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April 18, 2016

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Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Josée Turcotte
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Re: *CSA Notice and Request for Comment: Proposed National Instrument 94-102 and Companion Policy 94-102CP, Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*

Dear Sirs/Mesdames:

The Futures Industry Association, Inc.[1] ("**FIA**"), appreciates the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") on Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Proposed Rule**"*)* and the related companion policy thereto (the "**Companion Policy**," and together with the Proposed Rule, "**Proposed NI 94-102**").

[1] FIA is the leading global trade organization for the futures, options and cleared derivatives markets, with offices in London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and promote high standards of professional conduct. FIA's primary members, which act as the majority clearing members of U.S. exchanges, handle more than 90 percent of the customer funds held for trading on U.S. futures exchanges.

Introduction

FIA supports the principles underlying Proposed NI 94-102, namely the protection of customer positions and collateral. However, FIA is concerned that Proposed NI 94-102 may result in overlapping, duplicative and unnecessarily burdensome regulatory requirements depending on whether, and how, the CSA implement a substitute compliance regime.

The CSA recognized in the notice accompanying Proposed NI 94-102 that the over-the-counter (**"OTC"**) derivatives clearing infrastructure is largely located outside of Canada, primarily in the United States and Europe. It therefore should be unsurprising that certain of our non-Canadian members clear OTC derivatives transactions for local Canadian counterparties ("**Canadian Activities**"). The Canadian Activities of our members that are registered with the U.S. Commodity Futures Trading Commission (the "**CFTC**") as futures commission merchants (**"FCMs"**) are subject to requirements under U.S. federal law that, although not identical in every respect, are not materially different to those set forth in the Proposed Rule. Accordingly, and most importantly, CFTC-regulated FCMs provide an equivalent level of protection to all of their customers, including their Canadian customers.

Although the scope of Proposed NI 94-102 is narrower than originally contemplated in CSA Notice 91-304 (the "**Proposed Model Rule**"), FIA continues to believe that the imposition of costly and operationally burdensome regulatory requirements that would apply to regulated clearing agencies and clearing intermediaries (collectively, "**Clearing Service Providers**") under Proposed NI 94-102 may cause such market participants to withdraw from the Canadian market, absent an appropriately accommodating and practicable substitute compliance regime.

Substitute Compliance – Proposed NI 94-102 Should Generally Recognize Foreign OTC Derivatives Clearing Regimes In Their Entirety, Not on a "Rule-by-Rule" Basis

FIA appreciates the CSA proposing substitute compliance as a way to minimize compliance costs and burdens for appropriately regulated foreign Clearing Service Providers.

However, we believe the substitute compliance regime will not be effective in its proposed form. Under Proposed NI 91-102, substitute compliance would be implemented on a granular, "rule-by-rule" basis by publishing an Appendix that lists specific provisions of foreign law. If a foreign Clearing Service Provider is subject to and in compliance with any such provision, it will be deemed to satisfy the corresponding provisions of Proposed NI 94-102 listed in the Appendix.

FIA encourages the CSA to implement a more accommodating and practicable substitute compliance approach, whereby the OTC derivatives customer clearing regimes of foreign jurisdictions would be recognized in their entirety, as opposed to providing for substitute compliance only on a "rule-by-rule" basis. This approach would allow for a foreign Clearing Service Provider to be compliant with all of Proposed NI 94-102 if it is adhering to applicable home country requirements when dealing with Canadian customers. That is, so long as (i) a foreign Clearing Service Provider deals with Canadian customers in a manner that complies with the Clearing Service Provider's local law; (ii) such local law does not permit foreign customers of a Clearing Service Provider to be dealt with materially differently

than local customers; and (iii) the CSA has recognized the relevant local law for substitute compliance purposes, such foreign Clearing Service Provider would be deemed in compliance with Proposed NI 94-102. If there are particular areas where foreign law is not considered to sufficiently protect Canadian customers, the CSA could impose conditions on any particular substitute compliance decision, such that in a particular area compliance with Proposed NI 94-102 would be required.

FIA believes such an approach – whereby the CSA would typically recognize a foreign jurisdiction's customer collateral protection regime in its entirety for substitute compliance purposes – would simplify the implementation of Proposed NI 94-102 significantly, particularly in the case of jurisdictions, such as the U.S. and in Europe, where the local rules overlap significantly with the requirements contemplated by Proposed NI 94-102.

Imposing a layer of duplicative and potentially conflicting Canadian regulation on foreign Clearing Service Providers that seek to clear derivatives for Canadian customers would run contrary to the CSA's stated regulatory goal of encouraging central clearing of OTC derivatives. Many of the provisions of Proposed NI 94-102, if applied to cross-border activity with Canadian customers, could discourage foreign participation in the Canadian derivatives market and potentially limit Canadian market participants' access to global Clearing Service Providers.

Portfolio and Cross-Margining

FIA reiterates concerns raised by comments on the Proposed Model Rule regarding imposing a prohibition on portfolio and cross-margining. FIA believes that portfolio and cross-margining of OTC derivatives with other products, such as futures, can provide important commercial benefits to market participants (such as capital savings) without meaningfully increasing the risk of customer shortfalls in the event of a clearing intermediary's default. For example, the clearing division of the Chicago Mercantile Exchange Inc. ("**CME Clearing**") has obtained orders from the CFTC that permit cross-margining of cleared swaps products and futures.[2] In reliance on these orders, CME Clearing currently offers customers of FCMs the ability to cross-margin across nineteen cleared OTC interest rate swap currencies, CBOT treasury futures, CME Eurodollar futures and USD deliverable swap futures. In addition, the CFTC has issued an order authorizing ICE Clear Europe Limited and its FCM members to implement portfolio margining of cleared swaps products with certain non-U.S. futures.[3] The CFTC and

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[2] See Orders of the CFTC dated March 3, 2006 and September 26, 2008, regarding "Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by the Chicago Mercantile Exchange." Links provided here: http://www.cftc.gov/files/tm/tmcmeotc4dorder030306.pdf and http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/cbot4dorder9-26-08.pdf .

