1251 NW Briarcliff Parkway
Suite 800
Kansas City, MO 64116
USA
Tel: (816) 410-7120
Toll Free: (800) 255-6381
www.intlassets.com / www.fcstone.com

February 15, 2013

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington DC 20581

Re: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,
77 Fed. Reg. 67866 (November 14, 2012); RIN 3038-AD88

Dear Ms. Jurgens:

INTL FCStone, Inc. and its affiliates (collectively, "**INTL FCStone**" or the "**Company**") thank the Commodity Futures Trading Commission (the "**Commission**" or "**CFTC**") for the opportunity to comment on the proposed rule regarding Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivative Clearing Organizations (the "**Proposed Segregation Rule**").[1]

INTL FCStone is a financial services company that provides its 20,000 plus customers across the globe with execution and advisory services in commodities, capital markets, currencies, and asset management. The Company is publicly held, with a market capitalization of approximately $330.0 million and adjusted operating revenues of approximately $464.5 million for the twelve months ended September 30, 2012. FCStone, LLC ("**FCStone**") is a wholly-owned subsidiary of INTL FCStone and is registered with the National Futures Association (the "**NFA**") as a Futures Commission Merchant ("FCM").

Over the last five years, FCStone has historically been ranked in the top 20 FCMs in terms of average customer equity, with approximately $1.54 billion in 2012 and $1.35 billion in 2011. However, FCStone's larger competitors are many multiples of this size, making it fair to characterize FCStone as a small-to-mid-sized FCM. Unlike many of the big banks and other financial institutions that are FCMs, a significant portion of FCStone's clients are farmers, elevators, processors, merchants, and end-users of

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[1] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivative Clearing Organizations, 77 Fed. Reg. 67866 (November 14, 2012) (the "**Proposed Segregation Rule**").

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agricultural commodities. Mitigation of commodity price risk is critical to the success of these market participants. This mid-sized commercial customer base in aggregate produces, processes, merchandises and/or uses a significant portion of U.S. domestic agricultural production.

FCStone has noted the CFTC has proposed significant and numerous changes to customer protections, risk management programs, disclosure requirements, and auditing and examination programs. FCStone has focused its comments on changes relating to customer protections and disclosures at this time.

Although enhancing customer protections for future market participants is a laudable goal and one which if done properly we fully support, the anticipated benefits of the Proposed Segregation Rule must be carefully weighed against the impacts these proposed rules will impose on an already distressed industry. Regard must also be given to the effect that the proposed rules will have on competition, insofar as onerous capital requirements may force smaller FCMs out of business, leading to increased market concentration and greater systemic risk.

In addition, the ultimate cost of these changes will be borne by the customers of the FCM's which choose to remain, as these changes will necessitate that FCM's require their customers to maintain margin excess over exchange minimum requirements sufficient so that one day price movements in the commodities they trade do not cause their accounts to go into margin deficiency. This will in turn necessitate a significant increase in the capital required by these customers to maintain the hedge positions which underlie their core business and thus increase their cost of hedging their commodity price risk. Such an increase in costs will in turn require them to source additional capital, or in the event this is not feasible or cost efficient, they will have to limit the underlying volume of commodities which they deal in or choose to not hedge the commodity risk which they do have. As detailed below, it is FCStone's view that negative market impacts associated with certain aspects of the Proposed Segregation Rule far outweigh the purported benefits to be achieved.

Proposed Amendments to Reg. 1.17: Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

Capital Charges for One Day Outstanding Margin Calls

In the proposed rule, the Commission proposes modifying Regulation 1.17(c)(5)(viii) and (ix) to require an FCM to take a capital charge for the accounts of customers, noncustomers and omnibus accounts on margin call more than one business day after the margin call is issued. The stated rationale of the rule is to encourage

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prudent risk management by FCMs, and presumes a technological ability to obtain customer funds by wire transfer within 24 hours (irrespective of the customer profile, time zone differences, or location around the world). In reality, FCStone still receives checks from farmers and other agricultural clients. In addition, a sizable portion of our clients meet margin calls through ACH payments, which typically cost the customers significantly less than a wire transfer. If a customer executes an ACH, there is always a one day lag in receiving the funds. FCStone also has numerous foreign customers whose holidays fall on differing days than the US. These customers cannot initiate a same day wire transfer in instances where U.S. banks and markets are open, but the foreign banks are not (which is why settlement for foreign wires routinely is "t plus one".) In this same manner, when exchanges remain open on days where U.S. banks are closed due to a holiday, no domestic or foreign customers would be able to meet a same day margin call on their open positions. It would not appear reasonable for the CFTC to require an FCM to introduce more capital when the FCM has had no chance to even receive funds from its customers.

