

**NEW YORK
CITY BAR**

**COMMITTEE ON FUTURES
& DERIVATIVES REGULATION**

MICHAEL S. SACKHEIM
CHAIR
787 SEVENTH AVENUE
FLOOR 19
NEW YORK, NY 10019
Phone: (212) 839-5503
Fax: (212) 839-5599
msackheim@sidley.com

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DAVID A. FORM
SECRETARY
787 SEVENTH AVENUE
FLOOR 20
NEW YORK, NY 10019
Phone: (212) 839-5394
Fax: (212) 839-5599
dform@sidley.com

TO THE REGULATORS ON THE ATTACHED DISTRIBUTION LIST

Re: Joint notice of proposed rulemaking with respect to a new risk-based capital adequacy framework

The Committee on Futures Regulation (the "Committee") of the New York City Bar Association (the "Association") is pleased to provide comments on the joint notice of proposed rulemaking of the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation and Office of Thrift Supervision (collectively, the "Agencies") with respect to a new risk-based capital adequacy framework ("CAF") (71 Federal Register 55830 et seq. (September 25, 2006) (the "NPR")).

The Association is an organization of over 22,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in nearly every state and over 50 countries. The Committee consists of attorneys knowledgeable in the regulation of futures contracts and other derivative instruments and it has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities, including those affecting banks. The Committee appreciates the opportunity to comment on the NPR.

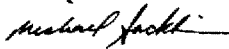
In the NPR, the Agencies note that currently, under the Agencies' general risk-based capital rules, a bank may not recognize netting agreements for purposes of calculating exposure under

over-the-counter ("OCC") derivative contracts for capital purposes unless it obtains a written and reasoned legal opinion representing that, in the event of a legal challenge, the bank's exposure would be found to be the net amount in the relevant jurisdictions. While proposing to retain this standard in the CAF, the Agencies note in the NPR that "there may be ways other than obtaining an explicit written opinion to ensure the enforceability of a contract. For example, the use of industry developed standardized contracts for certain OTC products and reliance on commissioned legal opinions as to enforceability of these contracts in many jurisdictions may be sufficient." In Question 38 in the NPR, the Agencies "seek comment on methods banks would use to ensure enforceability of single product OTC derivative netting agreements in the absence of an explicit written legal opinion requirement."

The Committee supports the Agencies' suggestion that reliance on commissioned legal opinions for this purpose may be appropriate. The International Swaps and Derivatives Association ("ISDA") has for many years commissioned legal opinions in a variety of jurisdictions relating to, among other topics, the netting of exposures under OTC derivative contracts, and these opinions are updated regularly. If a bank holding company ("BHC") or bank reasonably interprets such commissioned opinions as reaching the conclusions needed for a BHC or bank to recognize netting agreements, the Committee believes that reliance on such opinions, supplemented by any necessary ISDA-commissioned updates to such opinions (or by any necessary updates obtained independently by the BHC or bank), should be sufficient for netting agreements to be recognized under the CAF.

Please contact us if you have any questions or if there is any assistance we can provide in connection with the NPR.

Very truly yours,



Michael Sackheim
Chairman

New York City Bar Association
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* Chair and Member of Subcommittee that drafted this comment letter.

¶ This member of the Committee did not participate in this comment letter.

¶ These Adjunct Members did not participant in this comment letter.

Distribution List

Via e-mail

Office of the Comptroller of the Currency (Docket Number 06-09)

Board of Governors of the Federal Reserve System (Docket Number R-1261)

Federal Deposit Insurance Corporation (RIN 3064-AC73)