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May 25, 2005

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

**Re: CESR-CFTC Communiqué Requesting Comment on a Common
Work Program to Facilitate Trans-Atlantic Derivatives Business**

Dear Ms. Webb:

The Futures Industry Association (“FIA”)¹ submits this letter in response to the Communiqué that the Commodity Futures Trading Commission (“CFTC”) and the Committee of European Securities Regulators (“CESR”) have issued requesting comments on the proposed work program that the CFTC and CESR have proposed to facilitate trans-Atlantic derivatives business (“Communiqué”). FIA welcomes and strongly endorses this initiative, and we commend the CFTC and CESR for undertaking this project. Successful achievement of the goals set forth in the Communiqué is essential to assure efficient access to the international derivatives markets. We are especially pleased that the CFTC and CESR have identified greater transparency of the applicable laws and regulations as a primary task.

We also commend the CFTC and CESR for hosting the Roundtable in February to solicit the views of the industry. Several FIA member firms or their European affiliates took part in the Roundtable and found it to be a useful forum for the exchange of ideas. We encourage the CFTC and CESR to continue to hold such roundtables or otherwise solicit the views of the industry as they move forward with the work program, and we pledge our continued support.

We would also encourage the CFTC and CESR to invite the US Securities and Exchange Commission (“SEC”) to participate in the work program. The SEC, of course, has jurisdiction over equity options and shares jurisdiction with the CFTC over security futures products. Moreover, many US futures commission merchants are also registered with the SEC as broker-dealers. Therefore, the benefits sought to be achieved through the proposed work program will be more complete with the participation of the SEC.

¹ FIA is a principal spokesman for the commodity futures and options industry. Our regular membership is comprised of approximately 40 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 US and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators and other market participants, and information and equipment providers. 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 has identified three issues that it recommends that the CFTC and CESR include in the work program: (1) consistent standards for customer identification programs under applicable anti-money laundering statutes; (2) reciprocal recognition; and (3) temporary recognition in the event of a disaster.

Customer Identification Programs

All US and European financial institutions are required under applicable anti-money laundering statutes to implement customer identification programs. However, financial institutions in one jurisdiction are not permitted to rely on the identification programs of financial institutions in another jurisdiction, even where reliance is otherwise reasonable, *e.g.*, where the financial institutions are affiliates and the customer identification programs are essentially identical.

FIA member firms have found that that their institutional customers frequently have the need to open accounts directly with their US FCMs' European affiliates. Similarly, institutional customers of European affiliates need to open accounts directly with US FCMs. Because this implicates the customer identification requirements in each jurisdiction, these customers must submit to a second customer identification procedure. These procedures are disruptive to customers and divert resources of the financial institution. We encourage the CFTC and CESR to develop consistent standards for customer identification programs and permit reasonable reliance across jurisdictions. At a minimum, CFTC and CESR should make it unambiguous that US companies may rely on the identification programs of their European affiliated companies and that European companies may rely on the identification programs of their US affiliates.

Reciprocal Recognition

Pursuant to Rule 30.10 of its rules governing foreign futures and options transactions, the CFTC has exempted foreign firms from having to comply with applicable CFTC rules in connection with the offer and sale of foreign futures and option contracts to US customers where the CFTC has found that the foreign firm is subject to a comparable regulatory scheme. Although the CFTC has granted exemptions to firms located in several European countries, including France, Germany, Spain and the United Kingdom, only France has granted reciprocal exemptions to US firms.

We urge the CFTC and CESR to build upon the progress that has already been made in the area and develop procedures that would provide for mutual recognition of firms subject to regulation by the CFTC or one of the CESR countries. For US FCMs, such procedures would also allow a firm that is recognized in one European jurisdiction to conduct business throughout the CESR countries.²

² We understand that futures and options on commodities are not considered financial instruments and, therefore, a firm qualified to do business in commodities in one member country currently is not permitted to "passport" to another member country within the European Union. FIA strongly encourages CESR to work with the appropriate bodies within the European Union to permit firms that are engaged in commodities to passport.

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Temporary Recognition

The terrorist attacks of September 11, 2001 emphasized to all financial institutions the importance of developing disaster recovery plans which assure that the financial institution can continue to operate with minimal customer disruption in the event of an emergency or significant business interruption. For a US FCM with one or more European affiliates, it could well be more efficient in the event of a disaster to shift its business activities to a European affiliate, which has an established staff and infrastructure rather than attempt to establish one or more backup locations in the US. In these circumstances, however, the FCM must know that it will be able to conduct business temporarily from that European location without being in violation of applicable law. Similarly, it may be more efficient for a European affiliate of a US FCM to shift its business to the US.

FIA requests the CFTC and CESR to consider adopting procedures that would permit a firm registered in one jurisdiction to conduct business temporarily from another jurisdiction in the event of a disaster. For a US FCM, such procedures would allow a firm that is temporarily recognized in one European jurisdiction to conduct business throughout the CESR countries.

Conclusion

FIA appreciates the opportunity to submit these comments and again applauds the CFTC and CESR for undertaking this project. If you have any questions regarding this letter, please contact Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President

cc: Honorable Sharon Brown-Hruska, Acting Chairman
Honorable Walter L. Lukken, Commissioner
Honorable Fred Hatfield, Commissioner
Honorable Michael V. Dunn, Commissioner

Andrea M. Corcoran, Director
Office of International Affairs