[3] See Order of the CFTC dated August 8, 2012, regarding "Treatment of Funds Held in Connection with Clearing by ICE Clear Europe Limited of Contracts Traded on ICE Futures Europe." Link provided here: http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/iceclearеurope4dorder8-9-12.pdf.

the U.S. Securities Exchange Commission have also issued orders to permit ICE Clear Credit LLC to offer customers of FCMs the ability to portfolio margin and carry credit default index swaps and credit default single-name security-based swaps together in a CFTC-regulated cleared swaps account.[4]

Sections 6 and 32 of Proposed NI 94-102 would not, absent discretionary relief, permit portfolio or cross-margining of futures and OTC cleared derivatives. To reduce the regulatory burden on foreign Clearing Service Providers, we would encourage the CSA to recognize, where appropriate, existing foreign regulatory relief as part of its substitute compliance determinations so that foreign Clearing Service Providers are not required to apply for the same relief in Canada in order to make portfolio and cross-margining programs available to Canadian customers.

The effort and expense required to obtain separate relief from Canadian regulators in order to make these programs available to Canadian customers is such that foreign Clearing Service Providers may simply opt not to. This would be to the detriment of Canadian market participants, who would then not be permitted to participate in programs that may result in significant capital savings without meaningfully increasing any such customer's (i) exposure to a clearing intermediary insolvency or (ii) risk that its cleared OTC derivatives positions will be ported to another clearing intermediary in the event of such an insolvency.

Record Retention Obligations

Proposed NI 94-102 provides that all Clearing Service Providers "must keep the records required" under Proposed NI 94-102 "and all supporting documentation, in a readily accessible location for at least 7 years . . . ." FIA notes that the equivalent requirements under U.S. law provide for a five year record retention period.

FIA acknowledges that seven years is the typical record retention period applicable in other areas of Canadian securities regulation. However, we believe that the burden associated with requiring U.S. Clearing Service Providers to retain records related to Canadian customers for two additional years is disproportionate to any marginal benefit associated with the additional retention period, and ultimately a disincentive for such Clearing Service Providers to continue to clear for Canadian customers. We ask that the CSA consider reducing the retention period from seven years to five years.

More broadly, we would ask that the CSA, in the context of its substitute compliance determinations, provide that compliance with U.S. record retention requirements is deemed to satisfy Canadian requirements. We would further ask that the CSA limit the information and records required to be retained by a foreign Clearing Service Provider to those required under applicable foreign law.

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[4] See, e.g., Order of the CFTC dated January 14, 2013, regarding "Treatment of Funds Held in Connection with Clearing by ICE Clear Credit of Credit Default Swaps." Link provided here: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/icecreditclearorder011413.pdf .

We also request that the retention period apply and be measured in relation to each individual transaction. Section 36 of Proposed NI 94-102 provides that records for **all transactions** are required to be retained by a regulated clearing agency "for at least 7 years after the date upon which a customer's **last** cleared derivative expires or terminates" (emphasis added). Section 12 of Proposed NI 94-102 imposes the same requirement on clearing intermediaries. In the context of a long-term customer relationship, this could require Clearing Service Providers to maintain records for the relevant customer transactions far beyond a seven year period, which could prove extremely burdensome.

Books and Records – Collateral Information

Sections 13 and 37 of the Proposed Rule require Clearing Service Providers to record certain customer collateral information for each customer. FIA believes that the level of detailed information contemplated is not appropriate given the customer segregation model that is permitted under sections 3 and 29 of Proposed NI 94-102.

Under sections 3 and 29 of the Proposed Rule, Clearing Service Providers are required to segregate customer collateral from collateral securing proprietary positions (which is held in the "house" account). Customer collateral, however, may be commingled with the collateral of other customers in a single "omnibus" customer account. This model is similar to the "legally segregated operationally commingled" ("**LSOC**") model followed under the rules of the CFTC in the United States.

FIA believes it is adequate (and appropriate), in the context of a regime that permits the collateral of all cleared OTC derivatives customers to be held in a single customer account, to record the value of collateral attributable to each customer. However, sections 13(3) and 37(2) of the Proposed Rule also require Clearing Service Providers to record a description of the customer collateral held at each permitted depository. The corresponding provisions of the Companion Policy state that this description should include "an industry standard security identifier such as a CUSIP or ISIN code or, if an identifier is not available, a plain language description of the collateral."

We submit that identifying specific items of collateral attributable to individual customers is inconsistent with the segregation model contemplated elsewhere in Proposed NI 94-102. By way of comparison, under the LSOC model in the United States, DCOs and FCMs are only required to ascribe a value to the collateral attributable to a particular customer, not identify the type(s) of collateral attributable to each customer. Recording this level of detail could be misinterpreted by customers as meaning that specific items of collateral are individually segregated for their benefit, which is incorrect – the commingling of customer collateral permitted under LSOC and Proposed NI 94-102 does not completely eliminate fellow customer risk.

In light of the above, we would ask the CSA to reconsider the requirements in sections 13(3) and 37(2) of the Proposed Rule on the basis that the segregation model contemplated elsewhere in the instrument should only require the recording of collateral value. Assuming the CSA agrees, we would ask that sections 4 and 30(1) of the Companion Policy be amended to clarify that the recordkeeping obligation with respect to collateral extends to collateral value only. We would also ask that sections 26(1)(b) (customer collateral report – customer) and 44(b) (customer collateral report – direct intermediary) of

the Proposed Rule be amended to remove the references to "asset type and quantity of customer collateral."

