

Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 95-AWP-14, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments as self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 95-AWP-14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Auburn, CA. The development of GPS SIAP at Auburn Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the Instrument Departure Procedure and the GPS RWY 7 SIAP at Auburn Municipal Airport, Auburn, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Auburn, CA [New]

Auburn Municipal Airport, CA
(Lat. 38°57'10"N, long. 121°04'55"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Auburn Municipal Airport and within 4.3 miles each side of the 291° bearing from the Auburn Municipal Airport extending from the 4.3-mile radius to 5.6 miles northwest of the Auburn Municipal Airport.

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Issued in Los Angeles, California, on February 8, 1996.

James H. Snow,

*Acting Manager, Air Traffic Division,
Western-Pacific Region.*

[FR Doc. 96-4269 Filed 2-23-96; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 145 and 147

Financial Reporting and Debt-Equity Ratio Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend several provisions of its Rule 1.10, which governs financial reporting requirements for futures commission merchants (FCMs) and introducing brokers (IBs). The proposed rule

amendments would require that financial reports which need not be certified by an independent public accountant be filed within 17 business days of the end of the reporting period, which is generally the end of a month, a quarter or a six-month period. The Commission is also proposing to require that certified financial reports be filed within 60 calendar days of the fiscal year end. Currently, the Commission allows 45 and 90 calendar days for the filing of uncertified and certified financial reports, respectively. In addition, the Commission is proposing to delete the provision which permits a self-regulatory organization to allow its member FCMs file financial reports on a semiannual rather than a quarterly basis. The Commission is further proposing to amend the debt-equity ratio rule such that the 30 percent minimum equity requirement would apply to all of a firm's capital, rather than only to that portion of a firm's capital necessary to meet the minimum financial requirement. These proposed rule amendments would conform the Commission's rules to the corresponding rules of the Securities and Exchange Commission (SEC) and the Commission's proposals are part of its ongoing efforts to harmonize its financial rules with those of the SEC to the extent practicable. These proposals are also part of a series of rulemaking proceedings related to the discussions at the Commission's roundtable on capital issues last September. The Commission anticipates that it will next address harmonization of early warning notices among the Commission, the SEC and self-regulatory organizations as well as capital charge based upon five percent of unsecured receivables from foreign brokers.

DATES: Comments on the proposed amendments must be received on or before March 27, 1996.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Please refer to "Financial Reporting Cycle/Debt-Equity Ratio Amendments."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, at the address listed above. Telephone: (202) 418-5439.

SUPPLEMENTARY INFORMATION:

I. Financial Reporting Requirements for FCMs and IBs

A. Background

The Commission's minimum financial requirements are premised upon the concept that an FCM or an IB must maintain compliance with these requirements at all times.¹ An FCM or IB that is not in compliance with the minimum financial requirements, or is unable to demonstrate such compliance, must immediately cease doing business unless it can immediately demonstrate an ability to achieve compliance, in which case the Commission or the firm's designated self-regulatory organization (DSRO)² may, in its discretion, allow the firm up to 10 business days to achieve compliance without having to cease doing business.³

As part of the system of surveillance to assure that FCMs and IBs are maintaining compliance with their financial requirements, the Commission has established various reporting and recordkeeping requirements, and these begin when a firm applies for registration. An applicant for registration as an FCM must file a financial report certified by an independent public accountant⁴ which shows that the applicant meets the minimum financial requirement for an FCM.⁵ An applicant can meet this requirement in either of two ways, by filing: (1) A certified financial report as

¹ The statutory authority for the minimum financial requirements, Section 4f(b) of the Commodity Exchange Act (Act), 7 U.S.C. 6f(b) (1994), provides in pertinent part that:

Notwithstanding any other provisions of this chapter, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligation as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements * * *.

² The term "self-regulatory organization" (SRO) means a contract market or a registered futures association (National Futures Association (NFA) is currently the only registered futures association). 17 CFR 1.3(ee)(1995). A DSRO is the SRO, where an FCM or IB is a member of more than one SRO, that is delegated the responsibility under a plan approved by the Commission to monitor and audit such FCM or IB for compliance with minimum financial and related reporting requirements and to receive the financial reports necessitated by such requirements. 17 CFR 1.3(ff)(1995); see also 17 CFR 1.52(1995).

³ See 17 CFR 1.17 (a)(3), (a)(4) and (a)(5) (1995).

⁴ The Commission's rules relating to qualifications and reports of accountants are set forth in 17 CFR 1.16 (1995).

