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By Electronic Mail

August 17, 2009

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

Re: Account Ownership and Control Report, 74 Fed.Reg. 31642 (July 2, 2009)

Dear Mr. Stawick:

The Futures Industry Association (“FIA”) is pleased to submit this letter in response to the Commodity Futures Trading Commission’s (“Commission’s”) advanced notice of proposed rulemaking and request for comment with respect to the Commission’s determination to collect certain ownership, control and related data through a new Ownership and Control Report (“OCR”).¹ FIA appreciates the Commission’s interest in developing a reporting system that will “enhance market transparency, leverage the Commission’s existing surveillance systems, and foster synergies between its market surveillance, trade practice, enforcement and economic research programs.” 74 Fed.Reg. 31642. Nonetheless, for the reasons discussed below, we believe it would be premature to move forward with proposed rules. FIA recommends that the Commission first establish an inclusive, industry-wide committee calling on the expertise of all affected stake-holders, including but not limited to FCMs, US contract markets and trade processing system vendors, to address significant operational and other issues regarding the appropriate design of the OCR.

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 FIA’s 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.

To prepare this comment letter, FIA formed a committee comprised of individuals responsible for systems development and regulatory reporting, as well as legal and compliance staff, at ten member firms. The views expressed in this letter are the result of their careful analysis of the purposes underlying the Commission’s proposal balanced against the current operations and information technology environment within the futures industry.

The Commission states that it anticipates that most entities filing the proposed OCR will be designated contract markets (“DCMs”), and we agree that the DCMs would be the appropriate funnel through which this information is transmitted to the Commission. However, a significant amount of the information proposed to be provided through the OCR, if available at all, is maintained not at the DCMs but with the FCMs that carry the customers’ accounts. The financial and operational costs of requiring FCMs to modify their recordkeeping and reporting systems in order to be able to provide DCMs with the information proposed to be collected through the OCR in an acceptable format would impose a significant burden on FCMs in any environment.² In light of the current financial stress that all FCMs are facing to one degree or another and the competing demands on limited resources, we are concerned that the potential costs will far outweigh the expected benefits to the Commission.

In this regard, it would be essential that the protocols prescribing the content, format and transmission of OCR data from FCMs to the several DCMs be uniform. In addition, consideration should be given to establishing a single repository to hold at least some of the necessary data, especially since several FCMs might well be submitting information with respect to the same account owners and controllers to more than one DCM. In lieu of FCMs compiling and transmitting the same data repeatedly, a DCM could simply pull this data from the repository.

FCM Recordkeeping Systems are not Uniform

The creation, use, form, storage and retention of data are not uniform across FCMs. Although all FCMs collect certain information to satisfy requirements of applicable law, recordkeeping and retention solutions are generally firm-specific. In the case of older accounts, much of the information collected may well be on paper stored at offsite warehouse retention centers. Other data elements may never have been captured in useful format simply because there was no specific regulatory reason to do so. Within the same firm, information proposed to be provided through OCR, if available, may not be in a single format or a single system.³ For example, taxpayer identification numbers or other government issued identification numbers collected to meet anti-money laundering or tax reporting requirements may reside on paper or in an electronic system that is different from and incompatible with systems used for credit evaluation or generation of trade confirmations.

² As the Commission is aware, many FCMs use third-party vendors, *e.g.*, Sungard GMI and ION Trading, to provide the software required to perform back office recordkeeping and reporting services. FCMs cannot control the costs these third-party vendors will incur in modifying their programs to collect the OCR data or the time necessary to make such modifications. FCMs, however, will be required to reimburse these vendors for these costs.

³ The data that the Commission suggests be included in an OCR may be found among the following divisions within an FCM: customer account documentation; trading and reporting systems (both vendor-provided and proprietary); anti-money laundering; risk management; tax; credit; and record retention.

