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## COMMENT

March 23, 2009

Mr. David A. Stawick  
Secretary to the Commission  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Proposed Rules for Acknowledgment Letters for Customer Funds and Secured Amount Funds -- 74 Fed.Reg. 7838 (February 20, 2009)

Dear Mr. Stawick,

The Futures Industry Association ("FIA")<sup>1</sup> is pleased to submit this letter in response to the Commodity Futures Trading Commission's ("Commission's") request for comments on the Commission's proposed amendments to its regulations requiring futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") to obtain acknowledgement letters from depositories (each a "Depository") accepting customer funds and secured amount funds.<sup>2</sup> The proposed amendments to regulations 1.20, 1.26 and 30.7 set out specific representations that would be required in these acknowledgment

<sup>1</sup> 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 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.

<sup>2</sup> Currently, Regulation 1.20 requires such FCMs and DCOs to obtain from the bank, trust company, FCM or DCO holding customer funds in the capacity of a depository a written acknowledgement that the Depository was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Commodity Exchange Act (Act) and CFTC regulations. Regulation 1.26 repeats the requirement to obtain an acknowledgment letter, and Regulation 30.7 requires FCMs to obtain a written acknowledgment from initial Depositories holding property and funds comprising the "secured amount" that such "secured amount" is being held for or on behalf of the FCM's foreign futures and foreign options customers "in accordance with the provisions of these regulations."

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letters in order to reaffirm and clarify the obligations Depositories incur when accepting customer funds or secured amount funds.

FIA appreciates the Commission's concern underlying its proposal. Segregation is the lynch pin of the customer protection regime for futures in the United States. FIA generally supports the Commission's proposed inclusion of specific representations to reaffirm and clarify the obligations of Depositories accepting customer funds or secured amount funds (each an "Account"). Additionally, FIA also supports the proposed amendment to Commission Rule 1.26, which confirms that such letters should be held for as long as the Account remains open, and thereafter for the period provided in Rule 1.31 as may be amended from time to time.

While generally supporting the proposed regulations, internal counsel of both FCM and Depository members of the FIA have historically found that putting an acknowledgment letter in place with non-affiliate firms is more difficult and time consuming than it would appear, particularly in the case of foreign depositories. Each FCM and each Depository has its own preferred form letter. Depositories historically have preferred terms which simply mirror the current language of Rule 1.20. However, many FCMs, in an abundance of caution and because of earlier experience with third-party custodial accounts, have added provisions to their letters which track applicable portions of the Commodity Exchange Act and CFTC regulations.

The exchange of templates and negotiation of language to be included or removed from the final agreed document is frequently a lengthy process. Even when the parties have previously agreed to a letter, each subsequent letter often results in further negotiation. Our FCM and Depository members indicate that it may take several months to negotiate and put in place a single acknowledgment letter satisfying current Commission regulations. If the proposed amendments are adopted, one firm estimated it would have to renegotiate 60 – 80 letters. Complying with the Commission's proposed requirements would make finalization within the 180 day deadline problematic at best. Accordingly, we request that any final rules extend the proposed deadline for obtaining the new acknowledgment letters well beyond 180 days.

If the Commission determines to go forward with the proposed amendments, FIA recommends that the Commission defer setting an effective date in order to provide the affected members of the industry, *i.e.*, FCMs, DCOs and their Depositories, in coordination with the Commission, an opportunity to work together to develop a standard template acknowledgment letter which will satisfy the proposed regulations. FIA believes this would be the best way to streamline the process of obtaining new acknowledgment letters that would satisfy the proposed. A standardized letter would decrease the resources currently spent negotiating customized acknowledgment letters and would likely shorten the time needed to obtain the letters. In addition to development of a standardized acknowledgment letter, our Depository members are very interested in working with the

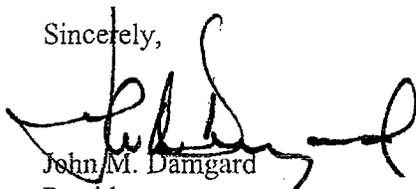
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Commission on a standardized notice, authentication and instruction protocol to help ensure against delay or confusion.

Also, in the interest of further efficiency, we hope the Commission will consider electronic filing, which might be best satisfied by development of a system to centralize electronic adherence, submission, access and retention of acknowledgment letters. Electronic submission of and access to information by members on the National Futures Association's ("NFA") website has proven efficient and reliable, and the FIA hopes to leverage that expertise by enlisting the NFA to help develop and host a system for acknowledgment letters.

FIA appreciates the opportunity to submit these comments in support of the proposed amendments and looks forward to working with the Commission, DCOs and Depositories to quickly develop an efficient working solution that satisfies the proposed regulations. If you have any question concerning our comments, please feel free to contact Tammy Botsford, FIA's Assistant General Counsel, (202) 466-5460.

Sincerely,



John M. Damgard  
President

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

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