⁵ The Commission recently proposed to increase the minimum required dollar amount of adjusted net capital for an FCM from \$50,000 to \$250,000. 60 FR 63995 (Dec. 13, 1995).

of a date not more than 45 days preceding its filing; or (2) an uncertified financial report as of a date not more than 45 days preceding its filing, accompanied by a certified financial report as of a date not more than one year preceding its filing.⁶ After a firm is granted registration as an FCM, it generally must file uncertified financial reports on a quarterly or semiannual basis and a certified financial report as of its fiscal yearend.⁷ If an FCM's adjusted net capital is below the "early warning" level (*i.e.*, 150 percent of the minimum requirement), it must file a financial report as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three successive months have elapsed during which its adjusted net capital is at all times equal to or in excess of the early warning level.⁸

Commission rules also provide that the Commission or a DSRO can request a special financial report upon written notice.⁹ In addition to the required financial reports, the Commission requires FCMs to make and keep as a record, but not file, a monthly computation of its adjusted net capital

⁶ An FCM or applicant therefor generally must file its financial report on Form 1-FR-FCM. However, the Commission also provides an FCM or applicant therefor that is also a securities broker or dealer the option of filing a copy of its Financial and Operational Combined Uniform Single (FOCUS) Report, Part II, filed with the SEC in lieu of Form 1-FR-FCM. See Commission Rule 1.10(h), 17 CFR 1.10(h)(1995). The Commission and the SEC are continuing to pursue efforts to develop a single financial reporting form that would be adopted by both agencies. If such a form were to require statements and schedules in addition to those currently required, the agencies may revisit the filing timetables but would continue to pursue harmonization to the extent practicable.

⁷ Although Commission Rule 1.10(b)(1)(i) specifies a quarterly financial reporting requirement for FCMs, Commission Rule 1.52(a) permits a DSRO to determine the number of financial reports it receives from member FCMs so long as such reports are required on at least a semiannual basis. Currently, the New York Mercantile Exchange, the New York Cotton Exchange and the Kansas City Board of Trade permit member FCMs to file semiannual financial reports. Less than ten percent of FCMs (approximately 20 out of 258) file semiannually. As discussed below, the Commission is proposing to delete that provision of Rule 1.52(a).

⁸ Commission Rule 1.12(b)(3). The Commission has proposed to redesignate paragraph (b)(3) of Rule 1.12 as paragraph (b)(4) and to add a new paragraph (b)(3). 60 FR 63995, 63999. If the Commission adopts those rule changes proposed last December prior to or simultaneously with the proposed amendment to Rule 1.12 concerning the due date for filing monthly financial reports set forth in this release, the latter amendment would appear in the redesignated Rule 1.12(b)(4).

⁹ Commission Rule 1.10(b)(4). The Commission would generally make such a request if a firm were experiencing financial difficulties. In extraordinary circumstances, such as the October 1987 market break, the Commission has requested all firms to file a special financial report.

and its minimum financial requirement.¹⁰

An applicant for registration as an IB, in addition to the filing options available to an FCM applicant with respect to submitting a certified financial report no more than 45 days old or an uncertified financial report no more than 45 days old accompanied by a certified financial report no more than one year old, has the option of submitting a guarantee agreement entered into with an FCM. Most IBs choose the guarantee agreement option and when registered are often referred to as "guaranteed introducing brokers" or "IBGs."¹¹ As such, they have no further financial reporting requirements. The minority of registered IBs which raise their own capital and are often referred to as "independent introducing brokers" or "IBIs," are subject to financial reporting and recordkeeping requirements. An IBI must file an unaudited financial report as of mid-year and a certified financial report as of the fiscal yearend.¹² An IBI is not subject to that portion of the early warning requirements in Commission Rule 1.12 which mandates that notice and monthly financial reports be filed when adjusted net capital is less than 150 percent of the minimum requirement.¹³ However, like an FCM, an IBI is subject to a request for a special financial report upon written notice by the Commission or a DSRO pursuant to Commission Rule 1.10(b)(4) and must prepare and maintain a monthly adjusted net capital and minimum financial requirement computation in accordance with Commission Rule 1.18.

The time frame within which registered FCMs and IBIs must submit interim unaudited financial reports is 45 days after the quarter or six-month period, and the certified yearend financial report must be filed within 90 days. FCMs subject to monthly reporting

under the early warning rule must file reports within 30 days, and the monthly adjusted net capital and minimum financial requirement computations must be prepared by FCMs and IBIs within 30 days. If a special report is requested upon written notice by the Commission or a DSRO pursuant to Commission Rule 1.10(b)(4), such a report must be furnished within the time period specified in the notice.

