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May 5, 2004

Patrick J. McCarty, General Counsel
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Futures Commission Merchant and Introducing Broker Customer Identification Rule—Request for No-Action Position

Dear Mr. McCarty:

The Futures Industry Association,[1] on behalf of its member firms and similarly situated futures commission merchants and introducing brokers (each, a "Firm"), respectfully requests the staff of the Commodity Futures Trading Commission ("Commission") to confirm that it will not recommend that the Commission initiate an enforcement action against a Firm, if the Firm, in complying with its obligations under the customer identification rule ("CIP Rule"),[2] relies on certain commodity trading advisors ("CTAs") to perform elements of the Firm's customer identification program notwithstanding that such CTAs currently are not subject to an anti-money laundering program rule under 31 USC 5318(h) ("AML Rule") for the purposes of paragraph (b)(6) of the CIP Rule. For purposes of this letter and for the reasons explained below, the term "CTAs" is defined to include (1) commodity trading advisors registered as such with the Commission, and (2) investment advisers that are registered as such with the Securities and Exchange Commission ("SEC") and are exempt from registration as commodity trading advisors with the Commission in accordance with applicable Commission rules.[3]

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[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 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.

[2] Customer Identification Programs for Futures Commission Merchants and Introducing Brokers, 31 CFR §103.123. The Commission issued the CIP Rule jointly with the Department of the Treasury. Commission rule 42.2 requires Firms to comply with the CIP Rule. 68 *Fed.Reg* 25149 (May 9, 2003).

[3] Our request does not include commodity pool operators. As the Commission and the Department of the Treasury noted in adopting the CIP Rule: "The focus of the CIP with respect to intermediated accounts will be the intermediary itself. . . . This is not because the [Firm] is relying upon the intermediary to perform its required due diligence. . . . [W]hen an intermediary opens an account . . . in the name of its collective investment vehicle, the . . .collective investment vehicle is the firm's 'customer.'" 68 *Fed.Reg.* at 25151.

The CIP Rule requires Firms to implement customer identification programs that contain the following elements: (1) procedures for verifying the identities of customers; (2) procedures for maintaining records of the verification process; (3) procedures for comparing customers with lists of known or suspected terrorists or terrorist organizations; and (4) procedures for providing customers with notice that information is being collected to verify their identities.

Paragraph (b)(6) of the CIP Rule permits Firms to rely on certain other financial institutions to undertake the required elements, *provided*: (1) the Firm's reliance is reasonable under the circumstances; (2) the other financial institution is subject to an AML Rule and regulated by a federal functional regulator; and (3) the relied-on financial institution enters into a contract requiring it to certify annually to the Firm that it has implemented an anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the Firm's customer identification program. The reliance provisions are designed to permit two financial institutions with mutual customers to avoid unnecessary duplication of efforts with respect to a given customer by reaching an agreement to allocate between them performance of their obligation under the rule.

We respectfully submit that the relationship between Firms, on one hand, and CTAs, on the other, is the type of relationship that the reliance provisions were intended to cover.[4] In this regard, we note that CTAs may have the most direct customer relationship and, therefore, would be in the best position to perform some of the requirements of the CIP Rule.

Certain of these CTAs have adopted anti-money laundering programs and have indicated a willingness to enter into agreements with Firms to perform specified elements of the Firms' customer identification programs. Moreover, because these CTAs are registered with the Commission or with the SEC, they meet the requirement that the relied-on financial institution be regulated by a federal functional regulator. However, the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, has deferred adoption of final rules that would require CTAs to implement anti-money laundering programs.[5] Therefore, these CTAs are not currently subject to an AML Rule and, consequently, do not meet this condition of paragraph (b)(6) of the CIP Rule.

Notwithstanding the fact that CTAs are not presently subject to an AML Rule, we believe the requested relief is appropriate. In this regard, we note that, by letter dated February 12, 2004, the SEC's Division of Market Regulation adopted a no-action position comparable to the one we are requesting here. Subject to the terms and conditions set forth in the letter, the no-action relief permits broker-dealers to enter into agreements with investment advisers that are subject to SEC regulation to perform certain elements of the broker-dealer's customer identification program.

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[4] CTAs typically are authorized to direct transactions in a commodities account opened in the name of the customer at a futures commission merchant.

[5] FinCEN published proposed rules requiring commodity trading advisors to adopt anti-money laundering programs on May 5, 2003. 68 *Fed.Reg.* 23640.

As the Commission is aware, many Firms are registered as broker-dealers. Further, many of the investment advisers that have agreed to perform elements of the broker-dealers' customer identification programs are also registered with the Commission as commodity trading advisors or are exempt from registration in accordance with applicable Commission rules. Consequently, the relief that the Division of Market Regulation has granted will have little effect in the absence of the relief requested here.

For all of the above reasons, we respectfully request the staff of the Commission to confirm that it will not recommend that the Commission initiate an enforcement action against a Firm, if the Firm, in complying with its obligations under the CIP Rule, relies upon certain CTAs that have agreed to perform specified elements of the Firm's customer identification program, *provided* the Firm and CTA are otherwise in compliance with the provisions of paragraph (b)(6) of the CIP Rule. Specifically: (1) the Firm's reliance is reasonable under the circumstances; (2) the CTA is registered with, and subject to regulation by, the Commission or the SEC; (3) the CTA is covered by the proposed AML Rule for commodity trading advisors or investment advisers; and (4) the CTA enters into a contract requiring it to certify annually to the Firm that it has implemented an anti-money laundering program, and that it will perform (or its agent will perform) specified elements of the Firm's customer identification program. If the Commission staff grants such relief and Treasury ultimately decides not to issue an AML Rule for CTAs, we ask that Firm's be permitted to continue relying on CTAs under paragraph (b)(6) until thirty days after Treasury publicly announces such a decision.

Thank you for your consideration of this request. If you have any questions or need any additional information, please contact me, at (202) 466-5460.

Sincerely,

Barbara Wierzynski
Executive Vice President
and General Counsel