Books and Records – Excess Margin

Sections 5 and 31 of the Proposed Rule require Clearing Service Providers to have "rules, policies or procedures in place with respect to identifying and recording, at least once each business day, the value of excess margin" that they hold that is attributable to each customer. FIA asks that the CSA reconsider this approach. The calculations required to be performed by FCMs under the CFTC's LSOC regime identify daily excess margin in the LSOC account across all customers, and not necessarily at a per customer level.[5] In the interest of harmonizing regulation across jurisdictions and encouraging Canadian access to international OTC derivatives clearing infrastructure, we submit that it would be appropriate for the CSA to adopt the same approach.

Disclosure – Clearing Intermediary Disclosure to Customers

Sections 21, 22, 23, 26 and 27 of the Proposed Rule impose disclosure obligations on clearing intermediaries regarding, among other things, (i) the regulated clearing agencies that a clearing intermediary clears through; (ii) the investment policies and guidelines of any such regulated clearing agency; (iii) the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws and reasonably prompt disclosure of any change to such treatment; (iv) the risks associated with receiving clearing services through an indirect intermediary and the rules, policies or procedures for transferring positions and customer collateral in the event of an indirect intermediary's default (including reasonably prompt disclosure of any change to any such rules); (v) daily reporting regarding, among other things, the current value, asset type and quantity of customer collateral held by the clearing intermediary and the location of each permitted depository at which customer collateral is held; and (vi) written disclosure regarding investment policies with respect to customer collateral.

Attached hereto as Exhibits A (the "**Rule 1.55(k) Disclosure**") and B (the "**Default Disclosure**") are examples of FIA disclosure templates that are typically provided by U.S. FCMs to their customers as part of the account opening process. FIA is hopeful that, as part of its substitute compliance determinations, the CSA will deem U.S. customer disclosure rules equivalent to the disclosure rules in Proposed NI 94-102. However, even if this result is expected to be achieved, we would nonetheless ask the CSA to consider aligning its customer disclosure rules with the market practice evidenced by the Rule 1.55(k) Disclosure and the Default Disclosure. In the absence of substitute compliance, the prescribed disclosures the CSA has proposed would impose a meaningful regulatory impediment to providing clearing services to Canadian customers.

[5] Pursuant to CFTC Rule 22.13, FCMs that offer "LSOC with excess", where excess collateral is posted to and held by a DCO, must identify the excess collateral of each customer so held on a daily basis. FCMs, however, are not required to offer LSOC with excess to its customers.

We wish to highlight, in particular, the requirement that, before receiving an OTC derivative from or on behalf of a customer, a clearing intermediary must provide "written disclosure to the customer describing the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws, in the event of a default by the clearing intermediary." Further, clearing intermediaries must disclose any change regarding the treatment of customer collateral "within a reasonable period of time."

Unless substitute compliance is available, these rules would require U.S. clearing intermediaries to provide disclosures to Canadian customers that they do not currently provide to U.S. and other global customers. Notably, the Rule 1.55(k) Disclosure provides that "[Firm] will update this information annually and as necessary to take account of any material change to its business operations, financial condition or other factors that [Firm] believes may be material to a customer's decision to do business with the [Firm]." Non-material changes in treatment of customer collateral do not trigger an intra-year update to the disclosure. Under Proposed NI 94-102, however, U.S. FCMs would appear to be required to provide such non-material update to Canadian customers.

Moreover, neither the Rule 1.55(k) Disclosure nor the Default Disclosure provides in-depth bankruptcy or insolvency analysis. The approach is instead to provide more generalized "default risk" disclosure along with links to relevant clearing house rules and other documents (including a link to FIA's "Protection of Customer Funds Frequently Asked Questions" document).

FIA submits that it would be extremely difficult, if not impossible, to create and provide detailed cross-border bankruptcy disclosures for Canadian customers. The nature of complex cross-border bankruptcies, including the application of equitable principles that underpin bankruptcy laws in the U.S., Canada and elsewhere, renders outcomes difficult to predict with certainty. Indeed, for this reason, a detailed disclosure of the kind that would be required by Proposed NI 94-102 could be inaccurate or misleading.

An additional disclosure requirement that FIA feels is inconsistent with U.S. rules is the obligation, under section 26 of the Proposed Rule, to make available daily collateral reports to customers, including the "location of each permitted depository at which customer collateral is held." Such reporting of collateral is required to be provided to customers only on a monthly basis under the U.S. regime and the location of depositories is not required to be disclosed to customers.[6]

A final disclosure requirement that FIA wishes to highlight is the requirement under section 27 of the Proposed Rule that a clearing intermediary that invests customer collateral disclose in writing its investment policy to the customer. This disclosure is not required under U.S. law and would be burdensome and unnecessary, particularly in light of the fact that CFTC Rule 1.25 is more restrictive than

[6] FCMs may only use qualifying depositories that sign a CFTC-required acknowledgement letter that obligates the depository, among other things, to provide the CFTC the ability to obtain account balance information for such accounts. See CFTC Rule 1.20.

the CSA's proposal regarding permitted investments in respect of customer collateral. For example, CFTC Rule 1.25 limits the type of instruments that may be used as well as imposes requirements as to the liquidity, concentration, and time-to-maturity of such instruments.

Reporting to Canadian Regulators

Although FIA supports increased transparency for regulators, we request that to the extent possible the reporting obligations be designed and implemented in a way that minimizes costly and duplicative reporting requirements for foreign Clearing Service Providers. The FIA would, for example, support a proposal that would permit U.S. FCMs to provide to Canadian regulators the same reports provided to the CFTC and/or the National Futures Association, with information regarding non-Canadian customers deleted from the version provided to Canadian regulators.

