



DIVISION OF  
MARKET REGULATION

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

January 5, 2004

Mr. John J. Nicholas  
Vice President and  
Director of Securities Compliance  
Fimat USA, Inc.  
630 Fifth Avenue, Suite 500  
New York, NY 10111

Re: Short Option Value Charge Relief for Options on Interest Rate Futures

Dear Mr. Nicholas:

This responds to your letter dated September 27, 2002, and telephone conversations with staff of the Division of Market Regulation ("Division"), in which you request, on behalf of Fimat USA, Inc. ("Fimat"), relief from the deduction referred to herein as the "short option value charge," required by subparagraph (a)(3)(x) of Appendix B to Rule 15c3-1 under the Securities Exchange Act of 1934 (the "Exchange Act").<sup>1</sup> The short option value charge requires that a broker-dealer, when calculating net capital under Rule 15c3-1, deduct from its net worth four percent of the market value of certain options granted (sold) by option customers on or subject to the rules of a contract market.

I understand the relevant facts to be as follows: Fimat is registered as a broker-dealer with the Securities and Exchange Commission ("Commission") and as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC"). In connection with its business, Fimat provides institutional and individual clients with a range of hedging and investment products, including futures, options, and securities. In your letter, you represent that Fimat executes and clears transactions in options on interest rate futures for certain large institutional clients primarily engaged in commercial financial activities (*e.g.*, banks and mortgage companies). You represent that these clients often use options on interest rate futures to hedge against existing or future interest rate risk arising in their business activities. With regard to these clients, you represent that Fimat is often required to deduct significant percentages of its net worth pursuant to the short option value charge.<sup>2</sup>

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<sup>1</sup> 17 CFR 240.15c3-1b(a)(3)(x).

<sup>2</sup> The CFTC rescinded the short option value charge in subparagraph (c)(5)(iii) of its net capital rule, Rule 1.17 under the Commodity Exchange Act (17 CFR 1.17). *See* 63 FR 32725 (June 16, 1998). Because the requirements of Exchange Act Rule 15c3-1 and CFTC Rule 1.17 are both applicable to entities registered dually as broker-dealers and futures commission merchants, staff in the Division are reviewing deductions by broker-dealers under the short option value charge to determine what action, if any, should be taken to align the provisions of Rule 15c3-1 with Rule 1.17.

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Because the institutional clients referenced in your letter are well-capitalized, highly-rated financial institutions actively involved in commercial financial activities, you request relief from the charge that Fimat is required to take when these clients execute hedging transactions involving short options on interest rate futures. You represent that risk associated with short options transactions executed by these clients is actively monitored and controlled by Fimat on a daily basis.

Based on your representations, the Division will not recommend enforcement action to the Commission if Fimat, when computing its short option value charge under subparagraph (a)(3)(x) of Appendix B to Rule 15c3-1, does not include short options on interest rate futures that are part of a "bona fide hedging transaction," as that term is defined in CFTC Rule 1.3(z),<sup>3</sup> provided that such positions are carried for the accounts of customers that: (1) directly, or through affiliates, engage in commercial financial activities that result in exposure to interest rate risk; (2) have a net worth, computed in accordance with generally accepted accounting principles ("GAAP"), of at least \$50 million or are guaranteed subsidiaries of a parent that has a GAAP net worth of at least \$50 million; and (3) have investment grade ratings for senior unsecured long-term debt or commercial paper by a nationally recognized statistical rating organization or are guaranteed subsidiaries of a parent that has such ratings. This relief only applies to options on interest rate futures traded on boards of trade designated by the CFTC as contract markets under the Commodity Exchange Act, and does not alleviate Fimat from deducing the short option value charge on other short option positions carried by the firm when applicable.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the securities laws.

Sincerely,



Mark M. Attar  
Special Counsel

cc: Susan DeMando, National Association of Securities Dealers, Inc.  
Anne Glass, Chicago Mercantile Exchange Inc.

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<sup>3</sup> 17 CFR 1.3(z).