FIA Submits Comment Letters on Dodd-Frank Rulemaking

Designation of Chief Compliance Officer

June 3, 2011

The FIA and the Securities Industry and Financial Markets Association submitted comments on June 3 to the Commodity Futures Trading Commission in response to the agency's proposed chief compliance officer rules. In the letter, the groups asserted, among other things, that the role of a chief compliance officer at a futures commission merchant, swap dealer or major swap participant must remain independent from the role of business supervisors. "The proposed rules would establish a compliance framework that is significantly different from that currently in place in the financial services industry," the groups wrote. The letter is a supplement to earlier comments FIA and Sifma submitted to the CFTC on Jan. 18 and is also intended to confirm several points made during a May 17 meeting with staff from the CFTC and the Securities and Exchange Commission.

The supplemental letter addressed how compliance officers will "ensure compliance" as found in Section 731 of the Dodd-Frank Act. Sifma and FIA stressed that this should be a test of taking reasonable steps to establish, maintain, review, modify and test the effectiveness of compliance policies. They suggested that compliance procedures may include procedures for escalating inadequate management responses to the appropriate level of senior management. The letter also discussed how the CCOs could meet their duty to "resolve any conflicts of interest that may arise" and how this duty actually interrelates to the power to enforce compliance, which rests with a firm's senior executives and supervisors. In addition, the letter addresses the annual report and certification. The groups also urged the CFTC to harmonize its proposed rules with Rule 3130 set by the Financial Industry Regulatory Authority "to minimize confusion and the burden associated with multiple differing requirements."

Seeking a 4C Exemption Regarding ICE Clear Europe

June 1, 2011

The FIA on June 1 asked the CFTC to provide a temporary exemption from new regulatory requirements that will apply to clearing firms conducting OTC energy business in the U.S. through ICE Clear Europe. The FIA explained that more time is needed for clearing firms to comply with certain requirements regarding the FCM registration of firms that clear U.S. customer business on ICE Clear Europe as well as certain rules required by Dodd-Frank that have not yet been finalized. The FIA made the request in the form of a petition for an exemption under Section 4(c) of the Commodity Exchange Act. The FIA noted in its petition that other foreign clearing organizations and their clearing members may need similar relief.

Under Dodd-Frank, any clearing organization located outside the U.S. that clears swaps for participants located in the U.S. may be required to be registered with the CFTC as a designated clearing organization, and any clearing member that clears a swap on behalf of U.S. participants may be required to register as a futures commission merchant. The CFTC has taken the view that the FCM registration requirements are mandated by provisions in the Dodd-Frank Act that will come into effect on July 16.

The FIA suggested that the best approach to addressing this issue of extraterritorial impact would be for the CFTC to adopt a "Part 30" approach based on the current model for futures listed on foreign exchanges. In the absence of such a determination, the FIA requested no less than a 30-day exemption from the registration requirements for OTC energy transactions cleared through ICE Clear Europe and suggested that 90 days would be more appropriate. With respect to customer segregation requirements, the FIA noted that the CFTC is considering several models and has not yet finalized the rules on this matter. "FCMs and DCOs should not be required to guess which regulatory regime the Commission will adopt or to undertake to implement an interim scheme that may conflict with the rules the Commission ultimately elects to promulgate," the FIA wrote.

Extending the Dodd-Frank Rulemaking Consultation Process

May 26 & 31, 2011

The FIA joined with six other industry groups in urging the CFTC and the SEC to extend the consultation process on Dodd-Frank rulemakings. In a May 26 letter to the CFTC, the groups expressed their appreciation for the CFTC's decision to provide an additional 30 days for comment, but said this would be inadequate to ensure an "efficient and timely" implementation and recommended that the CFTC re-propose the entire set of rules for a further round of comment. The groups explained that this would provide the industry with the opportunity to comment on any changes that the CFTC may have made to the proposed rules in response to prior comments. The groups also asked the CFTC to provide an implementation timetable and guidance on the extraterritorial impact of the proposed rules. The groups made a similar set of recommendations in a May 31 letter to the SEC. The letters were signed by the Financial Services Roundtable, the Institute of International Bankers, Insured Retirement Institute, Sifma, and the U.S. Chamber of Commerce in addition to the FIA.