Portability and Transferability

FIA agrees with the CSA regarding the importance of being able to transfer customer positions and collateral in certain pre-default and post-default scenarios. FIA also appreciates the fact the CSA have recognized in the Companion Policy some of the difficulties and challenges in ensuring transfer and portability arrangements work as intended in all circumstances. On that basis, FIA would ask that the obligation in section 46(1) of the Proposed Rule recognize more explicitly the challenges discussed in the Companion Policy (perhaps by substituting the words "must facilitate" with "must facilitate to the extent practicable" or words to similar effect). We also suggest that the CSA amend section 46(3)(a) of the Proposed Rule to reflect the fact that customer consent to transfer will not always be obtained. In lieu of explicit customer consent, certain default scenarios rely on negative consent (for example, in connection with auctions). Also, as acknowledged in the Companion Policy, the ability to transfer positions and collateral without client consent may actually be explicitly set out in the policies or procedures of the regulated clearing agency. On this basis, in order not to create doubt regarding when transfers are permitted, we support amending section 46(3)(a) along the lines suggested above.

Investment of Customer Collateral

FIA is generally supportive of the constraints placed on the investment of customer collateral by Proposed NI 94-102. We believe, however, that the requirement that any repurchase or reverse repurchase agreement in respect of permitted investment collateral be confirmed in writing to the customer is inappropriate and unduly onerous. There is no analogous requirement in the United States and, further, the customer does not bear any risk of loss on, and does participate in any profits with respect to, any such agreement, and therefore should not require notification. See CFTC Rule 1.29.

Definition of "Clearing Services"

FIA is concerned that the definition "clearing services" in Proposed NI 94-102 is inappropriately broad and may capture activity which should not be regulated as clearing activity. For example, the language with respect to "submitting customer transactions" could be interpreted to extend to persons/entities regulated as "introducing brokers" in the United States, for which compliance with the regime in

Proposed NI 94-102 would serve no purpose as they do not custody customer collateral. In addition, FIA notes that the prong of the definition that includes persons that "monitor[ ] credit and liquidity limits" is vague, particularly as the meaning of "liquidity limits" is unclear.

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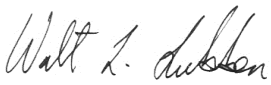
FIA appreciates the opportunity to submit these comments to the CSA on Proposed NI 94-102. If CSA staff has any questions concerning the matters discussed in this letter, please contact Allison Lurton, FIA's Senior Vice President and General Counsel, at (202) 772-3057 or alurton@fia.org.

Yours sincerely,



Walt L. Lukken
President and Chief Executive Officer

EXHIBIT A

RULE 1.55(k) DISCLOSURE

EXHIBIT A

COMMODITY FUTURES TRADING COMMISSION RULE 1.55(K):

FCM-SPECIFIC DISCLOSURE DOCUMENT

The Commodity Futures Trading Commission (Commission) requires each futures commission merchant (FCM), including [Firm], to provide the following information to a customer prior to the time the customer first enters into an account agreement with the FCM or deposits money or securities (funds) with the FCM.[1] Except as otherwise noted below, the information set out is as of [DATE]. [Firm] will update this information annually and as necessary to take account of any material change to its business operations, financial condition or other factors that [Firm] believes may be material to a customer's decision to do business with [Firm].[2] Nonetheless, [Firm's] business activities and financial data are not static and will change in non-material ways frequently throughout any 12-month period.

[NOTE: [Firm] is a subsidiary of [Holding Company]. Information that may be material with respect to [Firm] for purposes of the Commission's disclosure requirements may not be material to [Holding Company] for purposes of applicable securities laws.

Firm and its Principals

(1) FCM's name, address of its principal place of business, phone number, fax number and email address.

(6) FCM's DSRO and DSRO's website address.

(2) The name, title, business address, business background, areas of responsibility and the nature of the duties of each principal as defined in § 3.1(a).

Firm's Business

(3) The significant types of business activities and product lines engaged in by the futures commission merchant, and the approximate percentage of FCM's assets and capital that are used in each type of activity.[3]

This section should also include all registrations and exchange and clearing organization memberships.

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[1] The objective of the disclosures is to provide prospective and existing customers of the FCM with material information that could have an impact on their decision to engage in a relationship with the FCM. The Commission is not mandating the form in which the required information is conveyed, provided it is responsive to the information requirements of § 1.55 and provides such information in a clear, concise, and understandable manner. An FCM is not in compliance with § 1.55 if the annual report information does not disclose the information required by § 1.55 as it relates to the FCM.

[2] Each FCM will need to assess the materiality of changes and use its judgment to determine whether the Firm Specific Disclosure Document should be revised.

[3] The regulation is intended to provide the public with information concerning the major businesses activities that an FCM engages in to provide information regarding the benefits and risks of using such firm to conduct transactions in commodity interests. The rule requires disclosure of material non-regulated, as well as regulated, businesses that an FCM may engage in.

EXHIBIT A

Activity/Product Line	Percentage of Assets	Percentage of Capital
Financing (Resales, Borrows)		
Inventory by Business Line		
FICC		
Equities		
Other Inventory		
Goodwill and Tangible Assets		
Receivable from Broker-Dealers and Customers		
Investments in Subsidiaries and Receivable from Affiliates		
Fixed and All Other Assets		

FCM Customer Business

(4) FCM's business on behalf of its customers, in its capacity as such, including:

- Types of customers: *e.g.*, institutional (asset managers, pension funds, insurance companies, banks); retail; commercial (agricultural, energy); proprietary (HFT)
- Markets traded: *e.g.*, financial, agricultural, energy, security futures, swaps
- International businesses: Europe, Asia, Latin America
- Exchange and Swap Execution Facility Memberships

Exchange Memberships	SEF Memberships
Cantor Futures Exchange LP	360 Trading Networks, Inc.
CBOE Futures LLC	BGC Derivatives Markets LP
Chicago Board of Trade	Chicago Mercantile Exchange, Inc.
Chicago Mercantile Exchange, Inc.	DW SEF LLC
Commodity Exchange Inc.	EOX Exchange LLC
ELX Futures LP	GFI Swaps Exchange LLC
Eris Exchange LLC	GTX SEF LLC
ICE Futures US, Inc.	ICAP Global Derivatives Limited
Minneapolis Grain Exchange, Inc.	ICAP SEF (US) LLC
Nasdaq OMX Futures Exchange, Inc.	ICE Swap Trade LLC
New York Mercantile Exchange, Inc.	INFX SEF Inc.