To avoid capital charges for foreign or small domestic accounts where margin calls cannot feasibly be met in a 24 hour period for the reasons noted above, FCMs like FCStone would need to demand substantial excess margin from such customers to account for potential margin calls that have not been made, but which may occur at some point in the future (in effect, requiring "pre-funding" of anticipated market movements in excess of current margin requirements.) As such, while the new capital rule is purportedly intended to incentivize FCMs to manage risk in a more prudent fashion, its practical effect would be to impose liquidity demands and heightened costs on less sophisticated customers and non-US clients in exchange for a supposed benefit that is neither quantifiable nor verifiable.[2] At minimum, the Commission should consider adding one additional day for ACHs and foreign wires to be adequately processed before a capital charge is imposed on accounts on margin call. It would appear counter productive to mandate an FCM take a haircut on capital resources in instances where the FCM knows the funds are in process from the customer.

Margin Deficit Reporting

Other fundamental changes proposed in the new rules, alters the manner in which the segregated fund/secured fund calculation is prepared by an FCM. Under the new

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[2] In 2008, FCStone instituted a policy of making intra-day margin calls on its largest agriculture hedging customers to protect the FCM from risks associated with volatility in the agriculture markets. However, it would not be operationally feasible for FCStone to perform intra-day margin calls on all of our approximately 15,500 customers in a timely manner.

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Rule 1.22 Use of Customer Futures Funds requires an FCM to maintain at all times its residual interest in futures customer funds in excess of the sum of the margin deficits of all its customers as noted above. An FCM's customers would ultimately bear the brunt of these costs, as the pre-funding of potential margin deficiencies would become the norm in the industry and it is our opinion agricultural producers would suffer from the burden of these pre-funding margin requirements.

It would also appear the CFTC is changing the value of an account which would have sweeping changes for valuing an account for the customer and for the FCM. Currently a customer statement details the net liquidating value of the customer's account, which includes the cash and collateral on deposit from the customer plus the market value of open futures and option positions. However, under the new rule, it appears the CFTC is proposing any margin deficits being added to the customer account thereby changing the value of the account by recording the deficit margin requirement. This change in valuation may have significant impacts to both tax treatment and balance sheet treatment of a customer's account. It is unclear to FCStone if that is the intent of the proposed rule-making by mandating, "an FCM to record in the accounts of its futures customers the amount of margin required for such customers' open positions".[3]

FCM Representations Regarding Ability to Continue as a Going Concern

FCStone noted the proposed amendments to Rule 1.17(a)(4) specifying the CFTC may request in writing from an FCM that it has sufficient liquidity to continue as a going concern, and that if such certification is not provided immediately or the FCM is not able to demonstrate its access to liquidity with verifiable evidence, the FCM must transfer all customer accounts and immediately cease doing business as an FCM. Further clarity should be provided with respect to the exigent circumstances allowing such action to be taken, given that the proposed rule provides the Staff with authority to shutter an FCM based on wholly undefined and subjective criteria without allowing for any due process.

Standardized Acknowledgement Letters

FCStone supports the use of standardized acknowledgement letters for both its banking and carrying broker relationships. However, the current proposed acknowledgement letters do not appear to allow for "daylight overdrafts". Today, a customer receives a margin call via account statements, which are transmitted overnight. The customer then wires in funds the following day. However, a designated clearing organization automatically drafts the funds from the customer account at 9:00 AM on the basis of the banks permitting an intraday "daylight overdraft" until funds are actually

[3] Rule 1.20(i) narrative

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received from the customer. By not specifically permitting banks to allow for daylight overdrafts in the current proposed acknowledgement letter, the Commission is, in essence, requiring FCMs to "front" all funds for all customers in all commodities until wire transfers are received. The liquidity strain that this change would cause would be substantial, and could threaten the continued operations of small to mid-sized FCMs not affiliated with banks. The proposed acknowledgement letter also would detrimentally impact foreign commodity brokers, who would be unable to satisfy the 24 hour a day requirement requiring immediate response to requests from the CFTC and other prompt requests. Further clarification in the proposed acknowledgement letter should be made to take account of time zone differences, geographic locations, and similar factors for these important but dispersed market participants.

