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July 28, 2000

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Re: **Application of BrokerTec Futures Exchange, L.L.C. For Designation as a Contract Market in U.S. Treasury Note and U.S. Treasury Bond Futures Contracts, Fed. Reg. 36667 (June 9, 2000)**

Dear Ms. Webb:

The Futures Industry Association ("FIA") is pleased to submit the following comments on the proposed BrokerTec Rule 406 - Block Trades . As part of BrokerTec's application for designation as a contract market in U.S. Treasury Note and U.S. Treasury Bond futures contacts, Rule 406 was submitted for the Commission's approval in order to permit the execution of block trades subject to the terms and conditions described in the proposed rule. FIA, a not-for-profit corporation, is a principal spokesman for the futures industry. Its members include approximately sixty 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.

FIA supports the proposed BrokerTec Rule 406. FIA submits these comments with the desire that they be considered by the Commission, BrokerTec and any other contract markets contemplating the adoption of similar alternative execution procedures, to enable them to understand how FIA believes such procedures can be best designed to maximize their utility and benefits. We strongly encourage other exchanges to propose similar rules for upstairs trading. In the case of those exchanges that have adopted block trading rules, we strongly encourage them to consider whether rule amendments are appropriate in light of the views expressed in this letter.

As indicated in the notice relating to the proposed Rule 406, issued by the Commission on June 5, 2000, the proposed rule is designed to allow a block trade to be effected between a member's customers, between the member and a customer, and between the member and any other member (acting for itself or its customers), subject to the parties meeting certain specified requirements. Specifically, the parties would be permitted to negotiate and arrange futures transactions of a minimum size bilaterally away from BrokerTec's electronic trading system, the BrokerTec Execution Capability trading system. Once the specific terms of the block transaction have been agreed to, the parties would report the relevant details of the transaction to the BrokerTec Futures Exchange and the BrokerTec Clearing Company for clearing and settlement.

As the Commission is aware, FIA believes that there is a compelling need for alternative procedures to facilitate the execution of large orders in all contract markets in order to enhance the ability of these markets to meet the needs of institutional participants concerning transaction size and price.[1] Due to the dramatic growth in institutional participation in the futures markets during the last twenty years and the increasing integration of the financial futures and securities markets (including government securities), market participants increasingly wish to be able to trade large numbers of futures contracts as part of larger, structured capital markets transactions. Such transactions require size and price certainty in order to be implemented smoothly, efficiently and cost effectively.

Absent rules permitting alternative execution procedures, such as block trades, market participants must submit futures transactions for execution on exchange floors or in electronic markets and are prohibited from negotiating such transactions off the floor or outside the electronic market. The sizes and prices obtained for such transactions merely reflect the liquidity available on the floor or in the trading system in a particular contract at a particular time. These sizes and prices fail to achieve desired economic objectives or to reflect accurate actual supply and demand of the market at large, thus resulting in volume and price distortions. While on-floor and electronic market trading methods are intended to achieve competitive trading and best execution, they may not always produce the intended results in such circumstances, and may result in aberrant pricing. For the reasons set forth above, FIA supports the proposed BrokerTec Rule 406.

Among other things, FIA supports the provision in proposed Rule 406 which, in order to determine whether the minimum threshold of 250 contracts has been satisfied, permits the aggregation of orders from different accounts in the case of a commodity trading advisor registered under the Act, including any investment adviser registered as such with the Securities and Exchange Commission ("SEC") that is exempt from regulation under the Act or Commission regulations thereunder, with total assets under management exceeding US $50 million. Likewise, FIA supports the provision in proposed Rule 406, which states that if a Block Trade is entered into on behalf of customers by a similarly

[1] In this connection, FIA previously expressed its support for such alternative procedures in its letters commenting on rules proposed by the Cantor Financial Futures Exchange ("CFFE") and the Chicago Mercantile Exchange ("CME"). In addition to the CFFE and the CME, both The London International Financial Futures and Options Exchange and EUREX offer block trading through their automated systems.

registered commodity trading advisor or investment adviser, with total assets under management exceeding US$50 million, the individual customers need not qualify as an Eligible Participant. In addition , FIA supports the inclusion of advisers not required to be registered as commodity trading advisors under the Act or as investment advisers with the SEC (e.g., an adviser operating outside the United States with customers outside the United States, or an adviser with less than 15 clients and that is not otherwise holding itself out as a commodity trading advisor). Consideration should be given to whether there are circumstances in which a futures commission merchant should be permitted to aggregate orders for different accounts, such as in the case in which it is necessary to satisfy the requirement of the minimum threshold of 250 contracts, at least at the opening of trading.

FIA supports proposed Rule 406 because it imposes no parameters on the price at which block trades may be executed. FIA disagrees with views that may be expressed by others suggesting that proposed Rule 406 be modified to require that the price at which a block trade is executed must be "fair and reasonable". Even if the rule were to require a "fair and reasonable" price in the context of factors relating to the size of the block trade, the price and size of other transactions and/or the circumstances of the parties, FIA believes that such a standard would be vague and unnecessary. FIA believes that such a pricing requirement would not be not appropriate for the proposed Rule 406 or any other alternative execution procedure.

The prices of other trades in the same contract as executed in the electronic trading system may not necessarily be representative of the market for the larger orders that may be executed as block trades. As is an accepted practice with EFPs, the parties should be free to negotiate and agree to enter into a block trade at any price. The Commission should not be concerned that such an approach might lead to fraud or market manipulation, since adequate safeguards already exist to prevent such abuse. First, block trades would be subject to the other requirements of the proposed Rule 406, which will have been approved by the Commission. Second, the antifraud and antimanipulation provisions of the Act would remain applicable to block trades. Third, BrokerTec, through an outside party, would remain responsible for market surveillance and rule enforcement, subject to Commission oversight. Given these safeguards, the utility and benefits of block trades should not be impaired by any pricing requirement. In response to those who would argue that approval of proposed Rule 406 would not be "fair and reasonable" because other exchanges have adopted block trading rules with a pricing requirement, FIA strongly encourages those exchanges to propose rule amendments that would impose no parameters on the price at which block trades in their contract markets may be executed.

Finally, FIA wishes to comment regarding the requirement in proposed Rule 406 that information relating to each block trade must be reported to the BrokerTec Futures Exchange and the BrokerTec Clearing Company within different periods of time, each varying depending on the size of the transaction.[2] It is clearly in the interest of the firm executing a block trade to present the trade for clearing as soon as reasonably practical. FIA supports the proposed Rule 406 in that it recognizes the need for the specific timing requirement not to be overly burdensome especially during a period of highly active trading. Moreover, the varying reporting requirements are appropriate in the case in which a trader must work a large order in several parts in order to hedge and lay off block positioned risks. The safeguards described in the previous paragraph are adequate to address any concerns the Commission may have that this approach could lead to fraud or market manipulation. For these reasons, FIA strongly supports proposed Rule 406 as submitted by BrokerTec to the Commission for approval.

FIA appreciates the opportunity to submit these comments. If you have any questions regarding this letter, please contact me at (212) 612-1702 or Barbara Wierzynski, FIA's General Counsel at (202) 466-5460.

Sincerely,

Eileen Flaherty bbw

Eileen T. Flaherty
President

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[2] BrokerTec's proposed Rule 406(d) contains the following tiered price reporting requirements: 250-499 contracts – 15 minutes; 500-999 contracts – 30 minutes, 1000-2499 contracts – 1 hour; 2500-4999 contracts – 2 hours; 5000-9999 contracts – 4 hours; 10,000 or more contracts – 8 hours, 20 minutes.