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COMMENT

April 25, 2007

Ms. Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Rule on "Public Director" Definition, *Regulatory Governance;* Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations, 72 *Fed. Reg.* 14051 (March 26, 2007)

Dear Ms. Donovan:

On February 14, 2007, the Commodity Futures Trading Commission published its final rules on "Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations." 72 Fed. Reg. 6936 (Feb. 14, 2007). Following a comprehensive review of self-regulatory practices, the Commission promulgated a safe harbor or "Acceptable Practice" for compliance by designated contract markets with their statutory obligation to address conflicts of interest under Core Principle #15. See Section 5(d)(15) of the Commodity Exchange Act. Under the Acceptable Practice/safe harbor, at least 35% of a DCM's board of directors must be "public directors." Those public directors also will serve as the members of the DCM's "Regulatory Oversight Committee," as specified in the Acceptable Practice. The standards for determining who would, or would not, qualify as a "public director" are therefore central to the Commission's adopted safe harbor for DCMs.

On March 26, 2007, apparently in partial response to a petition from some DCMs filed on March 12, 2007, the Commission published, for public comment, certain refinements to its Acceptable Practice in the area of "public director" qualifications. The Futures Industry Association has long had an acute interest in improving self-regulation in futures markets.[1] As part of that effort, FIA has worked to make sure that DCMs have appropriate structures and procedures in place to address conflicts of interest that at least are perceived to be integral to the operations of all DCMs, including those that are for-profit exchanges that simultaneously run a business and police their market participants in "the public interest." FIA is therefore submitting these comments on the Commission's March 26 proposal. FIA is supportive of the Acceptable

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[1] FIA is a principal spokesman for the commodity futures and options industry. Our regular membership is comprised of approximately 36 of the largest futures commission merchants ("FCMs") in the United States. Among our approximately 150 associate members are representatives of virtually all other segments of the futures industry, both national and international, including U.S. and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators, other market participants, and information and equipment providers. Reflecting the scope of diversity of our membership, FIA estimates that our members are responsible for more than 90 percent of all customer transactions executed on U.S. contract markets.

Practice adopted by the Commission in February and compliments the Commission and its staff for their extensive work in this important area. The Commission's care and effort to "get it right" is exemplified in the March proposal's refinements. That proposal is significant both for what it does not propose to change and what it would change.

The Commission is not proposing to change the over-arching safe harbor standard that a DCM's board of directors should find on the record that any "public director" does not have a material relationship with the contract market. Under the Acceptable Practice, a material relationship is defined to be "one that reasonably could affect the independent judgment or decision making of the director." 72 Fed. Reg. at 6957. This standard applies to every director that a DCM is considering to be a "public director." FIA believes it to be an appropriate test that the Commission correctly is not reconsidering.

The Commission's safe harbor goes further, however, and identifies certain relationships that, in the judgment of the Commission, would constitute a material relationship that could reasonably affect a director's independence. FIA believes it is perfectly appropriate for the Commission to facilitate the administration of its safe harbor by listing various relationships that automatically disqualify someone from becoming a "public director." FIA also agrees with the Commission that those relationships should be relatively easy to quantify through some form of disclosure from the prospective director. For that reason, FIA agrees with the major change the Commission proposed in March: ; deleting the subjective disqualifying criterion of having a relationship with a member of a contract market that would call into question the "impartiality" of a prospective director. FIA views an analysis of the "impartiality" of a director to be relevant to the DCM board's ultimate inquiry whether the director has a material relationship with the DCM that could affect the independent judgment of the director. But, as the Commission recognized in its March proposal, that kind of qualitative standard should not be included in the Commission's list of straightforward, disqualifying criteria.

In one area, FIA would ask the Commission to reconsider its "non-public director" criteria. FIA continues to believe that the Commission's $100,000 professional service payment criterion sweeps too broadly insofar as it equates service to a DCM with service to a DCM member. FIA understands that an employee or partner of a law firm or accounting firm that receives material professional service fees from the DCM itself (or its affiliates) should not be considered to be a "public director" in order to avoid a perception or appearance of cronyism or favoritism that is inconsistent with the underlying philosophy of the Commission's safe harbor. But we question treating DCMs and their thousands of "members" in the same way.[2] Individual member interests very often diverge from those of the DCM as a whole and someone employed by, or a partner in, a firm that represents such a member, (let alone someone related to such an employee or partner) would often have an interest very attenuated from that of the DCM. Surely that would be the case if the professional service rendered by the firm receiving the payment from the DCM member had nothing to do with futures trading or the individual being considered to be public director provided no professional service to the member in connection with futures

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2 FIA understands that thousands of parties either own memberships on DCMs or "have trading privileges" on the DCM. and therefore constitute "members" under CEA § 1a(24). FIA expects that latter category to expand as electronic trading expands. The Commission may therefore be disqualifying an array of otherwise very qualified professionals from serving as public directors.

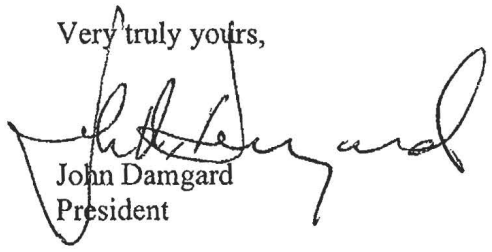
trading. In those circumstances, FIA believes employees and partners of professional service firms (and their relatives) should still be eligible to be public directors subject, of course, to the impartiality test noted below.

FIA agrees with the Commission that it is relevant to a board of director's consideration of an individual's qualifications to be a public director whether that individual, or her or his professional service firm, received $100,000 in fees from a DCM member. The board can then weigh the facts and circumstances of that individual's "independence" and "impartiality," and reach an appropriate judgment which would be documented for the record. FIA disagrees, however, that there should be an absolute and far-reaching bar from public director status for everyone involved in a professional service firm that receives more than $100,000 for any form of service to a DCM member.

FIA realizes, of course, that DCMs may comply with Core Principle #15 without complying with the Commission's safe harbor. It is merely one pathway for DCM compliance and not the only pathway. Therefore, service firm professionals that are determined by a DCM's board of directors not to have a material relationship with the DCM could still become "public directors" of the DCM. But those individuals, even if found not to have any material relationship with the DCM, would still cause the DCM to be unable legally to rely on terms of the Commission's "safe harbor," which seems to defeat the Commission's overall purpose.

With this one exception, FIA endorses the Commission's March proposal and urges the Commission to move expeditiously to adopt it. Again, FIA congratulates the Commission for its work in the area of self-regulation and conflicts of interest. We look forward to working with the Commission and the DCMs on implementing the Acceptable Practice.

Very truly yours,



John Damgard
President