B. Proposed Rule Amendments

1. Financial Reporting Cycle

The Commission is proposing to amend its financial reporting requirements for FCMs and IBIs such that interim unaudited financial reports would be due within 17 business days, rather than the current 45 calendar days, of the "as of" date, and the certified financial report as of the fiscal yearend would be due within 60, rather than 90, calendar days of the fiscal yearend. See proposed amendments to Commission Rules 1.10(b)(1) (i) and (ii). There will be no change in the requirement that applicants for registration as an FCM or an IB submitting only a certified financial report file such a report as of a date not more than 45 days prior to the date on which the report is filed, since that is a shorter timeframe than the proposed 60-day period for certified reports of registered firms.¹⁴ However, if an applicant for registration as an FCM or an IB chooses the option of submitting a certified financial report that is no more than one year old accompanied by a recent uncertified financial report, the Commission's proposed amendments to Rules 1.10(a)(2)(i)(B) and (a)(2)(ii)(B) would require that the latter have an "as of" date not more than 17 business days, rather than the current 45 calendar days, prior to the date upon which it is filed. Similar treatment would be accorded to an IBG whose guarantee agreement with an FCM is terminated and who is seeking to become an IBI under proposed amendments to Commission Rules 1.10(j)(8)(i)(B) and (j)(8)(ii)(B).

Certain unaudited financial reports are filed as of a monthend, where an FCM is filing financial reports under the early warning provision and where a firm succeeds to the business of an FCM

or IBI (Rule 1.10(a)(3)(i) and (a)(3)(ii)(A)). Such reports are now due within 30 and 45 calendar days, respectively. The Commission is proposing to amend these rules so that such unaudited financial reports, like a normal quarterly or semiannual report, would be due within 17 business days.

The monthly computation of adjusted net capital and minimum financial requirement which FCMs and IBIs must prepare in accordance with Commission Rule 1.18 is currently required to be made available for inspection within 30 days. Since these computations do not involve the preparation of all of the statements and schedules included in a Form 1-FR-FCM or a Form 1-FR-IB, the Commission is proposing to shorten the time period within which FCMs and IBIs must make available for inspection their monthly computations to 10 business days. The Commission also notes that this proposed shorter time period would conform the requirement pertaining to monthly computations to the SEC's requirement for filing Part I of the FOCUS Report, which is discussed below.

The Commission is also proposing to delete that portion of Rule 1.52(a) which permits an SRO to allow its member FCMs to file financial reports semiannually rather than quarterly. The Commission believes that this rule amendment would be consistent with the concept that financial reporting should be made more quickly than currently required so that such data does not become stale when it is reported to regulators. As noted above, relatively few firms are now filing only semiannually so the Commission does not believe that this rule amendment would cause undue hardship for a substantial number of FCMs.

The Commission was prompted to review its rules relating to the financial reporting cycle to assure that such rules are up-to-date in light of the speed and complexity of today's markets and available information technology following the roundtable on capital issues held on September 18, 1995, during which several matters relating to minimum financial and related reporting requirements were discussed. Several participants in the roundtable discussion stated that there should be greater harmonization of CFTC/SEC requirements in several areas such as financial reporting cycles.¹⁵ The

¹⁰ Commission Rule 1.18. As with other records required to be kept by the Act or rules thereunder, such record is open to inspection by any representative of the Commission or the U.S. Department of Justice. 17 CFR 1.31 (1995).

¹¹ As of November 30, 1995, of the registered IBs, 1,087 operated pursuant to a guarantee agreement with an FCM and 390 were raising their own capital. An IBG must introduce all accounts to its guarantor FCM. 17 CFR 1.57(a)(1)(1995).

¹² An IBI can file its financial reports using Form 1-FR-IB, which is shorter than Form 1-FR-FCM largely because an IBI, unlike an FCM, cannot handle customer funds and thus schedules related to segregation of customer funds are irrelevant to an IBI. For an IBI that is also a securities broker or dealer, it has the option under Commission Rule 1.10(h) to file a copy of its FOCUS Report, Part IIA, filed with the SEC in lieu of Form 1-FR-IB.

¹³ The Commission recently proposed to increase the minimum required dollar amount of adjusted net capital for an IBI from \$20,000 to \$30,000. 60 FR 63995, 63996, 64000.

¹⁴ The Commission has also determined not to propose an amendment to the timeframe for filing an uncertified financial report that must accompany an FCM's or IBI's request to withdraw its registration where such request is based upon the firm's having ceased engaging in activities requiring registration. Such a financial report must have an "as of" date not more than 30 days prior to the date of the withdrawal request. See Commission Rule 3.33(c)(1) which, as discussed below, is proposed to be amended for another reason.