Nodal Exchange LLC	Javelin SEF LLC
North American Derivatives Exchange	LatAm SEF LLC
NYSE Liffe US, LLC	MarketAxess SEF Corporation
One Chicago LLC	SDX Trading LLC
trueEX LLC	SwapEx LLC
	TeraExchange LLC
	Thomson Reuters (SEF) LLC
	tpSEF Inc.
	Tradition SEF Inc.
	trueEX LLC
	TW SEF LLC

- Clearinghouses used: member, non-member

Clearing Organization	**[Firm] a Member**	**[Firm] Affiliate a Member**
ASX Clear		
ASX Clear (Futures)		
Chicago Mercantile Exchange		
Eurex Clearing		
ICE Clear US Inc.		
ICE Clear Europe		
ICE Clear Credit LLC		
LCH.Clearnet LLC		
LCH.Clearnet Limited		
LCH.Clearnet SA		
Minneapolis Grain Exchange Clearing House		
New York Portfolio Clearing		
North American Derivatives Exchange		
Options Clearing Corporation		
Singapore Exchange Derivatives Clearing		

- carrying brokers used: affiliates, non-affiliates

Carrying Brokers US/Non-US	Affiliated with [FCM] Y/N

Permitted Depositories and Counterparties

FCM's policies and procedures concerning the choice of bank depositories, custodians and counterparties to permitted transactions under § 1.25.[4]

[Consider inserting from risk management program: Rule 1.11(e)(3)(i)(A) and (F)]

Material Risks

(5) The material risks, accompanied by an explanation of how such risks may be material to its customers, of entrusting funds to FCM, including, without limitation:[5]

> (i) the nature of investments made by FCM (including credit quality, weighted average maturity and weighted average coupon);[6]
>
> **Overview: In order to assure that it is in compliance with its regulatory capital requirements and that it has sufficient liquidity to meet its ongoing business obligations, [Firm] holds a significant portion of its assets in cash and US Treasury securities guaranteed as to principal and interest. [Firm] also invests in other short-term highly liquid instruments such as money market instruments, commercial paper, and certificates of deposit. [Firm] also invests a limited amount of its in state and municipal securities and certain highly-rated corporate debt securities. The average weighted maturity of all investments held is ___ [months], and the average weighted coupon is ___ percent.**

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[4] The term "counterparties" is limited to § 1.25 counterparties.

[5] We suggest that the information each firm provides in response to subparagraphs (i)-(iv) be based, to the extent practicable, on the notes in the firm's financial statements. In particular, with the exception of the discussion credit quality, weighed average maturity and average coupon of Rule 1.25 investments under subparagraph (i), we suggest that it is unnecessary to provide numerical values.

The Commission rejected FIA's suggestion that the term "risks" be replaced with the term "information." The Commission believes customers (particularly retail and less sophisticated customers) would benefit from an FCM providing its assessment of the risks of the firm, accompanied by an explanation of such risks. The disclosures contemplated by the rule go to the full operation of the FCM and not just its regulated or futures activities.

[6] We suggest that information regarding credit quality, weighed average maturity and average coupon be limited to investments of customer funds under Rule 1.25. Subject to the foregoing, an FCM must provide information regarding its general investments and not just the investment of customer funds. The disclosures contemplated by the rule go to the full operation of the FCM and not just its regulated or futures activities.

(ii) FCM's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business;[7]

(iii) risks to FCM created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and

(iv) any significant liabilities, contingent or otherwise, and material commitments.

Material Complaints or Actions

(7) Any material administrative, civil, enforcement or criminal complaints or actions filed against FCM where such complaints or actions have not concluded, and any enforcement complaints or actions filed against FCM during the last three years.[8]

Customer Funds Segregation.

(8) A basic overview of customer fund segregation, FCM management and investments, FCMs and joint FCM/broker dealers.

Customer Accounts. FCMs may maintain up to three different types of accounts for customers, depending on the products a customer trades:

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[7] The requirement to disclose leverage information would be met by an FCM providing the leverage information required under § 1.10 and NFA regulations. An FCM should define the leverage calculation in the Disclosure Document and may provide any other information necessary to make the information meaningful for the public, but if materially different from the then prevailing NFA methodology, should provide an explanation of the differences therefrom.

[8] The rule is not intended to cover open or closed investigations that have not resulted in the filing of a complaint.

FIA had recommended the Commission confirm that the disclosure required under this paragraph would be limited to matters required to be disclosed in accordance with § 4.24(l)(2), *i.e.*, an action will be deemed material if: (1) the action would be required to be disclosed in the footnotes to a commodity pool's financial statements under generally accepted accounting principles as adopted in the US; (2) the action was brought by the Commission and resulted in a civil monetary penalty in excess of $50,000; and (3) the action was brought by any other federal or state regulatory agency, a non-US regulatory agency, or an SRO and involved allegations of fraud or other willful misconduct.

In response, the Commission did not comment on (1) above. With respect to (2) and (3), the Commission stated that FCMs should disclose all Commission disciplinary actions that are pending or have been concluded against the FCM without regard to the amount of the civil monetary penalty that may have been imposed. With regard to actions brought by other regulatory and self-regulatory agencies, there may be circumstances in addition to fraud or other willful misconduct that should be disclosed to customers to allow customers to better appreciate the potential risks of entering into a business relationship with an FCM.