FCStone has noted over the past several years numerous banking institutions have exited the industry and it appears more prescriptive rules will likely drive further participants out of this industry. If new rules lead to less bank facility opportunities for the FCM community, the CFTC maybe introducing systemic risk into the industry by having all or a majority of all customer funds held at a handful of banks.

Proposed Amendments to Reg. 1.55: Public Disclosures by Futures Commission Merchants

Although FCStone LLC supports the concept of public access to significant financial information regarding the health and financial status of FCMs, the timing and content of certain Firm Specific Disclosures under Reg. 1.55 appear to be overly broad. The proposed rule requires an FCM "to update the Firm Specific Disclosure Document as necessary to keep the information accurate, but at least on an annual basis". However, certain information required in the Firm Specific Disclosures (i.e., the number of customers that comprise 50 percent of the firm's total customer segregated and secured amount requirements, or any material administrative, civil, criminal or enforcement actions pending or any enforcement actions taken in the last three years)[4] are subject to constant change, essentially creating a requirement of continuous disclosure. This requirement is in excess even of that required under the periodic disclosure regime

[4] There is also little benefit to the public, and substantial harm that could result, from disclosure of pending, but unresolved, administrative or enforcement proceedings. In a heavily regulated industry, FCMs are the subject of many regulatory inquiries, which may or may not be resolved with no action against the company. Reputational injury associated with disclosure of matters where the FCM is ultimately found not to be at fault would be a negative and unintended consequence of the rule. In addition, FCMs frequently receive grand jury subpoenas and CFTC and exchange requests relating to customer activity which may or may not involve a failure to supervise on the part of the FCM. Disclosure of these investigations prematurely because of the Firm Specific Disclosure Requirements will undermine legitimate law enforcement and regulatory objectives. As such, FCStone recommends that the Firm Specific Disclosures reference only concluded regulatory investigations in the preceding three years, and not "pending" matters.

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established by the SEC for public companies. As an alternative, FCStone recommends that FCMs be required to update Firm Specific Disclosures quarterly, much like the public company model. Any material changes in FCM operations that would give rise to the need for heightened DSRO or CFTC monitoring should already be identified through the reports required by rules if an FCM is under-secured, under-segregated, or has failed to maintain the required regulatory capital.

FCStone also believes the complicated nature of the some of the required disclosures noted in this rule such as Rule 1.12 notices, are such that their disclosure to the public would be mis-leading or potentially misunderstood by the general user of commodity futures and options markets.

Other Issues

Other issues with this proposed rule-making are the current policies of the designated contract markets and designated clearing organization to set margin requirements relatively lower than the limit move in the particular commodity exposing the FCM to cover that potential exposure if that market would move against the FCM's customer base. As such we recommend that price limits be set at levels equal to or below the margin requirement in all commodities to mitigate the potential for under margined customer positions. In addition, FCStone believes on days when markets are open and banks are closed systemic risk is introduced into the industry as a whole. The CFTC should consider ensuring markets are closed on days when U.S. banks are closed. Neither an FCM, nor its customers can facilitate the movement of funds on these days; however, customer margin balances can fluctuate significantly on such days leading to margin deficiencies and net liquidation deficits.

Please let me know if you have any questions.

Sincerely

William Dunaway
Chief Financial Officer

cc. Chairman Gary Gensler
Commissioner Mark Wetjen
Commissioner Bart Chilton
Commissioner Scott O'Malia
Gary Barnett, Divison of Swap and Intermediary Oversight
Kevin Piccoli, Division of Swap and Intermediary Oersight

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Thomas Smith, Division of Swap and Intermediary Oversight
Ananda Radhakrishnan, Division of Clearing and Risk
Robert Wasserman, Division of Clearing and Risk