¹⁵ The other areas mentioned at the roundtable with respect to harmonization included debt-equity ratio requirements, which are discussed more fully below, early warning requirements and risk assessment data elements. The Commission is expecting to receive more input from the industry concerning harmonization of CFTC, SEC, and self-

proposed rule amendments that would make the CFTC reporting cycle for registered FCMs and IBIs 17 business days for unaudited financial reports and 60 calendar days for certified financial reports would conform Commission Rule 1.10 to the corresponding SEC rules governing the filing of the FOCUS Report, Part II or Part IIA.¹⁶

The SEC also requires monthly filing within 10 business days after the end of each month of Part I of the FOCUS Report by every securities broker or dealer who clears or carries customer accounts.¹⁷ Although the Commission's requirement under Rule 1.18(b) that FCMs and IBIs prepare and make available for inspection monthly computations of adjusted net capital and the minimum financial requirement is not precisely analogous to the SEC requirement for filing a FOCUS Report, Part I on a monthly basis, the proposed amendment of Commission Rule 1.18 to require preparation of the monthly computations within 10 business days, rather than the current 30 calendar days, is also intended to promote harmonization between CFTC and SEC rules.

There is no specific analogue in the SEC's early warning rule¹⁸ to the requirement under the CFTC's early warning rule for monthly filings of financial reports referred to above. (As

regulatory organization rules relating to early warning notices following the next meeting of the Intermarket Financial Surveillance Group (IFSG). IFSG was formed in 1988 to provide a coordinating body to address financial surveillance issues relevant to both futures and securities markets and includes representatives of the principal futures and securities exchanges as well as NFA and the National Association of Securities Dealers, Inc. The Commission has outstanding proposals to amend the early warning notice requirements. 59 FR 66822 (Dec. 28, 1994). As to risk assessment data elements, the Commission's staff will continue to consult with staff from the SEC and other financial regulators concerning appropriate data elements. See also 60 FR 63995, 63998.

¹⁶ See 17 CFR 240.17a-5 (a)(2)(ii), (a)(2)(iii), and (d)(5)(1995). As to an applicant for registration as a securities broker or dealer or an introducing broker, the SEC does not require submission of a financial report with the registration application. Instead, an inspection is conducted by a self-regulatory organization within six months after a firm is registered to determine whether the firm is operating in conformity with applicable financial responsibility rules. See 17 CFR 240.15b1-1 and 240.15b2-2 (1995).

¹⁷ Part I of the FOCUS Report consists of two pages upon which a firm reports key financial and operational data in summary form including items such as subordinated debt, net profit or loss, ownership equity, partners' capital, non-allowable assets, net capital and haircuts. The FOCUS Report Part I contains side-by-side columns for each month of the year to allow visual month-to-month comparison of key items. Part II or Part IIA of the FOCUS Report requires several pages of in-depth computations of a firm's financial condition and minimum requirements.

¹⁸ 17 CFR 240.17a-11 (1995).

noted in the preceding paragraph, SEC rules require that all firms which clear or carry customer accounts file a monthly FOCUS Report, Part I.) Since the Commission is proposing to require that routine interim financial reports be submitted within 17 business days of the "as of" date, the Commission believes that financial reports on firms that are required to report under the early warning provisions and thereby subject to enhanced scrutiny should not be filed on a longer time cycle. The Commission is therefore proposing that monthly financial reports required by Rule 1.12 be submitted within 17 business days of the monthend, rather than the current 30 calendar days.

The Commission does not believe that these amendments to the financial reporting cycle should be an undue hardship for FCMs and IBIs. Many of these firms are dually registered as securities broker-dealers or introducing brokers and are thus already subject to the SEC reporting timeframes.¹⁹ Beyond the issue of conforming the filing cycles with the SEC, the Commission also believes that these proposed rule amendments are appropriate in light of the increasing rapidity and complexity of today's financial markets. FCMs and IBIs are required to be in compliance with minimum financial standards on a moment-to-moment basis and being required to formally demonstrate such compliance on a quicker schedule than is currently required is appropriate and achievable given advances in information technology.

2. Other Proposed Amendments

The Commission is also proposing two other minor amendments to the financial reporting requirements in Rule 1.10, both of which pertain to IBs. Currently, an applicant for registration as an IB that intends to operate pursuant to a guarantee agreement with an FCM must file a copy of the guarantee agreement with the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office in Los Angeles must file a copy with the Commission's Southwestern Regional Office in Kansas City).²⁰ This requirement is in addition to the requirement to file the original of the guarantee agreement with the registration application submitted to

¹⁹ As of November 30, 1995, almost one-half of FCMs (approximately 120 out of 258) and one-third of IBIs (approximately 141 out of 390) were dually registered with the SEC.