Note: Notwithstanding the Commission's comment, it should be noted that the statutory disqualifications in sections 8a(2) and (3), which are indicative of "material" actions, are generally limited to actions involving fraud or willful misconduct. Other actions that we may want to consider including are actions relating to conduct that also requires an early warning notice under Rule 1.12, *e.g.*: (i) violation of the net capital requirements; (ii) failure to keep current books and records; (iii) material inadequacy; (iv) violation of the segregation requirements; and (v) violation of Rule 1.25. Any such violations should be more than technical. Rather, we believe only material actions brought by other regulatory and self-regulatory agencies, evidencing a weakness in internal controls or other systemic problems would be required to be disclosed.

(i) a **Customer Segregated Account** for customers that trade futures and options on futures listed on US futures exchanges;

(ii) a **30.7 Account** for customers that trade futures and options on futures listed on foreign boards of trade; and

(iii) a **Cleared Swaps Customer Account** for customers trading swaps that are cleared on a DCO registered with the Commission.

The requirement to maintain these separate accounts reflects the different risks posed by the different products. Cash, securities and other collateral (collectively, **Customer Funds**) required to be held in one type of account, *e.g.*, the Customer Segregated Account, may not be commingled with funds required to be held in another type of account, *e.g.*, the 30.7 Account, except as the Commission may permit by order. For example, the Commission has issued orders authorizing ICE Clear Europe Limited, which is registered with the Commission as a DCO, and its FCM clearing members: (i) to hold in Cleared Swaps Customer Accounts Customer Funds used to margin both (a) Cleared Swaps and (b) foreign futures and foreign options traded on ICE Futures Europe, and to provide for portfolio margining of such Cleared Swaps and foreign futures and foreign options; and (ii) to hold in Customer Segregated Accounts Customer Funds used to margin both (c) futures and options on futures traded on ICE Futures US and (d) foreign futures and foreign options traded on ICE Futures Europe, and to provide for portfolio margining of such transactions.

Customer Segregated Account. Funds that customers deposit with an FCM, or that are otherwise required to be held for the benefit of customers, to margin futures and options on futures contracts traded on futures exchanges located in the US, *i.e.*, designated contract markets, are held in a **Customer Segregated Account** in accordance with section 4d(a)(2) of the Commodity Exchange Act and Commission Rule 1.20. **Customer Segregated Funds** held in the Customer Segregated Account may not be used to meet the obligations of the FCM or any other person, including another customer.

All Customer Segregated Funds may be commingled in a single account, *i.e.*, a customer omnibus account, and held with: (i) a bank or trust company located in the US; (ii) a bank or trust company located outside of the US that has in excess of $1 billion of regulatory capital; (iii) an FCM; or (iv) a DCO. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's customers. Unless a customer provides instructions to the contrary, an FCM may hold Customer Segregated Funds only: (i) in the US; (ii) in a money center country;[9] or (iii) in the country of origin of the currency.

An FCM must hold sufficient US dollars in the US to meet all US dollar obligations and sufficient funds in each other currency to meet obligations in such currency. Notwithstanding the foregoing, assets denominated in a currency may be held to meet obligations denominated in another currency (other than the US dollar) as follows: (i) US dollars may be held in the US or in money center countries to meet obligations denominated in any other currency; and (ii) funds in money center currencies[10] may be held in the US or in money center countries to meet obligations denominated in currencies other than the US dollar.

30.7 Account. Funds that **30.7 Customers** deposit with an FCM, or that are otherwise required to be held for the benefit of customers, to margin futures and options on futures contracts traded on foreign

[9] Money center countries means Canada, France, Italy, Germany, Japan, and the United Kingdom.

[10] Money center currencies mean the currency of any money center country and the Euro.

boards of trade, *i.e.*, **30.7 Customer Funds**, and sometimes referred to as the **foreign futures and foreign options secured amount**, are held in a **30.7 Account** in accordance with Commission Rule 30.7.

Funds required to be held in the 30.7 Account for or on behalf of 30.7 Customers may be commingled in an omnibus account and held with: (i) a bank or trust company located in the US; (ii) a bank or trust company located outside the US that has in excess of $1 billion in regulatory capital; (iii) an FCM; (iv) a DCO; (v) the clearing organization of any foreign board of trade; (vi) a foreign broker; or (vii) such clearing organization's or foreign broker's designated depositories. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's 30.7 Customers. As explained below, Commission Rule 30.7 restricts the amount of such funds that may be held outside of the US.

Customers trading on foreign markets assume additional risks. Laws or regulations will vary depending on the foreign jurisdiction in which the transaction occurs, and funds held in a 30.7 Account outside of the US may not receive the same level of protection as Customer Segregated Funds. If the foreign broker carrying 30.7 Customer positions fails, the broker will be liquidated in accordance with the laws of the jurisdiction in which it is organized, which laws may differ significantly from the US Bankruptcy Code. Return of 30.7 Customer Funds to the US will be delayed and likely will be subject to the costs of administration of the failed foreign broker in accordance with the law of the applicable jurisdiction, as well as possible other intervening foreign brokers, if multiple foreign brokers were used to process the US customers' transactions on foreign markets.

If the foreign broker does not fail but the 30.7 Customers' US FCM fails, the foreign broker may want to assure that appropriate authorization has been obtained before returning the 30.7 Customer Funds to the FCM's trustee, which may delay their return. If both the foreign broker and the US FCM were to fail, potential differences between the trustee for the US FCM and the administrator for the foreign broker, each with independent fiduciary obligations under applicable law, may result in significant delays and additional administrative expenses. Use of other intervening foreign brokers by the US FCM to process the trades of 30.7 Customers on foreign markets may cause additional delays and administrative expenses.

