trade option exemption, will such provision preserve appropriate hedging opportunities for current users of the trade options market? Is there any reason not to retain the trade option exemption as issued herein?*

On behalf of itself and customers, INTL FCStone respectfully submits that the Interim Final Rule does not preserve appropriate hedging opportunities for current users of trade options; and that curtailing access to financially settled options for trade option participants is neither required nor wise.

The Commission has acknowledged its authority to extend the trade option exemption to financially settled options. ("Similarly, the Commission could have elected to make the exemption available for trade options that, if exercised, result in either physical or financial settlement of the option.") Nonetheless, the Commission has stated there are two reasons why it has elected to exclude financially settled options from the rule. First, the Commission has stated that it "limited the condition to physical settlement out of a concern that if it allowed financial settlement, parties could evade the requirements otherwise applicable to swaps by merely labeling their transaction a trade option even though it was unrelated to their business as a commercial." This concern, however, has already been addressed, both through the anti-evasion provisions of Dodd-Frank, and through the continuing requirement that the offeree of a trade option be a producer, processor, merchant, or commercial user of the underlying commodity that uses the option solely for purposes related to its business.

Second, the Commission stated "that the trade option exemption is rooted in a need by commercials to hedge the price risk of physical commodities, including but not limited to agricultural and energy commodities. Permitting financially settled trade options would make this market, which is used for making or taking delivery of physical commodities needed for a commercial function, indistinguishable from the financial world of swaps and futures." However, as the Commission is well-aware, there is no clear demarcation between the "financial world" of futures and swaps, and the physical market. Actual delivery still occurs in some instances on the exchanges. Trade options and swaps can likewise result in physical delivery. In the end, the distinction to be drawn is the one sensibly made in the Commission's original trade option rule: not whether the trade option physically or

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financially settles, but rather, whether the transaction is entered into to hedge or mitigate a commercial risk.

By limiting the exemption to options that settle physically, the Commission appears to presume that existing market participants use trade options solely to source physical product (hence, the physical delivery requirement). In reality, rather than being used as a sourcing mechanism for physical fuel, small commercials use financially settled trade options to hedge. An unintended consequence of the physical delivery requirement (at least with respect to the long fuel options our customers employ) is to favor larger commercial enterprises which currently own or could build storage, squeezing out smaller enterprises for whom the building of excess storage is not economic. There is no history of option offerors engaging in abusive conduct with respect to trade option customers. There is likewise no systemic risk introduced by the use of trade options (particularly financially settled long options) because customers pay in advance and have limited risk of loss. In sum, by limiting the Trade Option exemption proposed in the Interim Final Rule, the Commission has eliminated a beneficial risk management tool for a group for whom reasonable alternatives are not available, and for no identifiable benefit to any party.

For all of these reasons, we urge the Commission to reconsider the scope of the Trade Option exemption, and permit the execution of long OTC options (either financially or physically settled) where the offeror is an ECP or commercial, and the offeree is a commercial entering to the option to hedge or mitigate a commercial risk.

Regards,

Pete Nessler
Executive Vice-President, Commodities
INTL FCStone, Inc.

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[i] The futures contract is 42,000 gallons. Our typical farmer customer hedges approximately 10,000 gallons of fuel to be used in connection with his agricultural business. Our small customers who purchase gasoline from service stations (such as taxi cab companies) typically hedge 7,500 gallons per month.