Commodity Firms Regulatory Capital Working Group response to second part of CEBS Technical Advice to the European Commission on the Review of Commodities Business under Article 48 of Directive 2006/49/EC

The Commodity Firms Regulatory Capital Working Group (CFRC WG) is is a joint task force set up by ISDA[1], EFET[2] and the FOA[3] to discuss the prudential treatment of commodity firms in the EU. The London Investment Banking Association (LIBA) is represented on the WG in an observer capacity. The CFRC WG comprises 21 commodity firms active in the European energy and metal markets. The CFRC WG does not purport to represent soft commodity traders and continues to recommend that the Commission and CEBS contact them or their trade bodies directly. A full list of CFRC WG member firms is located in Appendix 1.

The CFRC WG welcomes the second part of CEBS's technical advice to the European Commission on the review of commodities business under Article 48 of Directive 2006/49/EC, and generally agrees with the points made within that paper. We welcome in particular the recognition that levels of systemic risk in these markets appear "significantly smaller". Notwithstanding the general support for the comments contained within the CEBS paper, the CFRC WG has identified some areas which we feel require further clarification, and some points which we still believe to be misleading or incorrect.

GENERAL OBSERVATIONS

Level Playing Field

The paper contains several references to the concept of a "level playing field" without adequately defining the term or justifying why such a state is necessarily desirable. It is clear that some parties involved in the ongoing investigation into the commodities markets believe that a level playing field can only be achieved if all companies in a given market must follow the same rules and regulations.

The CFRC WG strongly believes that this position is unsupportable. The CEBS paper specifically notes[4] that the "magnitude [of systemic risk in specialist commodities firms] appears significantly smaller relative to the systemic risks posed by banks and ISD investment firms". In this light, the continued insistence of some respondents that commodities firms should be subject to the same regulation as banks and ISD investment firms is contrary to the principles of Basel II, that firms able to

[1] ISDA represents participants in the privately negotiated derivatives industry. ISDA was chartered in 1985, and today has over 700 member institutions from 50 countries. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the risks inherent in their core economic activities.
[2] EFET is a group of 80 energy trading companies from 18 European countries dedicated to promoting energy trading throughout Europe.
[3] FOA is an industry association for 170 firms and institutions carrying on business in futures, options and other derivatives. The FOA's membership notably includes financial institutions, commodity trade houses, energy market participants, fund managers, exchanges and clearing houses.
[4] Executive Summary, paragraph 12

demonstrate reduced levels of risk and/or greater risk management techniques should be rewarded with a reduced capital burden.

Furthermore, the CFRC WG believes that a "level playing field" is more about open rights of market access and the avoidance of market rules which prejudice the competitiveness of differentiated market participants. In applying that interpretation of what is meant by a "level playing field", regulatory "harmonisation for harmonisation's sake", which pays insufficient regard to the need for proportionality, actually undermines the competitive position of specialist firms operating solely in a specialist market (where, for example, reduced risk justifies commensurate reduction in required capital) as against those market participants which operate across a diverse range of markets (i.e. banks and ISD investment firms). Such disproportionate regulatory treatment has the effect of delivering an unlevel "playing field", is tantamount to protectionism and runs contrary to free and open market access principles.

We draw the attention of CEBS to the comment in the HM Treasury / FSA response to the Commission's Call for Evidence[5] that "Regulation only brings economic benefits where it addresses a market failure. Where the intention of adding regulatory burdens is solely to create a 'level playing field', it will give rise to net economic costs."

Consequently, the CFRC WG requests that the term "level playing field" be removed from the paper wherever it occurs or be used only in its context of delivering non-discriminatory rights of access.

Lack of distinction between specialist commodity firms and other respondents

The CEBS paper notes[6] that the findings are based on responses from, among other sources, "22 responses received from institutions, commodity traders, brokers, etc". The CFRC WG feels that the detailed comments in the paper frequently treat the above group as a single collective, and as such do not always fully reflect the differences in standard practice between specialist commodity traders and other market participants. Specific cases are highlighted in the detailed response below, but the CFRC WG feels that a summary note drawing the attention of the reader to the potential for these discrepancies would prevent the reader from drawing inaccurate conclusions from the information presented.