To reduce the potential risk to 30.7 Customer Funds held outside of the US, Commission Rule 30.7 generally provides that an FCM may not deposit or hold 30.7 Customer Funds in permitted accounts outside of the US except as necessary to meet margin requirements, including prefunding margin requirements, established by rule, regulation, or order of the relevant foreign boards of trade or foreign clearing organizations, or to meet margin calls issued by foreign brokers carrying the 30.7 Customers' positions. The rule further provides, however, that, in order to avoid the daily transfer of funds from accounts in the US, an FCM may maintain in accounts located outside of the US an additional amount of up to 20 percent of the total amount of funds necessary to meet margin and prefunding margin requirements to avoid daily transfers of funds.

Cleared Swaps Customer Account. Funds deposited with an FCM, or otherwise required to be held for the benefit of customers, to margin swaps cleared through a registered DCO, *i.e.*, **Cleared Swaps Customer Collateral**, are held in a **Cleared Swaps Customer Account** in accordance with the provisions of section 4d(f) of the Act and Part 22 of the Commission's rules. Cleared Swaps Customer Accounts are sometimes referred to as LSOC Accounts. LSOC is an acronym for "legally separated, operationally commingled." Funds required to be held in a Cleared Swaps Customer Account may be commingled in an omnibus account and held with: (i) a bank or trust company located in the US; (ii) a bank or trust company located outside of the US that has in excess of $1 billion of regulatory capital;

(iii) a DCO; or (iv) another FCM. Such commingled account must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's Cleared Swaps Customers.

Investment of Customer Funds. Section 4d(a)(2) of the Act authorizes FCMs to invest Customer Segregated Funds in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States. Section 4d(f) authorizes FCMs to invest Cleared Swaps Customer Collateral in similar instruments.

Commission Rule 1.25 authorizes FCMs to invest Customer Segregated Funds, Cleared Swaps Customer Collateral and 30.7 Customer Funds in instruments of a similar nature. Commission rules further provide that the FCM may retain all gains earned and is responsible for investment losses incurred in connection with the investment of Customer Funds. However, the FCM and customer may agree that the FCM will pay the customer interest on the funds deposited.

Permitted investments include:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) Obligations of any United States government corporation or enterprise sponsored by the United States government (U.S. agency obligations);[11]

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank that carries deposits insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (commercial paper);

(vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation (corporate notes or bonds); and

(vii) Interests in money market mutual funds.

The duration of the securities in which an FCM invests Customer Funds cannot exceed, on average, two years.

An FCM may also engage in repurchase and reverse repurchase transactions with non-affiliated registered broker-dealers, provided such transactions are made on a delivery versus payment basis and involve only permitted investments. All funds or securities received in repurchase and reverse

[11] Obligations issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Association are permitted only while these entities operate under the conservatorship or receivership of the Federal Housing Finance Authority with capital support from the United States.

repurchase transactions with Customer Funds must be held in the appropriate Customer Account, *i.e.*, Customer Segregated Account, 30.7 Account or Cleared Swaps Customer Account. Further, in accordance with the provisions of Commission Rule 1.25, all such funds or collateral must be received in the appropriate Customer Account on a delivery versus payment basis in immediately available funds.[12]

[No SIPC Protection. Although [Firm] is a registered broker-dealer, it is important to understand that the funds you deposit with [Firm] for trading futures and options on futures contracts on either US or foreign markets or cleared swaps are not protected by the Securities Investor Protection Corporation.]

[Further, Commission rules require [Firm] to hold funds deposited to margin futures and options on futures contracts traded on US designated contract markets in Customer Segregated Accounts. Similarly, [Firm] must hold funds deposited to margin cleared swaps and futures and options on futures contracts traded on foreign boards of trade in a Cleared Swaps Customer Account or a 30.7 Account, respectively. In computing its Customer Funds requirements under relevant Commission rules, [Firm] may only consider those Customer Funds actually held in the applicable Customer Accounts and may not apply free funds in an account under identical ownership but of a different classification or account type (*e.g.*, securities, Customer Segregated, 30.7) to an account's margin deficiency. In order to be used for margin purposes, the funds must actually transfer to the identically-owned undermargined account.]

For additional information on the protection of customer funds, please see the Futures Industry Association's "Protection of Customer Funds Frequently Asked Questions" located at www.futuresindusty.org/[insert link].

Filing a Complaint

(9) Information on how a customer may obtain information regarding filing a complaint about FCM with the Commission or with FCM's DSRO.

A customer that wishes to file a complaint about [Firm] or one of its employees with the Commission can contact the Division of Enforcement either electronically at https://forms.cftc.gov/fp/complaintform.aspx or by calling the Division of Enforcement toll-free at 866-FON-CFTC (866-366-2382).

A customer that may file a complaint about the [Firm] or one of its employees with the National Futures Association electronically at http://www.nfa.futures.org/basicnet/Complaint.aspx or by calling NFA directly at 800-621-3570.

[If the CME is Firm's DSRO.] A customer that wishes to file a complaint about the [Firm] or one of its employees with the Chicago Mercantile Exchange electronically at: http://www.cmegroup.com/market-regulation/file-complaint.html or by calling the CME at 312.341.3286.

Relevant Financial Data

(6) The location where [Firm's] annual audited financial statements are made available.

(10) Financial data as of the most recent month-end when the Disclosure Document is prepared.

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[12] As discussed below, NFA publishes twice-monthly a report, which shows for each FCM, *inter alia*, the percentage of Customer Funds that are held in cash and each of the permitted investments under Commission Rule 1.25. The report also indicates whether the FCM held any Customer Funds during that month at a depository that is an affiliate of the FCM.