²⁰ The geographic coverage of jurisdiction of the Commission's regional offices is set forth in 17 CFR 140.2 (1995).

NFA. The Commission is proposing to amend Rule 1.10(c) to eliminate the requirement that a copy of a guarantee agreement be filed with a Commission regional office. An IB's status as an IBG can be readily discerned by Commission staff from contacting NFA's Information Center or by accessing the registration database. An IBG has no ongoing financial reporting requirements, so the Commission believes that no purpose is served by continuing to maintain copies of guarantee agreements. The Commission further believes that this amendment to Rule 1.10(c) will ease filing burdens on IB applicants and record maintenance burdens on the Commission's staff.

The other proposed amendment to the financial reporting requirements would eliminate Rule 1.10(i). Rule 1.10(i) provides an IBI or an applicant which is also a country elevator an alternative to satisfy its financial reporting obligation by filing, in lieu of filing a Form 1-FR-IB, a copy of a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements, prepared in accordance with requirements of the U.S. Department of Agriculture. This provision was adopted when the Commission first adopted rules to govern IBs in 1983²¹ and has never been utilized. The Commission believes it is appropriate to delete this provision as a means of streamlining and simplifying Rule 1.10. References to Rule 1.10(i) in other Commission rules would likewise be eliminated.²²

II. Proposed Amendments to Debt-Equity Ratio Requirements

A. Proposed Rule Amendments

Commission Rule 1.17(d) sets forth the debt-equity ratio requirement, which requires that at least 30 percent of an FCM's or IBI's *required* debt-equity total must consist of equity capital.²³ Thus, if

²¹ 48 FR 35248, 35263, 35282 (Aug. 3, 1983).

²² See proposed deletions of Rules 1.10(g)(3), 145.5(d)(1)(i)(G) and 147.3(b)(4)(i)(A)(7) as well as proposed amendments to Rules 1.10(g)(5), 1.18 (a) and (b), and 3.33(c)(1).

²³ In addition to certain subordinated debt as described more fully below, equity capital includes the following:

(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

Continued

an FCM's required debt-equity total amount is \$1 million, it must maintain equity capital as defined in the Commission's rules of \$300,000. No matter how much adjusted net capital is actually maintained by an FCM or IBI, the thirty percent equity requirement currently applies only to the amount of required debt-equity total. Accordingly, if an FCM has a \$1 million adjusted net capital requirement and actually maintains \$5 million in adjusted net capital (*i.e.*, it has \$4 million in "excess" adjusted net capital), the entire \$4 million amount above the minimum requirement could consist of debt subject to satisfactory subordination agreements in accordance with Commission Rule 1.17(h).²⁴

When the Commission originally proposed what is now Rule 1.17(d) in 1977, the debt-equity ratio requirement was patterned upon the SEC rule and would have applied to a firm's debt-equity total.²⁵ However, in response to comments that "it would be inappropriate to penalize a firm that maintains capital in the form of satisfactory subordination agreements, which is in excess of the minimum required by regulation," the Commission revised its proposal. As adopted, Rule 1.17(d) provides that the required debt-equity total to which the 30 percent equity capital requirement applies means a firm's debt-equity total less its excess adjusted net capital.²⁶

Several of the panelists at the capital roundtable on September 18, 1995 urged the Commission to pursue greater harmonization between CFTC and SEC financial rules and related reporting requirements and the debt-equity ratio requirement was one area referred to in this regard. The Commission also notes that the general international standard is to apply the debt-equity ratio requirement to all of a firm's capital.²⁷ The Commission believes that it is important for its rules to conform to international standards with respect to the quality of capital.

Accordingly, in light of these developments and its own

"Debt-equity total" means equity capital as described above plus the outstanding principal amount of subordinated debt which does not qualify as equity capital. The "required debt-equity total" means debt-equity total less the amount by which a firm's adjusted net capital exceeds the minimum required. 17 CFR 1.17(d)(1995).

²⁴ 17 CFR 1.17(h) (1995).

²⁵ 42 FR 27166, 27177 (May 26, 1977).

²⁶ 43 FR 39956, 39965, 39976 (Sept. 8, 1978).