It would be difficult and extremely expensive, therefore, for FCMs to collect this information in a single location and then transmit it to a DCM in a uniform, industry-wide format. This difficulty is only exacerbated by the consolidation that has occurred within the industry, which has likely resulted in several FCMs operating more than one system.⁴

Information Collected and Maintained is not Uniform

Similarly, the information that FCMs collect with respect to customers is not uniform. Firms may collect different information from account owners or controllers, especially given the global nature of some of those entities. For example, it would not be surprising for two FCMs to have different mailing addresses for the same account owner, depending on where the relationship exists between each FCM and the account owner. Even within a single FCM, the answer to “what is the address of the account owner” may have many responses, each depending on the purpose for which the address is intended.

Separately, we note that the Commission anticipates receiving OCR data linked to the trading account number reported to the Commission through the DCMs’ trade capture reports.⁵ However, as the Commission is aware, a significant number of transactions executed on DCMs involve “give-ups.” The account number used by the executing firm does not necessarily tie back to the account number used by the clearing firm for a customer’s account. Similarly, the account number used by a firm to execute bunched orders may not tie back easily to the accounts for which the trades were executed, but simply identify the individual responsible for entering the trade into the system for execution. In developing an OCR, therefore, the Commission must take into consideration that discrete aspects of the data the Commission wishes to capture may be held at either the executing firm or the clearing firm

Not All Information is Available

Further, as noted above, not all of the information proposed to be collected through the OCR may be available. For example, the date that an account was “assigned to its current owners” or “assigned to its current controller(s)” may not be information that is created and maintained. More critically, perhaps, in stating that an objective of the OCR is to identify with certainty all accounts that are under common ownership or control, the Commission implies that it would expect the OCR to include the taxpayer identification numbers of all individuals and entities that directly or indirectly own an account, *i.e.*, shareholders, partners and limited liability company members. However, as a general matter, this is not information that is currently collected. In this regard, we note the Form 40 does not require a reporting trader to list either

⁴ Our member firms are also concerned about the potential security risk in maintaining all of the prescribed information regarding customers in a single record.

⁵ We also understand that some FCMs may recycle trading account numbers after they have been closed for a period of time.

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its own taxpayer identification number or the taxpayer identification number of individuals or entities that have an interest of 10 percent or more in (or that guarantee) the account.⁶

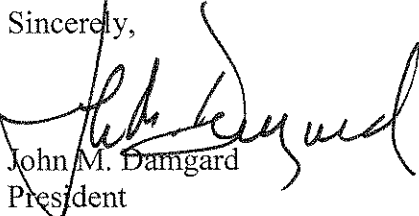
Conclusion

As we noted at outset of this letter, before the Commission proceeds with proposed rulemaking with respect to an account Ownership and Control Report, we believe it is essential that the Commission establish an inclusive, industry-wide committee calling on the expertise of all affected parties, including but not limited to FCMs, US contract markets and trade processing system vendors, to address significant operational and other issues regarding the appropriate design of the OCR. In light of the overwhelming burden that the proposal would place on FCMs, in both money and resources, it is critical that any such proposal be carefully tailored to provide only such information as will meaningfully assist the Commission and DCMs in performing their regulatory and self regulatory responsibilities. In this regard, for example, we question the necessity of collecting OCR data with respect to accounts that have not been designated "special accounts." FIA would be pleased to work with the Commission in addressing these concerns.

We also question if now is the appropriate time to move forward with this proposal. Several bills pending before Congress, including the Administration's recently issued Over-the-Counter Derivatives Markets Act of 2009, would authorize the Commission to collect significantly more information concerning the OTC derivatives markets and market participants than it currently receives. We expect that the Commission may want to coordinate the collection of futures-related data with OTC derivatives data. Further, the Commission and the Securities and Exchange Commission may be required to coordinate their recordkeeping and reporting requirements. In order to assure efficiency in the development of the necessary systems and to contain anticipated costs, the data that may be required to be submitted through the OCR should be fixed at the outset. Until the scope of its authority in this regard is clear, therefore, the Commission might consider whether action on the OCR be deferred.

We appreciate the opportunity to submit these comments. If the Commission has any questions concerning the matters discussed in this letter, please contact Tammy Botsford, FIA's Vice President and Assistant General Counsel, at (202) 466-5460.

Sincerely,



John M. Damgard
President

⁶ Consequently, the Commission may have to consider amending its recordkeeping rules to require the creation and maintenance of data necessary to complete the OCR.

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cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner

Division of Market Oversight
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