(i) the FCM's total equity, regulatory capital, and net worth, all computed in accordance with U.S. Generally Accepted Accounting Principles and Rule 1.17, as applicable;

(ii) the dollar value of the FCM's proprietary margin requirements as a percentage of the aggregate margin requirement for futures customers, cleared swaps customers, and 30.7 customers;[13]

(iii) the number of futures customers, cleared swaps customers, and 30.7 customers that comprise 50 percent of the FCM's total funds held for futures customers, cleared swaps customers, and 30.7 customers, respectively;

(iv) the aggregate notional value, by asset class, of all non-hedged, principal over-the counter transactions into which the FCM has entered;[14]

(v) the amount, generic source and purpose of any unsecured lines of credit (or similar short-term funding) the FCM has obtained but not yet drawn upon.[15]

(vi) the aggregated amount of financing the FCM provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices;

(vii) the percentage of futures customer, cleared swaps customer, and 30.7 customer receivable balances that the FCM had to write-off as uncollectable during the past 12-month period, as compared to the current balance of funds held for futures customers, cleared swaps customers, and 30.7 customers.

Additional financial information on all FCMs is also available on the Commission's website at: http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm.

Customers should be aware that the National Futures Association (**NFA**) publishes on its website certain financial information with respect to each FCM. The FCM Capital Report provides each FCM's most recent month-end adjusted net capital, required net capital, and excess net capital. (Information for a twelve-month period is available.) In addition, NFA publishes twice-monthly a Customer Segregated Funds report, which shows for each FCM: (i) total funds held in Customer Segregated Accounts; (ii) total funds required to be held in Customer Segregated Accounts; and (iii) excess segregated funds, *i.e.*, the FCM's Residual Interest. This report also shows the percentage of Customer Segregated Funds that are held in cash and each of the permitted investments under Commission Rule 1.25. Finally, the report indicates whether the FCM held any Customer Segregated Funds during that month at a depository that is an affiliate of the FCM.

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[13] The Commission believes that information regarding an FCM's proprietary trading is necessary for customers to appropriately assess the risks of entrusting their funds to an FCM. The Customers would benefit from some measure of the FCM's proprietary trading rather than a simple statement that the firm does or does not engage in such trading. **Note:** Neither the Federal Register accompanying the proposed rule nor the Federal Register release accompanying the final rule states whether the term "proprietary" includes affiliates. Our initial view is that the term would include an affiliate that, directly or indirectly, is controlled by or is under common control with, such FCM.

[14] The objective is for an FCM to disclose the extent of the risk it is exposed to from over-the-counter transactions that are not hedged or for which the FCM does not hold margin from the counterparty sufficient to cover the exposure. As with subparagraph (5), above, we suggest that the information provided be based, to the extent practicable, on the notes in the firm's financial statements.

[15] The Commission agrees that it would be more appropriate to disclose committed lines of credit and to exclude lines of credit that could be withdrawn by the potential lender.

The report shows the most recent semi-monthly information, but the public will also have the ability to see information for the most recent twelve-month period. A 30.7 Customer Funds report and a Customer Cleared Swaps Collateral report provides the same information with respect to the 30.7 Account and the Cleared Swaps Customer Account.

The above financial information reports can be found by conducting a search for a specific FCM in NFA's BASIC system (http://www.nfa.futures.org/basicnet/) and then clicking on "View Financial Information" on the FCM's BASIC Details page.

(11) A summary of FCM's current risk practices, controls and procedures.

[Consider inserting from [Holding Company] MD&A discussion]

This Disclosure Document was first used on _____.

EXHIBIT B

DEFAULT DISCLOSURE

EXHIBIT B

DISCLOSURE FOR CLEARED SWAPS CUSTOMERS

Default of a Non-Clearing Futures Commission Merchant

[FCM] may not be a clearing member of the derivatives clearing organization that you have selected to clear the Cleared Swaps that you may enter into. In such circumstances, [FCM] will enter into an agreement with a clearing member of such derivatives clearing organization that is registered with the CFTC as a futures commission merchant ("Clearing Broker"), pursuant to which [FCM] will maintain an omnibus account of behalf of all of its Cleared Swaps Customers ("Omnibus Account").

In compliance with CFTC Rule 22.16, we are advising you that, in the event of [FCM's] default, the agreement between the Clearing Broker and [FCM] provides that Clearing Broker, in its sole discretion, may terminate, liquidate and/or accelerate any and all Cleared Swaps, close out the Omnibus Account or any open positions of [FCM] in whole or in part, cancel any or all pending orders, and/or terminate [FCM's] right to trade in the Omnibus Account. Further, the Clearing Broker may, but is not required to, transfer all non-defaulting customer positions to another futures commission merchant. Any such action that Clearing Broker may take will be in accordance with Applicable Law, including but not limited to the CFTC's rules governing the protection of Cleared Swaps Customer Collateral. Therefore, in the event [FCM's] default is caused by the default of one or more customers that are part of the Omnibus Account, Clearing Broker may not use the funds of non-defaulting customers to satisfy the obligations of the defaulting customers.

Default of a Clearing Futures Commission Merchant

Each derivatives clearing organization is required to have rules that govern the use of Cleared Swaps Customer Collateral, and the transfer, neutralization of risks, and liquidation of Cleared Swaps in the event of a default by a clearing futures commission merchant relating to a Cleared Swaps Customer Account.

In further compliance with CFTC Rule 22.16 (17 CFR 22.16), we are providing you with the URL links to the rules of the relevant derivatives clearing organizations. Please note that such rules and the URL links are susceptible to change. If you encounter difficulty accessing these rules, please contact your [FCM] Representative for an updated URL link.

http://www.cmegroup.com/rulebook/CME/index.html

https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Rules.pdf

http://www.lch.com/rules_and_regulations/ltd/default.asp

THE INCLUSION OF A DERIVATIVES CLEARING ORGANIZATION ON THIS LIST DOES NOT MEAN THAT YOUR ACCOUNT IS ELIGIBLE TO CLEAR ANY OR ALL PRODUCTS ON THAT DERIVATIVES CLEARING ORGANIZATION. SHOULD YOU REQUIRE ADDITIONAL INFORMATION OR HAVE ANY QUESTIONS CONCERNING THE ABOVE, PLEASE CONTACT YOUR [FCM] REPRESENTATIVE.