²⁷ This is the recommendation of Working Party No. 3 of the Technical Committee of the International Organization of Securities Commissions (IOSCO). See Report of the Technical Committee of IOSCO, "Capital Requirements for Multinational Securities Firms," XV Annual Conference of IOSCO, Santiago, Chile 1990.

reconsideration of the issue, the Commission has determined to propose to amend Rule 1.17(d) to require that the 30 percent debt-equity ratio requirement apply to an FCM's or IBI's debt-equity total. The Commission notes that, as referred to above, a large proportion of FCMs and IBIs are also securities brokers or dealers and thus already subject to the SEC rule concerning the debt-equity ratio.²⁸ The Commission further notes that Rule 1.17(d)(1) provides that certain subordinated debt may qualify as equity capital if specified conditions are met, in addition to those which apply to subordinated debt in general. These additional conditions are: (1) The lender must be a partner or stockholder of the FCM or IBI; (2) the initial term of the debt must be at least three years, and there must be a remaining term of not less than twelve months;²⁹ (3) the governing subordination agreement does not contain most of the otherwise permissible provisions relating to accelerated maturity; (4) the governing subordination agreement allows no special prepayment of the debt (*i.e.*, prepayment before one year from the date such subordination agreement becomes effective); and (5) the debt in question is maintained as equity capital subject to the provisions on withdrawal of equity capital contained in Commission Rule 1.17(e). If a firm is organized as a partnership, however, additional conditions (3) and (4) need not be met for subordinated debt to qualify as equity capital, if the partnership agreement provides that the capital contributed pursuant to a satisfactory subordination agreement as defined in Commission Rule 1.17(h) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof set forth in Commission Rule 1.17(e).

B. Request for Comment

Following the capital roundtable in September, the Chicago Mercantile Exchange (CME), on behalf of the IFSG, submitted a letter to the Commission's Division of Trading and Markets dated October 31, 1995 supporting the goal of conforming the rules of the Commission

²⁸ See n.19 *supra*. The Commission notes that the SEC definition of equity capital does not include, in the case of a partnership, partners' securities accounts. See 17 CFR 240.15c3-1(d)(1995).

²⁹ Subordinated debt entered into today with a maturity date of January 1, 2000 could, therefore, qualify as equity capital if all other requirements were met. On January 1, 1999, however, such subordinated debt would no longer be counted as equity capital unless an extension of the maturity date had been agreed to by the parties, since the remaining term of the debt would be less than one year at that time.

and the SEC concerning the debt-equity ratio requirement. CME also requested in that letter, and in a similar letter of the same date to the SEC's Division of Market Regulation, that the financial rules of each agency be amended such that goodwill net of amortization could be subtracted from the denominator when a firm calculates its debt-equity ratio.³⁰ Since the SEC has not yet made such a change in its rule and since the Commission's intention in this proposal is to conform its rule to that of the SEC concerning the debt-equity ratio requirement, the Commission is not proposing to incorporate the CME's request in the proposed amendment to Rule 1.17(d). However, the Commission's staff will discuss this matter with staff of the SEC. The Commission also specifically requests comment upon the CME's suggestion, which could be accommodated by amending Rule 1.17(d)(2) to define debt-equity total as equity capital as defined in Rule 1.17(d)(1) *less goodwill net of amortization* plus total subordinated debt, and whether the Commission should adopt such a rule amendment in conjunction with or irrespective of action taken by the SEC. The Commission staff also notes, however, that information provided by CME based upon studies of several SROs indicates that the number of firms reporting goodwill as an asset is quite small.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments proposed herein would affect FCMs and IBIs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.³¹

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that

³⁰ CME stated in its letters that it was making this request because, by definition, goodwill is an intangible asset acquired in a business combination which represents the excess "going concern" value over the fair value of a firm's net assets, it lacks separability from the firm itself, and its value is often indefinite, indeterminate and subject to wide fluctuation.

³¹ See 47 FR 18618, 18619 (Apr. 30, 1982).

time.³² The proposed amendments to Rules 1.10 and 1.18 relate to the time within which financial reports must be filed and monthly financial computations must be prepared, but would not increase the number of reports or records. Accordingly, these proposed amendments should impose no additional requirements on an IBI. In addition, the proposed amendment to Rule 1.17(d) for an IBI would conform the Commission's requirement to that of the SEC. More than one-third of the IBIs are also subject to the jurisdiction of the SEC and therefore the proposed amendment to Rule 1.17(d) should have no impact on the financial operations of these IBIs. Thus, if adopted, these proposals would not have a significant economic impact on a substantial number of IBs. Therefore, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1990, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. While the amendments proposed herein have no burden, Rules 1.10, 1.12, 1.17, and 1.18 are part of a group of rules with the following burden.

