



FUTURES INDUSTRY ASSOCIATION

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March 25, 1998

COMMENT

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

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COMMERCIAL
REGISTRATION
SECTION

Re: Voting by Interested Members of Self-Regulatory Organizations Governing Boards and Committees, 63 Fed.Reg. 2492 (January 23, 1998)

Dear Ms. Webb:

The Futures Industry Association ("FIA") is pleased to submit the following comments in response to the Commodity Futures Trading Commission's ("Commission's") notice of proposed rulemaking with respect to proposed new Commission rule 1.69. FIA, a not-for-profit corporation, is a principal spokesman for the futures industry. Its members include approximately 66 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.

Proposed rule 1.69 is designed to implement the provisions of section 5a(a)(17) of the Commodity Exchange Act ("Act"), which requires self-regulatory organizations ("SROs") to adopt rules prohibiting certain interested members of SRO governing boards and disciplinary committees (collectively, "committees") from voting on particular matters described in the proposed rule and with respect to which such members could be unduly influenced because of financial or personal concerns.

As the Commission noted in the *Federal Register* release accompanying the proposed rule, a different version of proposed rule 1.69 was first published for comment in May 1996.¹ The original proposal was the subject of considerable criticism from the various sectors of the futures industry, including FIA.² The revised rule substantially addresses the deficiencies identified in the original proposal. In particular, the Commission appears to have effectively addressed all of FIA's comments.

¹ 61 Fed.Reg. 19869 (May 3, 1996).

² Letter from John M. Damgard, President, Futures Industry Association, to Jean A. Webb, Secretary to the Commission, dated July 30, 1996.

In this regard, FIA is especially pleased that the proposed rule would delete the provisions of subparagraph (c) that were set forth in the original proposal. Under that provision a member would be presumed to know certain information about their affiliated firm's positions and thus the burden of proof would shift to the board member to prove that he did not have such knowledge. As FIA discussed in considerable detail in its 1996 comment letter, these provisions would have placed an undue burden on SROs and the individuals asked to serve on their committees. For similar reasons, FIA welcomes the Commission's decision to remove subparagraphs (d) and (e) from the revised proposed rule.

FIA believes a few additional modifications or clarifications are appropriate. In this connection, FIA notes that the proposed rule would exclude from the definition of a "disciplinary committee" those circumstances in which "a single person is authorized to impose summarily minor penalties for violating" certain exchange rules.³ In the *Federal Register* release accompanying the proposed rule, however, the Commission does not limit this exclusion to committees composed of a "single person." FIA believes the *Federal Register* release accurately reflects the Commission's intent, as well as the intent of the commenters that caused the Commission to adopt this revision. FIA encourages the Commission to revise the proposed rule further to delete the phrase "single person" from proposed rule 1.69(a)(1) and replace it with the term "committee."

Proposed rule 1.69(b)(2)(iii)(E) would provide that, in addition to establishing procedures to review relevant open positions held at the SRO, the SRO must also establish procedures to review "any other types of positions, whether held at that [SRO] or elsewhere, that the [SRO] reasonably expects could be affected by the significant action." As the Chicago Board of Trade discussed in its comment letter dated February 23, 1997, the CFTC should clarify what appears to be its intent that any review of such positions should be limited to those positions owned or controlled by the member.

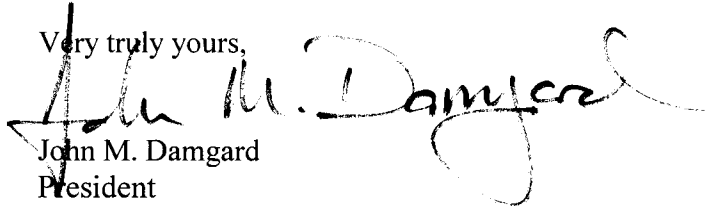
Finally, FIA also agrees with the Board of Trade that rule 1.69 should permit a member to recuse himself or herself without making the disclosures required by the rule. There would appear to be no reason why a member should be required to make the required disclosures or why an SRO should be required to conduct the review of open positions or make the determination called for under the rule, if the member has voluntarily determined not to take any part in the consideration of a particular matter.

³ Proposed rule 1.69(a)(1).

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FIA appreciates the opportunity to submit these comments with respect to the revised proposed Commission rule 1.69. If you have any questions regarding this letter, please contact me, at (202) 466-5460.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Damgard". The signature is written in a cursive style with a large, looping "D" and "G".

John M. Damgard
President