

# Joint Audit Committee

## REGULATORY UPDATE

TO: Chief Financial Officers  
Chief Compliance Officers

#09-01

DATE: February 10, 2009

SUBJECT: Covered Positions – Proprietary Capital Charge

The Statement of the Computation of the Minimum Capital Requirements requires the calculation of capital charges for open uncovered proprietary futures and commodity option contracts under CFTC Regulation 1.17(c)(5)(x). Additional clarification of the proprietary capital charge may be found within the Form 1-FR-FCM Instructions Manual.

In determining whether a particular open position is covered, the requirements of CFTC Regulation 1.17(j) must be followed. In general, open futures and commodity options may be covered with inventory or forward contracts when such represents a suitable substitute to the future or commodity option positions.

Additional forms of risk reduction may be applied to futures and commodity option positions; however, in some cases, these methods may not be appropriate for treatment as covered positions within the calculation of the proprietary charge. Swaps and various other instruments currently are not recognized as cover by CFTC Regulation 1.17. Also, open futures contracts may not be used to cover additional open futures contracts. All such open futures contracts are subject to a clearing organization's margin requirements, which are then included within the proprietary capital charge.

FCMs may request that the CFTC recognize risk reducing transactions or positions as cover for purposes of the proprietary capital charge. The request must be in writing and provide the detailed explanation required by CFTC Regulation 1.17(j)(3).

If you have any questions, please consult your DSRO.