



November 13, 2008

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Joint Audit Committee Operating Agreement
73 Fed.Reg. 52832 (September 11, 2008)

Dear Mr. Stawick:

The Futures Industry Association (“FIA”)¹ is pleased to submit this letter in response to the Commodity Futures Trading Commission’s (“Commission’s”) request for comments on the proposed revisions to the Joint Audit Committee Operating Agreement (“Agreement”) to be entered into among the several futures exchanges and the National Futures Association (“NFA”). As explained in the above-referenced *Federal Register* release, the Agreement governs the operation of the Joint Audit Committee (“JAC”) and the manner by which the JAC will cooperate in examining and monitoring FCMs for compliance with Commission and self-regulatory organization (“SRO”) minimum financial and related reporting requirements. Among other things, the Agreement establishes a procedure by which the JAC assigns primary responsibility for conducting audits of FCMs to a designated self regulatory organization (“DSRO”).²

FIA strongly supports self regulation as an effective and efficient means of assuring market integrity and the protection of the public. Further, a procedure by which one SRO is assigned primary responsibility for conducting audits of FCMs that are members of more than one

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA’s regular membership is comprised of approximately 30 of the largest futures commission merchants (“FCMs”) in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

² Commission rule 1.3(ee), defines an SRO as a designated contract market or a registered futures association. A DSRO is defined in Commission rule 1.3(ff) as an SRO assigned responsibility for monitoring and auditing an FCM in accordance with a plan approved under Commission rule 1.52. Significantly, derivatives clearing organizations are not self-regulatory organizations under the Commission’s rules.

SRO properly reduces the costs and administrative burdens on member firms. However, we respectfully submit that the Agreement no longer reflects the structure of the futures industry or the rights and responsibilities of the several SROs.

The Agreement and Commission Rule 1.52 appear to contemplate the allocation of audit responsibilities among the seventeen SROs listed as signatories.³ That is, each SRO would play a part, to one degree or another, in performing audits of member firms. In fact, however, with one exception,⁴ audit responsibilities are now allocated between only two SROs: (1) CME Group, which audits essentially all exchange member FCMs; and (2) NFA, which audits primarily non-exchange member FCMs.⁵ This allocation is unlikely to change in the foreseeable future.

In these circumstances, we believe it is appropriate that the Commission, in consultation with the several SROs, FCMs, and the public consider whether Rule 1.52 and the Agreement should continue to govern the rights, obligations and potential liabilities of the parties, or whether a new structure should be established to reflect more accurately the effective delegation of audit responsibilities to CME Group (with respect to exchange member FCMs) and NFA (with respect to non-exchange member FCMs). This consideration would also address, among other topics, appropriate voting rights of participating SROs,⁶ confidentiality of documents generated or received in connection with the audits, and potential conflicts of interest.⁷

Conclusion

FIA appreciates the opportunity to submit these comments on the Agreement. If you have any questions concerning this letter, please contact me at (202) 466-5460.

Sincerely,



John M. Damgard
President

³ Three of the signatories have been dormant for three years or more.

⁴ The Kansas City Board of Trade has audit responsibilities for one FCM.

⁵ Each SRO, of course, continues to be responsible for market and trade practice surveillance on its own markets.

⁶ Although the relevant provisions are unclear, the Agreement appears to restrict the voting rights of a significant number of participating SROs.

⁷ This analysis could be conducted concurrently with the Commission's continuing consideration of Acceptable Practices with respect to Core Principle 15 and, in particular, the definition of a Public Director.

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cc: Honorable Walter L. Lukken, Acting Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner

Ananda Radhakrishnan, Director, Division of Clearing and Intermediary Oversight
Thomas J. Smith, Deputy Director, Division of Clearing and Intermediary Oversight
Jennifer Bauer, Special Counsel, Division of Clearing and Intermediary Oversight