Lack of discrimination between commodities

The CFRC WG has made the point in various discussions with representatives of both CEBS and the Commission, that a review which considers "commodities" as a single unit overlooks the significant differences between the markets for different commodities. Comments which hold true for energy products need not apply to metals or softs, and within these broad categories further distinctions can be made between storable and non-storable commodities, base and precious metals and similar. Several of the objections to points made below stem from the fact that, while

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[5] HM Treasury/FSA response dated 30 April 2007
[6] Methodology, paragraph 6

applicable to a narrow range of commodities, they do not generally hold true across all, or even most, commodity markets.

Liquidity and the treatment of fixed assets.

The CFRC WG notes that no consideration has been given to the nature of fixed assets held by specialist commodity firms, and the way in which those assets interact with the risk profile and potential capital requirements of such firms. If the CRD were to be applied (as drafted) to certain fully integrated oil firms, the impact of prudential regulation on such firms would be to make any capital requirement unacceptable and totally disproportionate with the risks represented by the financial business they propose to regulate. It would consequently become essential that such firms dramatically restructure themselves to remove the assets in the shape of oil and gas fields, refineries, pipelines, offshore platforms etc – all of which have value on the balance sheet and are the fundamental reason for companies investing in oil companies – to create smaller, less financially robust vehicles for the purposes of trading and reducing the capital burden, all of which makes no sense. The alternative would be for such firms to relocate outside the EU.

Counterparty credit risk

The report gives the general impression that commodities derivatives business is characterised by a very high degree of counterparty credit risk resulting from a high proportion of OTC trading on the one and low risk mitigation on the other hand. Some descriptions (e.g. practise of collateralisation) are wrong (see detailed comments). Against the background of this overestimation of credit risk the conclusion drawn (existence of systemic risk) is not correct.

Limited scope of CFRC WG response

The CFRC WG wishes to make it clear that this response deals only with the issues directly arising from the CEBS paper, and that we reserve the right to respond with further concerns and observations as the positions of CEBS, CESR and the Commission develop in regard to the ongoing commodity review.

SPECIFIC COMMENTS

EXECUTIVE SUMMARY

Paragraph 9: The statement that "risks arising from commodities business and the risk in other financial markets are *generally the same*" is ambiguous insofar as, while it is true that the classes of risk are the same, the levels of risk and therefore the actual risks in fact can be fundamentally different. Although this point is touched on in other parts of the report, the CFRC WG feels that it is important to highlight the different levels of risk in this general early statement.

Paragraph 10: While it is true that markets for the underlying can be regionally subdivided, these markets can also be divided, depending on the underlying commodity, in terms of quality and perishability. Stressing only the regional divisions gives a false impression of the nature of international markets in some commodities.

Furthermore, the extent of the risk to a market participant does not depend solely on its risk appetite but also on the existence of "natural" positions since the market is not complete. There are natural positions that cannot be fully hedged by (forward) markets, e.g. hourly load shapes in power.

Paragraph 11: The CFRC WG disputes the claim that "despite the use of risk mitigation techniques, significant counterparty credit risk (CCR) arises". The risk mitigation techniques used by market participants have proven sufficient to address the level of risk faced by market participants. We note below (paragraph 51ff) that the techniques used by specialist firms are not always those adopted by non-specialist firms to which the CRD already applies, but suggest that mitigation techniques recognised by existing regulation are not the only effective techniques, and the observation that specialist firms do not manage CCR in the same manner as banks and ISD investment firms does not imply that the methods used are insufficient to adequately mitigate the risks faced.

Paragraph 12: The CFRC WG welcomes the conclusion that the systemic risk posed by specialist firms in these markets appears "significantly smaller" than that posed by other firms. However, the assertion that the interconnections can give rise to systemic risk concerns is overestimated given the applied credit risk mitigation techniques.

Paragraph 13: The CFRC WG welcomes the conclusion that direct contact between specialist firms and retail clients appears negligible.

Paragraph 17: The observation that "hedge funds can and do expose their counterparties to substantial CCR" may be true, but we find this statement misleading. It would be an exception for commodity firms to have significant CCR to hedge funds, not least because the commodity firms do not have the resources to provide the financing that enables the hedge funds to achieve leverage on the activities. Hedge fund credit exposure in most case, therefore, will be limited to major banks that are able to offer the prime brokerage relationship. Hence the risk posed by hedge fund involvement in the market is born by those institutions already subject to the CRD, and adequate capital is presumably already held to protect against the potential impact of significant hedge fund failure.

