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FUTURES INDUSTRY ASSOCIATION

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August 26, 1999

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

COMMENT

Re: **Contract Market Designation Procedures
Fed.Reg. 40528 (July 27, 1999)**

Dear Ms. Webb:

The Futures Industry Association ("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.

The Commodity Futures Trading Commission ("Commission") has proposed to use its exemptive authority under section 4(c) of the Commodity Exchange Act ("Act") to adopt a new rule 5.3 that would revise the Commission's procedures for reviewing and approving applications for contract market designation. 64 Fed.Reg. 40528 (July 27, 1999). Specifically, the Commission is proposing to establish a two-year pilot program, pursuant to which an exchange that has been approved to trade at least one other contract may elect to list new contracts for trading prior to Commission approval.

For the past several years, FIA has been encouraging the Commission to undertake a comprehensive review of its rules with the goal of removing unnecessary regulatory burdens on US futures exchanges and market intermediaries alike, which burdens add unnecessary costs to doing business and inhibit the ability of both the exchanges and market intermediaries to meet the challenges posed by international exchanges as well as the over the counter derivatives markets. FIA, therefore, congratulates the Commission for its willingness to consider such a bold change in its regulatory program. Nonetheless, for the reasons described below, FIA has concluded that the proposed revised procedures would create both practical and legal uncertainty with respect to any contract listed under the revised procedures. As a result, we question whether adoption of the proposed rule "would be consistent with the public interest."

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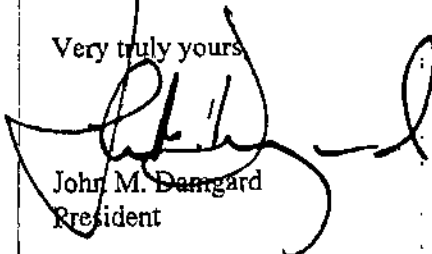
If an exchange elects to take advantage of the revised procedure, the exchange would be required to file a copy of the terms and conditions of the new contract no later than the day preceding listing. In addition, the exchange would be required to submit an application for approval with 45 days of the date the contract is listed for trading. The contract would then be reviewed and approved by the Commission. Pending approval, the exchange could list trading months that extended for no more than one year.

We recognize that, with certain limited exceptions, the terms and conditions of futures and options on futures contracts are the only exchange rules that the Act specifically requires the Commission to review and approve. Therefore, we appreciate the Commission's concern that it should retain the ability to review and approve proposed new contracts. However, as a practical matter, FIA doubts that a contract, the terms of which market participants know may be changed or, more troublesome, found to be in violation of the provisions of the Act, will attract sufficient liquidity to be successful until the Commission's review is complete. Moreover, although the Commission states in the *Federal Register* release accompanying the proposed rule that any contract listed under the revised procedures would be valid and enforceable pending approval, the proposed rule itself is silent on this issue. Without such certainty, the enforceability of any contract subsequently determined to be in violation of the Act would also be open to question.

FIA notes that, since the publication of the instant *Federal Register* release, the Commission has published for comment the Petition of the Chicago Board of Trade, the Chicago Mercantile Exchange and the New York Mercantile Exchange for Exemption pursuant to Section 4(c) of the Act. 64 Fed.Reg. 46356 (August 25, 1999). From our initial review of the exchange petition, it is evident that the petition raises a number of serious issues, many of which are raised by the Commission's proposed rule 5.3. Following a more careful analysis of the exchange petition, FIA intends to prepare comments for the Commission's consideration. We respectfully request that the Commission defer taking action on proposed rule 5.3 until it has had the opportunity to analyze all of the comments filed in connection with that petition.

FIA appreciates the opportunity to comment on proposed rule 5.3. If you have any questions regarding this letter, please contact me or Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Very truly yours,



John M. Damgard
President