Position Limit Proposal, Aggregation Policy

May 25, 2011

The FIA submitted a letter to the CFTC on May 25 recommending that the agency re-issue its proposed speculative position limit rules to clarify how the agency intends to aggregate positions within a firm. The FIA submitted the letter after learning that the agency plans to aggregate positions on a firm-wide basis regardless of whether the positions are under common control or common ownership. This would include all positions held within a firm including asset management subsidiaries that operate separately from other divisions of the firm. The FIA stated that the public must be able to review this policy, which was not discussed in the proposed rules as published. Further, the FIA said the planned aggregation policy goes beyond the law, is unprecedented and would stifle legitimate use of the of the markets by investors and end-users. "In our view, compulsory firm-wide aggregation in such circum-

stances would not advance any regulatory policy or purpose and the consequences to the markets and the industry of imposing such an onerous standard would be harmful and vast," the FIA wrote.

Anti-Disruptive Trading Practices

May 17, 2011

The FIA and Sifma jointly submitted comments on May 17 in response to the CFTC's proposed interpretive order on anti-disruptive trading practices authority. The FIA and Sifma warned in the joint letter that the CFTC's proposed order does not go far enough in offering guidance to market participants, and the associations offered several recommendations. "The proposed order is still unclear as to what constitutes proscribed, violative conduct," FIA and Sifma said. They suggested, among other things, that the CFTC identify specific problems that would necessitate additional enforcement authority to prosecute disruptive trading practices, that the CFTC further refine definitions of key terms, and that the CFTC further clarify its authority in the context of algorithmic and high-frequency trading activities.

"The Commission should identify the specific problems the new antidisruptive practices authority seeks to address," the associations said. "The Commission has yet to identify any specific problems or concerns where its pre-Dodd-Frank authority was lacking." The associations added that the CFTC has yet to provide a clear definition of what "disruptive practice" means. "Absent identification of specific characteristics, problems or concerns, the Commission should urge Congress to repeal the new authority," FIA and Sifma stated, warning that without the needed clarity, the provision could "chill" legitimate trading and market participation.

Registration of Intermediaries

May 10, 2011

The FIA on May 10 submitted a comment letter responding to the CFTC's notice of proposed rulemaking relating to the registration of intermediaries. The FIA letter expressed its support for a provision in the proposal that exempts foreign brokers who submit for clearing over-the-counter transactions that have been executed on a swap execution facility. The FIA suggested this exemption be expanded to cover cleared bilateral transactions, which it said will be "an important part of the swaps market for some time."

Further, the FIA urged the CFTC to confirm that associated persons of futures commission merchants be exempt from being registered as an FCM, if their activities are limited to submitting swaps transactions that were entered into between a swap dealer and its customers. The CFTC proposal would not require associated persons of swap dealers or major swap participants to register, in accordance with the Dodd-Frank Act. FIA agreed with the CFTC that the statute did not contemplate registration of these individuals.

Dodd-Frank Implementation

May 4, 2011

The FIA co-signed a May 4 letter with the Financial Services Forum, ISDA and Sifma that included a series of recommendations to regulators on implementing Dodd-Frank rulemakings related to derivatives. In the letter, which was submitted to the CFTC and the SEC, the groups highlighted the importance of providing enough time for market infrastructure and business operations to implement final rules to avoid disruptions. "New market infrastructure and technologies, including central clearing services, data reporting services and trading platforms, will be required to give effect to the new swap regulatory regime," the groups wrote.

The groups recommended that regulators prioritize data reporting, including the registration of swap data repositories, to better inform regulators of market activity when crafting future rulemaking. "The commissions will learn much about the full range of swap markets from the data collected by SDRs," the groups wrote. The group suggested the new Dodd-Frank requirements be phased in based on the type of market participant and asset class. Within each asset class and type of market participant, regulators should prioritize reduction of systemic risk, such as the use of centralized clearing. "Implementation of requirements designed to achieve other goals, such as trade execution, should be phased in only once clearing has been successfully implemented," the groups wrote.