The burden associated with the collection required by Rules 1.10, 1.12, 1.17 and 1.18 (3038-0024), including these proposed amendments, is as follows:

Average Burden Hours Per Response (FCMs)	7.00
Average Burden Hours Per Response (IBs)	5.00
Number of FCM Respondents	785.00
Number of IB Respondents	542.00
Frequency of Response	5.00

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5170.

List of Subjects

17 CFR Part 1

Commodity futures, minimum financial requirements.

17 CFR Part 3

Commodity futures, reporting and recordkeeping requirements.

17 CFR Part 145

Freedom of information, exceptions.

17 CFR Part 147

Sunshine Act, exceptions.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.10 is amended by revising paragraphs (a)(2)(i) (A) and (B), (a)(2)(ii) (A) and (B), (a)(3)(i), (a)(3)(ii)(A), (b)(1)(i), (b)(1)(ii) and (c), by removing and reserving paragraph (g)(3), by revising paragraph (g)(5), by removing and reserving paragraph (i), and by revising paragraphs (j)(8)(i)(B) and (j)(8)(ii)(B) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

- (a) * * *
- (2) * * *
- (i) * * *

(A) A Form 1-FR-FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1-FR-FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed.

- (ii) * * *

(A) A Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which such report is filed; or

(B) A Form 1-FR-IB as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 1 year prior to the date on which such report is filed; or

* * * * *

(3)(i) The provisions of paragraph (a)(2) of this section do not apply to any person succeeding to and continuing the business of another futures commission merchant. Each such person who files an application for registration as a futures commission merchant and who is not so registered in that capacity at the time of such filing must file a Form 1-FR as of the first monthend following the date on which his registration is approved. Such report must be filed with the National Futures Association, the Commission and the designated self-regulatory organization, if any, not more than 17 business days after the date for which the report is made.

- (ii) * * *

(A) Each such person who succeeds to and continues the business of an introducing broker which was not operating pursuant to a guarantee agreement, or which was operating pursuant to a guarantee agreement and was also a securities broker or dealer at the time of succession, who files an application for registration as an introducing broker, and who is not so registered in that capacity at the time of such filing, must file with the National Futures Association either a guarantee agreement with his application for registration or a Form 1-FR-IB as of the first monthend following the date on which his registration is approved. Such Form 1-FR-IB must be filed not more than 17 business days after the date for which the report is made.

* * * * *

(b) *Filing of financial reports.* (1)(i) Except as provided in paragraphs (b)(3) and (h) of this section, each person registered as a futures commission merchant must file a Form 1-FR-FCM for each fiscal quarter of each fiscal year unless the futures commission merchant elects, pursuant to paragraph (e)(2) of this section, to file a Form 1-FR-FCM for each calendar quarter of each calendar year. Each Form 1-FR-FCM must be filed no later than 17 business days after the date for which the report is made: *Provided, however,* That any Form 1-FR-FCM which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 60 days after the close of each

³² See 48 FR 35248, 35275-78 (Aug. 3, 1983).

futures commission merchant's fiscal year.

(ii) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1-FR-IB semiannually as of the middle and the close of each fiscal year unless the introducing broker elects pursuant to paragraph (e)(2) of this section to file a Form 1-FR-IB semiannually as of the middle and the close of each calendar year. Each Form 1-FR-IB must be filed no later than 17 business days after the date for which the report is made:

Provided, however, That any Form 1-FR-IB which must be certified by an independent public accountant pursuant to paragraph (b)(2) of this section must be filed no later than 60 days after the close of each introducing broker's fiscal year.

(c) *Where to file reports.* The reports provided for in this section will be considered filed when received by the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office) and by the designated self-regulatory organization, if any; and reports required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association and by the regional office of the Commission nearest the principal place of business of the applicant (except that an applicant under the jurisdiction of the Commission's Western Regional Office must file such reports with the Southwestern Regional Office): *Provided, however,* That information required of a registrant pursuant to paragraph (b)(4) of this section need be furnished only to the self-regulatory organization requesting such information and the Commission, and that information required of an applicant pursuant to paragraph (b)(4) of this section need be furnished only to the National Futures Association and the Commission: *And, provided further,* That any guarantee agreement entered into between a futures commission merchant and an introducing broker in accordance with the provisions of this section need be filed only with and will be considered filed when received by the National Futures Association.

(g) * * *

(3) [Reserved]

(5) The independent accountant's opinion and a guarantee agreement filed pursuant to this section will be deemed public information.

(i) [Reserved]

(j) * * *

(8) * * *

(i) * * *

(B) A Form 1-FR-IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

(ii) * * *

(B) A Form 1-FR-IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1-FR-IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed.