Paragraph 19: The Market Risk and Operational Risk columns in the table contain risk management tools, while the CCR column contains a blend of risk mitigants (clearing houses, exchanges) and management tools. We suggest that the table be redrawn to highlight this distinction and request that both parent company and bank guarantees be added as CCR mitigants.

Paragraph 24: The CFRC WG welcomes the comment that "it may not be proportionate to extend the full scope of prudential requirements to all of [the market participants]", but questions the further clarification that this applies "in particular in respect of physical production and delivery". It is not the place of financial regulators to impose regulation on the physical market, and yet this comment suggests that such remains a possibility. We therefore request that the second part of this statement be removed.

PART A: INTRODUCTION

Paragraph 26: The CFRC WG agrees with the assertion that “systemic risk is the paramount concern”, and feels that this point should be highlighted in the executive summary of the report as that summary does not emphasis the relative importance of different risks to the question of prudential regulation.

Graph 1: The graph appears to have been distorted with the “product market” caption repeated.

PART B: RISKS ARISING FROM COMMODITIES MARKETS

Paragraph 37: It is not clear what point is being made here. The paragraph appears to suggest that regional restrictions on the underlying are sufficient to differentiate between sub-markets, but that neither the location of the markets nor the contract type are sufficient by themselves. If the contract type and location of the market are eliminated then what regional restrictions apply? Furthermore, what is the significance of determining individual sub-markets, and how does this point contribute to the overall review?

Paragraph 39: This paragraph implies significant recent change in market practice, and gives misleading emphasis to that change. The CFRC feels that a more developed analysis of practice by exchange would provide the necessary balanced view. For example, on the LME all Forward Contracts are capable of delivery. Therefore if there is a position on Settlement Day deliveries will be made. If the position is square then financial settlement of the differences will be made. In December 2006 the LME commenced trading Mini contracts in Copper, Aluminium & Zinc (“Mini” means the lot size is 5 tons as opposed to 25 tons). However, these contracts are Cash settled, which means they do not go to physical delivery. All positions are settled by a net cash payment/receipt.

Paragraph 40: The comment that “subdividing the forward markets into a market for financially settled and a market for physically settled forward transactions does not seem to be appropriate” suggests two possible approaches to regulation, that it may be extended to neither or to both markets.

The CFRC WG does not believe that expansion of scope of regulation by financial regulators to cover the physically settled market is appropriate. Furthermore it has to be taken into account that physical and financial products are managed together whereas financial derivatives are mostly used to hedge physical assets. Disentangling both and treat them differently does not make sense from a risk management perspective.

Given the inappropriateness of regulation covering the physical markets, the observation that physical and financial markets cannot be readily separated supports our argument that financially settled commodity markets should only be subject to a limited scope of financial regulations and should not be subject to capital adequacy requirements designed for banks and other financial institutions. The CFRC WG supports this conclusion drawn from the above observation.

Paragraph 48: The example of exchange traded transactions (in brackets) does not apply to the LME

Paragraph 49: The response may be taken as implying that delivery delays in commodity markets are the result of inefficiency on the part of market participants. The CFRC WG requests that the cause of delays is clarified in the text, for instance the delays in the power market arise from the necessary metering/measuring process which has no equivalent in purely financial markets.

Paragraph 50: The table has a row dedicated to "Other metals" with no other metals appearing. What "other metals" are included within this category, and to what are they considered "other"? In addition, there is no source provided for the OTC volumes. Do all of the figures come from a single source and are they all calculated on the same basis?

Paragraph 51: Footnote 2 refers to the LME not requiring clearing that includes frequent margining requirements. This is incorrect as all Exchange Traded contracts between LME/LCH members are cleared by LCH.Clearnet. There is no concept of credit given by the LCH to its members. The LCH fully margins its members by calling for a combination of Cash, acceptable Bank Guarantees and acceptable Government Securities. It is not for the LME as an Exchange to dictate whether their members margin their customers fully or give credit. The majority of LME members' customers are not LCH members, therefore it is not possible to clear their trades through a central clearing system.

