HOUSE COMMITTEE ON AGRICULTURE
SUBCOMMITTEE ON GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

REAUTHORIZATION OF THE COMMODITY FUTURES TRADING COMMISSION

ORAL STATEMENT OF JOHN M. DAMGARD, PRESIDENT
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Chairman Etheridge, Ranking Member Moran, members of the Subcommittee, I am John Damgard, president of the Futures Industry Association. Thank you for the opportunity to appear today.

FIA has three general points to make: we endorse CFTC reauthorization, we support CFTC exclusive jurisdiction and we oppose major changes to CFMA.

FIA believes the CFTC is an excellent agency that fulfills its statutory mission in an efficient and effective manner. The CFTC's past and present leadership is to be commended for this record. The CFTC deserves to be reauthorized.

Recently, a controversy has arisen concerning the scope of the Commission's exclusive jurisdiction. There should be no controversy. In 1974, the House Agriculture Committee created both the CFTC and its exclusive jurisdiction to make sure that only an expert, specialized agency would regulate futures trading. Congress knew that exposing futures exchanges, intermediaries and market participants to duplicative or conflicting regulation from other agencies, with no expertise in futures markets, would be a recipe for disaster.

That is why Congress has made crystal clear that the CFTC's exclusive jurisdiction, where applicable, supersedes that of any other agency. As the courts have held, that means no other agency -- whether it is the SEC, the FERC or USDA -- may police the futures markets. Any other result would threaten the competitiveness of U.S. futures markets.

This subcommittee was the birthplace of the CFMA. That landmark legislation has allowed our markets to prosper and grow. Even though FIA does not believe its full competitive promise has been realized, we would oppose major changes to the CFMA's framework.

There are four specific substantive areas we expect the Subcommittee will consider in its deliberations. Let me offer FIA's views briefly.

1. SRO Reform.

FIA supports the important role the exchanges, clearing organizations and NFA perform as self-regulatory organizations. Their expert market knowledge and close proximity to the trading markets is vital to effective oversight. However, as exchanges have moved successfully into the for-profit world, their public interest duties have come into conflict with their private interests. That has affected public confidence in self-regulation.

To address this concern, the CFTC has proposed a series of best practice reforms for SROs, including a safe harbor for an exchange when 35% of its board of directors are independent, public directors. The CFTC has proposed some modest revisions to its new guidelines. FIA strongly supports these SRO reforms and urges the Commission to implement them as soon as possible.

2. Competition

Promoting fair competition was a goal of CFMA. Although it has led to the creation of more new exchanges, it has not stimulated the kind of direct product competition the CFMA envisioned. This is disappointing. Competition leads to reduced costs, higher volumes, narrower spreads and greater innovation. Competition also is the best system for serving the interests of our customers.

Exempt Commercial Markets in the energy space have been the one area of direct product competition under the CFMA. ECM trades are principal to principal, not brokered. My member firms are largely brokers so you might expect me to oppose ECMs. We don't. We support them because ECMs serve as incubators for the successful trading platforms of tomorrow. If you cut out ECMs, you cut out the competitive, innovative heart of the CFMA.

With the merger of the Chicago Mercantile Exchange and Chicago Board of Trade, some might argue that the futures industry has become more concentrated, than competitive. If that is true, it would be very unfortunate because real competition leads to better service and lower fees for our customers. Recently, we have seen clearing fees reduced for some financial markets, but not on U.S. futures exchanges. With the explosive growth in futures trading volume, my members have asked me why they have not enjoyed similar clearing fee reductions. I don't know the answer.

I do know that competition and market structure are critical issues for customer service. Unless competitive forces materialize in our markets, FIA believes the CFTC should study the state of competition in our industry to make sure we have the best market structure in place for serving our customers.

Energy

Everyone agrees that the price of energy is a critical element of our national economy. As a result of CFMA, our energy markets have experienced considerable innovation and increasing competition, without compromising the public interest.

There is no regulatory gap for futures manipulation. The Commission uses a wealth of market surveillance techniques and an arsenal of enforcement weapons in its pursuit of what Chairman Lukken has labeled the agency's zero tolerance of price manipulation. FIA agrees with this emphasis. Price manipulation should be prevented whenever possible and never tolerated.

Some have questioned how well the existing anti-manipulation defenses work when more than one energy market exists. Multiple trading facilities, like NYMEX and ICE, only enhance the need for strong CFTC oversight. When two markets are competing directly, the CFTC's market surveillance staff must have ready access to all relevant large trader information.

At the same time, FIA believes price manipulation is of little concern in one-off, non-standardized transactions between two eligible contract participants where the price affects the individual transaction, not a wider market. Those transactions should remain outside the CFTC's price manipulation authority.

4. Retail FX

FIA continues to support the legislation offered by the President's Working Group in 2005 to enhance the CFTC's powers over retail FX transactions. This targeted, focused approach makes sense and should help the Commission combat the boiler rooms and bucket shops that abuse customers.

Conclusion.

Our last point is a familiar one and a critical one. FIA continues to oppose funding the CFTC through a transaction tax. All taxpayers benefit from CFTC market oversight. Therefore all taxpayers should pay for it. If the CFTC needs additional resources, the Administration should request and Congress should appropriate the necessary funds. But a transaction tax would hit hardest those traders that provide essential market liquidity. It is therefore a bad idea whose time should never come.

Thank you for holding this hearing and for considering our views. I would be happy to answer any questions you might have.