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Fimat

SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF MARKET REGULATION

BY FAX (202 942-9643) AND FEDERAL EXPRESS

September 27, 2002

Mr. Michael **A.** Macchiaroli
Associate Director
Division of Market Regulation
United States Securities and Exchange Commission
Mail Stop 10-1
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Fimat USA, Inc. – Relief from the Short Option Value Charge for Institutional Customers Active In The Financial Markets

Dear Mr. Macchiaroli:

Thank you again for meeting with us last week to discuss net capital issues that are very important to our Firm. **As** you suggested, we are submitting a request for relief from the short option value charge ("SOVC") for certain of our large institutional customers that hedge their exposure using options on financial futures. As we set forth below, we believe such relief is a necessary and appropriate extension of the SOVC relief previously granted by the Division of Market Regulation ("Division") in Man Financial, Inc., SEC No-Action Letter **(April** 21, 2001), ABN AMRO, Inc., SEC No-Action Letter (May 28, 2002), and Fimat **USA,** Inc., SEC No-Action Letter (May 23,2002).

FIMAT

Fimat USA, Inc. ("Fimat") is registered as a broker-dealer ("BD") and futures commission merchant ("FCM") with the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), respectively. One of Fimat's primary businesses is providing institutional customers with a broad range of brokerage services, including the execution and clearing of futures, options and securities. **A** significant portion of Fimat's brokerage business involves the execution and clearing of hedging transactions in options on financial futures for institutions that either directly, or through their affiliates, engage in commercial financial activities.

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SOCIETE GENERALE GROUP

The financial markets that the institutional customers use to hedge their exposure include the Chicago Board of Trade ("CBOT"), the Chicago Mercantile Exchange ("CME") and other regulated exchanges. The market and capital risks associated with these transactions are actively monitored and controlled by Fimat on a daily basis. Among other things, each account is margined using the SPAN methodology and both original and variation **margin** pays/collects are settled daily. In addition, each account is stress tested regularly for market volatility.

THE SEC'S NET CAPITAL, RULE AND THE STAFF'S SOVC RELIEF

Subparagraph (a)(3)(x) of Appendix B to Rule 15c3-1 under the Securities Exchange Act of **1934** ("Exchange Act") requires BDs to take a SOVC for customers who sell options on commodity futures. The rule requires BDs, when calculating their net capital under Rule 15c3-1, to deduct from their net worth four percent (4%) of the market value of commodity options sold by their customers that are listed on or subject to the rules of an exchange. This daily charge can be significant for joint BD/FCMs that execute and clear short options trades for institutional customers seeking a hedge against their exposure for commercial business, and can put such firms at a disadvantage to competitor firms that register only as FCMs.

To address this problem in the energy markets, the Division provided relief to three different joint BD/FCMs (including Fimat) for the short options trading activities of certain well capitalized and highly rated institutional customers that sell options as a hedge against changing energy prices. Man Financial, Inc., SEC No-Action Letter (April 21, 2001), ABN AMRO, Inc., SEC No-Action Letter (May 28, 2002), Fimat USA, Inc., SEC No-Action Letter (May **23,** 2002). Specifically, the Staff stated that a SOVC would not have to be taken for short options on energy-related products that "are part of a 'bona fide hedging transaction"' **(as** that term is defined in CFTC Rule 1.3(z)), provided that such positions are carried for customers that:

(1) directly (or through affiliates) produce, purchase, transport, or sell energy products;

(2) have a net worth, computed in accordance with *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.'

[1] The Staff also granted SOVC relief to certain Chicago Board Options Exchange ("CBOE") clearing brokers that carry the accounts of **market** makers and specialists who hedge their options positions by selling options on futures in the same product group. Chicago Board Options Exchange, Inc., SEC No-Action Letter (February 25, 1999). The Staff therefore has granted SOVC relief on both "tangible commodity" and "financial" futures products where, among other things, the trading activity constituted a bona fide hedge.

EXTENSION OF SOVC RELIEF TO THE FINANCIAL MARKETS

As we discussed with you last week, we believe that providing SOVC relief €or options on financial futures – according to the specific requirements set forth in Man, ABN AMRO and Fimat – is a necessary and appropriate extension of the relief previously granted. First, such relief would be limited solely to institutional customers actively involved in commercial financial activities. Second, the relief would apply only to short options on financial futures that represent bona fide hedging transactions (as defined by CFTC Rule I.3(z)). Third, the relief would be limited to institutional customers whose net worth, computed according to generally accepted accounting principles ("GAAP"), is at least $50 million, or who are subsidiaries of a parent that has **a** *GAAP* net worth of at least $50 million. Fourth, the relief would be limited to institutional customers with investment grade ratings for senior unsecured long-term debt issued by a nationally recognized statistical rating organization, or who are subsidiaries of a parent that has such ratings.

The extension of SOVC relief to options on financial futures under these specific circumstances is appropriate because, as in the energy markets, the relief would be available only to well capitalized, highly rated institutional customers (or their subsidiaries) who engage in short options not for speculative purposes but as commercial users seeking to hedge their normal business activities in a volatile market. In addition, similar to the energy markets, the market and capital risks associated with options on financial futures are actively monitored and controlled by BD/FCMs according to the rules of the regulated exchanges on which they are listed. Finally, the extension of SOVC relief to options on financial futures is necessary because, **as** in the energy markets, the joint BD/FCMs that execute and clear short options on such products are subject to significant capital charges that their competitor firms registered solely as FCMs are not.

FIMAT'S REQUEST FOR RELIEF

Fimat seeks relief from the SOVC charge only for institutional customers using options on financial futures to hedge commercial exposure as follows. Any such customer would (1) be actively involved in commercial financial activities, (2) have a net worth computed in accordance with *GAAP* of at least $50 million, or be a subsidiary of a parent with a GAAP net worth of at least $50 million, and (3) have investment grade ratings for senior unsecured long-term debt issued by a nationally recognized statistical rating organization, or be **a** subsidiary of a parent that has such ratings. We further represent that such relief would be taken only in connection with trades represented to us as being bona fide hedging transactions involving options on financial futures.

Thank you again for yow consideration of this matter. Please do not hesitate to call the undersigned (at 646 557-8516) or Eileen Flaherty (at 646 557-8514) to discuss any questions or concerns you or your staff may have regarding our entitlement to such relief. We will not take **any** actions with respect to the Firm's SOVC until we have spoken with you or your staff on this matter.

Sincerely,

John J. Nicholas
Vice President and Director of Securities Compliance