Paragraph 52: The CFRC WG considers it unreasonable to suggest that market participants are unwilling or unable to comply with margining requirements. The reality is that these requirements are sometimes calculated according to out-of-date systems and are not always properly measuring true market risk. The result is that the premium to be paid by market participants for clearing as a risk mitigant is out of proportion to the true risk posed by counterparties. As a result, they are discarded as a cost-effective methodology for managing counterparty risk. This was, for example, the case with the LCH offering for clearing power market trades.

Paragraph 53: This paragraph only describes the exemption to the rule, while true for some commodity firms is not true for all entities, particularly larger companies, and constitutes a potentially misleading generalisation. Some bigger entities usually mark-to-market bilateral agreements on a daily basis and require collateral in cash or via a bank guarantee if certain limits have been exceeded. The text does not make it clear that the decision to use bi-lateral agreements without collateral is dependent on external and internal credit ratings, and they are only used with highly rated counterparties. The CFRC WG feels that this information should be included in the paper to ensure that firms are not assumed to be accepting undue levels of risk – this is not as significant an issue as the comments in the response paper suggest.

Paragraph 57: The phrase "a significant volume of positions" is imprecise and, the CFRC WG believes, inaccurate. Some specialist commodity firms cover many exposures through collateral, with the extent of collateralisation varies from firm to firm and market to market, although the firms accept that not all of this collateral is

recognised by existing regulatory capital rules. For example, some firms utilise delivery amounts for this purpose. This distinction between the relatively narrow definition of collateral under existing regulation and what the specialist firms view as current best practice underlies arguments for a more nuanced regime for specialist firms.

In support of this position we refer CEBS to the KPMG report on the impact of the CRD on commodity firms[7], paragraph 4.3 of which deals with this issue in detail.

Paragraph 58: Enron owned physical assets and so was not solely an intermediary as this paragraph suggests. The passage goes on to state that in "most cases market prices are impacted…" The CFRC WG believes that, with the exception of Enron, there are no significant cases on which to base any generalisation and requests that further details be provided to support the claims made.

Paragraph 62: As noted in our comment on paragraph 10, the possibility of hedging natural positions is limited since markets are incomplete. As a results there will always exist a certain degree of basis risk and residual risk.

Paragraph 66: This paragraph addresses concerns over operational risk arising from physical settlement. At present, physical settlement is outside the scope of financial regulation and the CFRC WG believes that discussion of the risks in this area, which are themselves the purview of the physical regulator, is misleading and suggests that the unregulated risks facing specialist commodity firms are greater than is actually the case.

Paragraph 67: Legal risk is a category of operational risk as defined by banking regulators and should not be included as a separate category here. Master netting agreements are provided by many trade associations (including ISDA and EFET, as specifically identified, and the FOA). These agreements are supported by legal opinions for a wide variety of jurisdictions covering the EEA and beyond, which adequately address the "non-negligible degree of legal uncertainty" for regulatory purposes. If CEBS believes that the level of legal certainty provided by these opinions is insufficient then that is an issue which extends beyond the scope commodity markets alone and should not be used as an example of unmitigated risk within those markets. It should be noted, however, that such legal opinions are already acceptable to regulatory authorities as a sufficient criterion for recognising firms' netting arrangements.

Paragraph 68: The CFRC WG notes that the Metallgesellschaft entity responsible for the near-bankruptcy of the group was a US subsidiary, MG Refining and Marketing. Discussing the impact of US regulated firms into a discussion of the EU/EEA market without appropriate notification may give a distorted view of EU commodities markets and market participants.

Paragraph 84: The assertion that from "significant mechanisms/relationships… between commodities markets and the wider financial industry" systemic risk

[7] Impact of the Capital Requirements Directive on Commodity Market Participants dated 30 January 2007. This was an independent report produced by KPMG and commissioned by the FOA. A copy of this paper is available at www.foa.co.uk/publications/index.jsp

concerns can be concluded seems exaggerated given the common risk mitigation practice.

Paragraph 87: The CFRC WG notes that the risk mitigation of clearing on exchange-traded contracts is applicable only in the case of exchange members, i.e. it does not - except in very unusual circumstances or in relation to particular types of clearing solutions - extend to the counterparty risk arising between exchange members and their customers.

The penultimate sentence reads, "However, exchanges do not reduce the portion of systemic risk that is caused by the impact of reduced liquidity…" This is not the purpose of any exchange covering any underlying.

