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April 18, 2001 COMMENT

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

Re: Proposed Privacy Regulations, 66 *Fed. Reg.* 15550 (March 19, 2001)

Dear Ms. Webb:

The Futures Industry Association ("FIA") is a principal spokesman for the commodity futures and options industry. Our regular membership is comprised of approximately 60 of the largest futures commission merchants ("FCMs") in the United States. Among our associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of our membership, FIA estimates that our members effect more than 90 percent of all customer transactions executed on US contract markets.

FIA welcomes this opportunity to comment on proposed Part 160 to the Commodity Futures Trading Commission's ("Commission's") rules. The proposed rules would implement the provisions of Title V of the Gramm-Leach-Bliley Act, which require financial institutions, including entities subject to the Commission's jurisdiction, to disclose to its individual customers the institution's policies and practices with respect to the disclosure of nonpublic personal information obtained from such customers. Congress determined to make Title V applicable to Commission registrants in its recent amendments to the Commodity Exchange Act.[1] We generally support proposed Part 160 and provide the following in response to the Commission's request for additional guidance on certain issues.

Substituted Compliance

FIA is particularly pleased that the Commission has proposed rules that are consistent with the rules that the Securities and Exchange Commission ("SEC") adopted in June 2000.[2] We also endorse the Commission's decision to permit those Commission registrants that are registered

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[1] Commodity Futures Modernization Act of 2000, §124.

[2] Section 504 of the Gramm-Leach-Bliley Act instructs the relevant federal regulatory agencies to assure to the extent possible, that the rules each agency prescribes are consistent with the rules the other agencies adopt.

with the SEC to comply instead with the SEC's parallel rules.[3] As the Commission is aware, a substantial number of FCMs are registered as broker-dealers, and the proposal to permit such substituted compliance will reduce the administrative burden on joint registrants and the possibility that a registrant might violate the Commission's rules inadvertently.

Notice Registrants. Proposed rule 160.2(b) should be especially welcome to those broker-dealers that are required to be "notice registered" with the Commission in order to effect transactions in security futures products on behalf of customers. It is appropriate that such broker-dealers should not be subject to the Commission's privacy rules. In this connection, however, FIA notes that FCMs that are required to be "notice registered" with the SEC for this limited purpose would appear to be required to comply with Regulation S-P. We encourage the Commission to coordinate with the SEC to obtain similar relief from regulation S-P for such FCMs.

Affiliated Entities. The Commission asks whether it should provide for a broader form of substituted compliance by permitting an FCM that is affiliated with a financial holding company, a bank holding company, a national bank or a broker-dealer to comply with Part 160 by complying with the privacy rules of the functional regulator for the affiliated entity. Provided such relief would be consistent with applicable law, FIA would support such an expansion of proposed rule 160.2(b) for the reasons discussed above.[4]

Rule 30.10 Entities

In the *Federal Register* release accompanying the proposed rules, the Commission notes that the rules would not apply to any non-resident entity that is not registered with the Commission, since it would be impracticable to apply the rules to entities located outside of the US. (The SEC took the same position in promulgating Regulation S-P.) The Commission then asks whether the privacy rules should apply to non-US entities that are exempt from registration pursuant to an order issued under Commission rule 30.10. FIA recognizes that such entities are authorized to deal directly with US customers. Consequently, the Commission has a basis for extending the proposed rules to include persons exempt from regulation under rule 30.10. However, we also note that, as with other non-resident entities, it would be difficult, if not impossible, for the Commission to assure compliance with the rules by such entities. Moreover, these entities may be subject to privacy laws or regulations in their home countries that are different from, and may be stricter than, the Commission's rules. That generally is the case in Europe. For these reasons, FIA recommends that the Commission confirm that the proposed rules would not apply to entities that are exempt from regulation under rule 30.10.

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[3] Proposed rule 160.2 (b). See SEC Regulation S-P, 17 CFR Part 248. 65 *Fed.Reg.* 35162 (June 1, 2000).

[4] Finally, FIA notes that the *Federal Register* release accompanying the proposed rules appears to limit the applicability of proposed rule 160.2(b) to FCMs that are registered with the SEC as broker-dealers. However, the rule is broader and permits any Commission registrant that is otherwise subject to SEC Regulation S-P to take advantage of the substituted compliance provisions of the rule. We support the broader application of the rule. In addition to other revisions of the rule discussed above, we recommend that the Commission clarify its scope in promulgating final rules.

Safe Harbor

Proposed rule 160.2 provides that compliance with the examples and sample clauses contained in the rules and appendix, "to the extent applicable, constitutes compliance with this part." FIA welcomes and strongly endorses the Commission's decision to adopt this safe harbor. We would encourage the Commission to consider whether it should adopt additional guidance similar to that published by the federal banking regulators when they promulgated their privacy rules.

Exceptions to Delivery Requirement

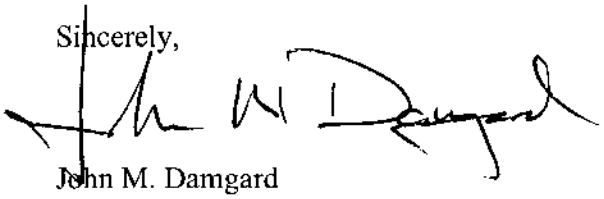
Proposed rule 160.4(a) requires a registrant to provide a customer with an initial notice of the registrant's privacy policies and practices not later than the time a "customer relationship" is established. Exceptions to this requirement are set forth in proposed rule 160.4(e). Among other exceptions, the rule provides that a registrant may furnish the initial notice within a reasonable time after establishing a customer relationship if the customer relationship is not established at the customer's election.

As the Commission is aware, the Commission's bulk transfer rule, rule 1.65, establishes a "negative consent" procedure for the transfer of customers' accounts from one FCM to another. Since the customer has the right to move his account to another FCM prior to a transfer, the ability of a transferee FCM to take advantage of the exceptions in rule 160.4(e) is not clear. We believe that an FCM that accepts customer accounts in a bulk transfer should be able to provide its initial privacy notice subsequent to the establishment of a relationship with such customers and we ask the Commission to amend rule 160.4(e) accordingly. In this connection, we note that rule 1.65 affords FCMs 60 days to obtain a the risk disclosure statements from such customers.

Conclusion

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

Sincerely,



John M. Damgard
President

cc: Honorable James E. Newsome
Honorable Barbara Pedersen Holum
Honorable David D. Spears
Honorable Thomas J. Erickson