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OFFICE OF THE SECRETARY

COMMENT

November 11, 1999

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

By Facsimile (202 418-5521)

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**Re: Internet Account-Opening Process-
Use of Electronic Signatures by Customers, Participants and Clients of
Registrants, 64 Fed.Reg. 47151 (August 30, 1999)**

Dear Ms. Webb:

E.D.& F. Man Inc. ("Man") and its affiliates, which include registered futures commission merchants and commodity pool operators, are pleased to submit the following comments on the proposed amendments to the Commodity Futures Trading Commission's ("Commission's") regulations that would allow the use of electronic signatures in lieu of manual signature for certain purposes.

Man endorses the Commission's decision to recognize electronic signatures for purposes of complying with those provisions of the Commission's rules that require registrants to obtain signatures from a commodity customer, commodity pool participant or commodity trading advisor client. We recommend that the Commission, following completion of the comment period, act promptly to confirm the authority of registrants to accept electronic signatures in lieu of manual signatures.

Man believes that by embracing electronic signatures now, the futures industry can be more actively involved in the ongoing development and adoption of this emerging technology. Since much of this technology will emerge from electronic commerce generally, independent of the futures world, the industry would be better served by participating actively in the development process and ensuring its adaptation to the industry's unique regulatory and operational needs. We note that the CFTC explicitly retains its right to impose additional standards for electronic signatures in the future with guidance from its staff.

Although we are not expert in technical aspects of electronic signatures, we do not believe that such substantively alters relationship between registrant and its clients. To the extent that

the CFTC has not previously regulated or controlled aspects of a customer relationship, this proposal should not be the basis for expanding CFTC authority over this relationship. In connection with the proposed rule, we have the following specific comments for the CFTC's consideration:

We recommend that the Commission adopt the broadest definition of electronic signatures to encompass new and presently unforeseen technologies and to avoid inconsistency with state or other federal laws. Man supports the Commission's determination to adopt as its own the definition of "electronic signature" contained in the *Uniform Electronic Transactions Act*. With the ever-increasing use of electronic communications to engage in all forms of international commerce, including derivatives transactions, a uniform definition of this term is essential. It might even be desirable to define by cross-reference to that act so that the definition automatically incorporates subsequent amendments to this definition as they emerge.

Man also believes that security will be an uppermost concern in accepting electronic signatures and that reasonable safeguards do not need to be specified and included in the CFTC rules. For practical business reasons, Man's registered entities will ensure that they know the identity of clients for transmitting information and collecting margins and debits. Most of the proposed safeguards are already required by the CFTC, such as the obligation to keep permanent records of the customer's identity and restrictions on the alteration of records, and don't need to be specifically addressed for electronic signatures. Any attempt to specify detailed safeguards for the futures industry is also likely to cause inconsistencies as these technologies are improved, standardized and applied across a variety of businesses.

For FCMs, obtaining a customer's signature is only one part of the new account opening process and not necessarily the final part. Credit, risk and funding issues are equally important elements of the process. We believe that registrants will impose their own prudent controls and procedures on electronic account openings and that imposing an arbitrary waiting period is not warranted. Such a waiting period would vitiate the benefit of electronic access and should not be imposed until a proven need exists. We assume that the CFTC's reserved authority could be applied to any specific problems that arise from electronic account opening. Current technology has already substantially shortened the period of time required to open a futures account and the necessity for a mandatory waiting period has not been established. There could be value from the capability to open without delay a futures account and hedge a physical or securities position in the face of an event likely to cause a decline.

We are convinced that the burden will remain on registrants such as Man to ensure that electronic signatures are enforceable and admissible under applicable state or federal law and that this will be settled before widespread use of electronic signatures is accepted in the industry. We are strongly opposed to the proposed disclosure regarding insufficiency of electronic signatures under other federal or state laws for several reasons. First, any disclosure would be subject to constant modification and varying legal interpretations. Second, it is not

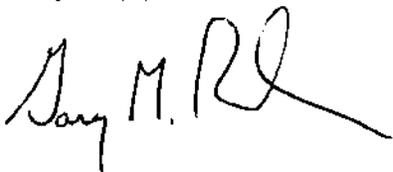
clear what purpose is served advising a client that he may not be bound by an agreement that he or she signed, presumably with intent to be bound. There is no comparable provision now concerning manual signatures, which may be subject to varying legal formalities depending on the jurisdiction, and we see no benefit from including an additional disclosure of this nature. It also runs contrary to the current trend of reducing and simplifying disclosures to customers.

Man agrees that any SRO rules should be entirely consistent with CFTC rules. If this is not the case, the feasibility of electronic signatures for the futures industry will be curtailed.

As proposed by the FIA in its comment letter, Man agrees that the Commission might consider withdrawing the proposed rulemaking and, instead, issuing an advisory. An advisory would provide regulatory certainty for registrants, while assuring the Commission sufficient flexibility to address issues relating to electronic signatures that are certain to arise as the law and technology rapidly evolve.

Man appreciates the opportunity to comment on the proposed rule. If you have any questions regarding this letter, please feel free to contact the undersigned at (212) 566-9102.

Very truly yours,



Gary M. Rindner
Senior Vice President and General Counsel