3. Section 1.12 is amended by revising paragraph (b)(3) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(b) * * *

(3) For securities brokers or dealers, the amount of net capital specified in Rule 17a-11(b) of the Securities and Exchange Commission (17 CFR 240.17a-11(b)), must file written notice to that effect as set forth in paragraph (g) of this section within five (5) business days of such event. Such applicant or registrant must also file a Form 1-FR-FCM (or, if such applicant or registrant is registered with the Securities and Exchange Commission as a securities broker or dealer, it may file, in accordance with § 1.10(h), a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, in lieu of Form 1-FR-FCM) or such other financial statement designated by the National Futures Association, in the case of an applicant, or by the Commission or the designated self-regulatory organization, if any, in the case of a registrant, as of the close of business for the month during which such event takes place and as of the close of business for each month thereafter until three (3) successive months have elapsed during which the

applicant's or registrant's adjusted net capital is at all times equal to or in the excess of the minimums set forth in this paragraph (b) which are applicable to such applicant or registrant. Each financial statement required by this paragraph (b) must be filed within 17 business days after the end of the month for which such report is being made.

4. Section 1.17 is amended by revising the introductory text of paragraph (d) and by removing paragraph (d)(3) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(d) Each applicant or registrant shall have equity capital (inclusive of satisfactory subordination agreements which qualify under this paragraph (d) as equity capital) of not less than 30 percent of the debt-equity total, provided, an applicant or registrant may be exempted from the provisions of this paragraph (d) for a period not to exceed 90 days or for such longer period which the Commission may, upon application of the applicant or registrant, grant in the public interest or for the protection of investors. For the purposes of this paragraph (d):

5. Section 1.18 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.18 Records for and relating to financial reporting and monthly computation by futures commission merchants and introducing brokers.

(a) No person shall be registered as a futures commission merchant or as an introducing broker under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1-FR-FCM or Form 1-FR-IB, respectively, or, if such person is registered with the Securities and Exchange Commission as a securities broker or dealer and he files (in accordance with § 1.10(h)) a copy of his Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1-FR-FCM or Form 1-FR-IB, the account

classification subdivisions specified on such Report, or categories that are in accord with generally accepted accounting principles. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or the requirements of the designated self-regulatory organization to which it is subject as of the close of business each month. An applicant or registrant which is also registered as a securities broker or dealer with the Securities and Exchange Commission may meet the computation requirements of this paragraph (b) by completing the Statement of Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 10 business days after the date for which the computations are made, commencing the first monthend after the date the application for registration is filed.

* * * * *

6. Section 1.52 is amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained

in §§ 1.10 and 1.17 of this part and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c) of this part: *Provided, however*, A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h) of this part) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1-FR: And, provided further, A designated self-regulatory organization may permit its member introducing brokers to file a Form 1-FR-IB in lieu of a Form 1-FR-FCM.

* * * * *

PART 3—REGISTRATION

7. The authority citation for Part 3 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

Subpart A—Registration

8. Section 3.33 is amended by revising paragraph (c)(1) to read as follows:

§ 3.33 Withdrawal from registration.

* * * * *

(c)(1) Where a futures commission merchant or an introducing broker which is not operating pursuant to a guarantee agreement is requesting withdrawal from registration in that capacity and the basis for withdrawal under paragraph (a)(1) of this section is that it has ceased engaging in activities requiring registration, the request for withdrawal must be accompanied by a Form 1-FR-FCM or a Form 1-FR-IB, respectively, which contains the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request: *Provided, however*, That if such registrant is also registered with the Securities and Exchange Commission as a securities broker or dealer, it may file a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA (in accordance with § 1.10(h) of this chapter), in lieu of Form 1-FR-FCM or Form 1-FR-IB. Any financial report submitted pursuant to this paragraph (c)(1) must contain the information specified in § 1.10(d)(1) of this chapter as of a date not more than 30 days prior to the date of the withdrawal request.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

9. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99-570, unless otherwise noted.

§ 145.5 [Amended]

10. Section 145.5 is amended by removing and reserving paragraph (d)(1)(i)(G).

PART 147—OPEN COMMISSION MEETINGS

11. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); Sec. 101(a)(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. 4a(j)(Supp. V 1975)), unless otherwise noted.

§ 147.3 [Amended]

12. Section 147.3 is amended by removing and reserving paragraph (b)(4)(i)(A)(7).

Issued in Washington, D.C. on February 20, 1996 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-4236 Filed 2-23-96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 96N-0002]

“Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products;” Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of draft document.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled “Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products (December 1995).” This draft document is intended to identify an approach that FDA believes is appropriate for the regulation of placental/umbilical cord blood stem