Paragraph 91: The dichotomy between extensive PCR supervision of national power and gas markets, and the limited PCR supervision of oil, coal and fuel markets arises from the natural division of storable and non-storable commodities, with non-storable commodities naturally requiring greater supervision, and for the avoidance of doubt and such additional supervision should not necessarily be financial. It is not clear what point is being made here.

Paragraph 92: That PCRs are not concerned with systemic issues is indicative of the lack of systemic risk in the physical market. The PCRs help to mitigate operational risk relating to supply and delivery issues as noted under Paragraph 66. The CFRC WG suggests that these two paragraphs be cross-referenced or that the interrelated point be otherwise highlighted.

Paragraph 98: "Overall, there seems to be negligible direct contact between private clients and commodity firms." The CFRC WG agrees with this conclusion but requests that the distinction between specialist commodity firms and other market participants be stressed more clearly through paragraphs 94 to 97 so as to avoid presenting an unintentionally misleading impression of the risks to retail customers from specialist participants.

PART C: RISKS ARISING FROM THE ACTIVITIES OF FIRMS CARRYING OUT COMMODITIES BUSINESS

Paragraph 113: Under a), the CFRC WG notes that speculation in market prices and market price parameters does rather include vega (volatility) but not gamma factors.

Paragraph 123: Neither of the two Enron entities which were wound up (Enron Metals Brokers Limited and Enron Europe Finance and Trading Limited) had customers. EEFL was an arranger and the customer base of EMBL had already been transferred to Enron Metals. The CFRC WG is reliably informed that both of these entities were Solvent and continued to meet the FSA's solvency requirements. On this basis we question the need to refer to these entities, and specifically to imply that a lack of solvency resulting from inadequate capital lay behind their being wound up.

The CFRC WG considers the final sentence, "This demonstrates one of the benefits of holding regulatory capital", to be unsupported and extremely misleading. Enron Metals remained solvent in part due to the FSA's Chapter 3 regime, but this regime

does not include any requirements in respect of large exposures and in itself did not ensure the continuation of the company. The survival of Enron Metals was attributed internally to the ability of management to manage intra group exposures in spite of the lack of a regulatory requirement to do so, and as such depended on the existence of good internal controls and procedures above the existence of a fixed capital regime.

LME member firms note that trade with Enron continued because LCH confirmed Enron Metals remained a member in good standing. i.e. their margins were fully paid up and they therefore had sufficient bank lines to continue trading. This was crucial as, when contracts are registered by LCH, then LCH becomes the counterparty, and LCH will only register trades if the original counterparty has deposited sufficient margin. We note that margin money is separate from the "ring fenced capital" referred to in this paragraph.

Other firms noted also that it was the value of the assets, not the regulatory capital, in the form of long term supply contracts that kept them trading with Enron after it went into liquidation.

On the basis that no other points are made beyond the erroneous comments about the role of ring fenced capital in the survival of Enron Metals, we propose that this paragraph be deleted.

Paragraph 124: What evidence is there to support the assertion in the final bullet point, that "hedge fund strategies can have a significant effect on underlying commodity prices"? While it is true that large scale hedge fund involvement in the market may amplify price movements, the CFRC WG believes that hedge funds have the power to neither instigate price moves contrary to those driven by the demands of the physical market, nor counter those price movements once initiated.

Paragraph 136: No mention is made of the use of OTC clearing as a risk mitigant. Although this is used minimally and is only available in limited circumstances, it does remain a possibility.

Paragraph 139: The issue of regulators taking into account illiquid assets is critical in the context of specialist commodity dealers, where a large part of their asset base is in illiquid rather than liquid assets. They are assets of considerable value, but in the context of a "fair sale", have a limited market and a potential high write down in value. Even so, these assets are nevertheless of significant value and it is doubtful whether adequate allowance is made for them in the context of recurrent prudential regulatory framework.

Paragraph 144: Oil is listed as being seasonally affected due to fluctuation in demand. Because oil can be stored, it is not typically subject to the seasonal demand variations experienced by gas and power. We refer to our general comment above on the differences between commodities, even those which are apparently similar, and the dangers of generalising across all commodity markets.

Paragraph 150: We believe that the second sentence "A potential benefit…" is misleading as, although later refuted by the sentence "However, as described above…" it seems to suggest that spot prices are a reasonable basis on which to base

the maturity ladder for commodities firms. Since the conclusion of this paragraph is that spot prices are not reasonable for this purpose we request that the second sentence outlining the general benefits in other markets be removed.
The remainder of the paragraph concentrates on non-storable commodities. We request that the following observation be included in respect of storable commodities "For storable commodities, valuation at the forward price is also the preferred option for forward products since occasional shortages in supply often cause forward price curves to exhibit significant backwardation structures" in order to ensure a balanced review of the limitations of spot prices in all commodity markets.

Paragraph 152: The CFRC WG does not believe that commodity forwards are inherently or universally more volatile than non-commodity related products. For example, calendar products of power are less volatile than many FX currency pairs and the equity markets. Also, remaining delivery amounts of power are decreasing over time which deterministically reduces CCR.

PART D: ASSESSMENT OF THE POSSIBLE IMPLICATIONS OF REGULATORY CHANGES

Paragraph 162: The CFRC WG welcomes the additional clarification of the distinction between Category B and Category D firms, with Category D being a subset of Category B.

Paragraph 194: As previously noted, the CFRC WG does not believe that objection to a proposition on the basis that is fails to provide "a level playing field" is valid and requests that the sentence, "However, a level playing field would not be achieved" be removed.

Paragraph 197: The CFRC WG welcomes the assurance that, in light of the additional costs involved, "stricter rules would only be justified if the need for financial regulation was evident". However no further explanation of what might constitute such a need. Is it possible to outline what factors would be key in making this determination, given that the paper already recognises the significantly reduced levels of systemic risk posed by commodities firms?

Paragraph 202: The comment that "the conduct of commodities business has at least the potential to raise systemic risk concerns even if this risk has yet to be realised" is confusing and unproven. Systemic risk is, by definition, a risk that has yet to be realised, and "potential systemic risk" is a tautology. If it is the intent of this paragraph to suggest that the activities of commodities firms currently present no systemic risk at present (whether due to volumes or other factors) but may do in the future then the CFRC WG recommends that this paragraph be rephrased accordingly. In addition, the term "commodities business" is vague – does it refer to the combined commodities business of banks, investment firms and specialist commodities firms? If so, and if this impacts the overall level of systemic risk identified, we recommend that comments be split between specialist commodity firms and other market participants as per our general point above.

While it is impossible to provide evidence that no future weakness in commodities markets will impact the financial system, we note by way of example that in 2001 and 2002 the energy sector experienced an unprecedented number of defaults. In addition

to Enron, there were a significant number of defaults in the UK following the introduction of NETA in the UK power market (where power prices fell by around 40%) and a significant number of defaults in the US attributable to a variety of causes. Despite these numerous defaults there was no suggestion that these events created systemic risk to the financial sector. As such the CFRC WG feels that the onus is on regulators to explain why such a systemic impact is now deemed sufficiently likely in the future to justify an increased regulatory burden.

Paragraph 204: "...However, even a limited differentiated treatment of commodities business could easily result in a very complex regime. The resulting complexity would have to be carefully weighed against the supervisory gains." We would like to withdraw these sentences and replace it by this one: "The future regulation should allow all participants in commodity market to benefit from an homogeneous treatment, should they already be regulated or have the benefit of exemptions. A minimum would be that already regulated institutions should have the choice - that could be an option for them - to fall in the new regime for their commodity business. That possibility is essential to guarantee an equal competition between all participants.

The assumption that differentiation "could easily result in a very complex regime" is a curious conclusion. Differentiation could just as easily result in a simplified, proportionate regime which would, as a result, not be complex to those to whom it is applied. The CFRC WG requests that equal space be given to this possibility lest the impression be given that there is no potential time/cost benefit to a differentiated regime for firms or regulators.

Paragraph 211: The CFRC WG does not agree unconditionally with the final assertion that "The imposition of prudential risk requirements needs to be proportionate to the risks and independent of the ability of the firms to meet the requirements". While we accept that regulation should be proportionate to risk, to further suggest that the ability of firms to meet capital requirements is of no consequence raises the possibility that the broader market impact of regulation, and in particular inappropriate regulation, might be ignored and that damage to market liquidity could result. The CFRC WG therefore requests that the words "and independent of the ability of the firms to meet the requirements" be removed not insomuch as they are inaccurate, but rather in that they risk diminishing the obvious need for potentially damaging requirements to be sufficiently reviewed.