Finally, where different regulators will apply different rule sets to similar transactions, the groups recommended that regulators sequence implementation so the effectiveness of each rule set is coordinated.

Legal Entity Identifiers

May 3, 2011

A coalition of financial services trade associations, including the FIA, on May 3 released a comprehensive set of requirements for establishing a legal entity identifier system to aid regulators and industry in monitoring systemic risk.

"The accurate and unambiguous identification of legal entities engaged in financial transactions is foundational and critically important towards the improved measurement and monitoring of systemic risk by regulators and supervisors," the groups noted in the proposal. "A global standardized Legal Entity Identifier will help enable organizations to more effectively measure and manage counterparty exposure, while providing substantial operational efficiencies and customer-service improvements to the industry."

Ownership, Governance Proposals for Security-Based Clearinghouses

April 29, 2011

A group of financial trade associations including the FIA warned the SEC that proposed limits on ownership and governance at swaps-based clearinghouses would curb the use of central clearing for swaps transactions. "We believe the proposed limits are neither necessary nor appropriate," the group wrote in the April 29 letter. Imposing "unduly restrictive limits" on the voting interests of clearing agency participants would run counter to the intention of Congress to increase clearing of swap transactions," the groups said, stating that concerns about conflicts of interest can be addressed through various other statutory and regulatory requirements. "We do not believe there is any need for a belt-and-suspenders approach that would layer on an additional limitation on aggregate ownership by participants," the groups wrote.

Other groups that co-signed the letter were the ABA Securities Association, the Financial Services Roundtable, ISDA and Sifma. The FIA, ISDA and Sifma expressed similar concerns in a January letter submitted to the CFTC on its proposed conflicts of interest and governance rules. In November, the FIA recommended the SEC and CFTC withdraw or defer ownership restrictions, asserting such limits are not mandated by Dodd-Frank and could have unintended consequences.

Processing, Clearing and Transfer of Customer Positions

April 14, 2011

The FIA on April 14 submitted a comment letter responding to the CFTC's notice of proposed rulemaking relating to the processing, clearing and transfer of customer swap positions. The FIA letter expressed support for the underlying purposes of the proposed rules—to assure the financial integrity of swaps submitted for clearing and to confirm a customer's ability to transfer cleared

swap positions from one clearing member to another clearing member. The FIA said, however, that the proposed rules "fail to recognize" the role that clearing members play in the transmission and submission of executed swaps for clearing or in assuming responsibility for the financial obligations arising from such transactions. In particular, the FIA said that the proposed rule should recognize that customers wanting to transfer positions must direct their requests to the clearing firms carrying those positions, not to the clearinghouses. "We respectfully submit, therefore, that the proposed rules must be revised to recognize the central role that clearing members play in connection with the processing, acceptance and clearing of swaps."

Risk Management and Governance Requirements for Clearinghouses

April 7, 2011

The FIA submitted a comment letter to the CFTC on April 7 in response to the agency's notice of proposed rulemaking establishing risk management requirements for derivatives clearing organizations. The FIA said the CFTC has properly identified many of the responsibilities that DCOs and clearing members must undertake in order to manage the risks of clearing swaps but urged the CFTC to rely on guidance rather than prescriptive rules. The FIA recommended that customers should be represented on a clearinghouse's board of directors rather than its risk management committee.

Commodity Options and Agricultural Swaps

April 1, 2011

The FIA and ISDA filed a joint letter on April 1, commenting on the CFTC's proposed rule on the regulation of commodity options and agricultural swaps that are traded over-the-counter. The two associations expressed support for the proposal to apply the same rules to agricultural swaps that apply to all other OTC commodity derivatives under the Dodd-Frank Act, rather than applying separate or more restrictive rules to these products.

The two associations also expressed support for the CFTC's proposal to treat agricultural trade options in the same way as all other commodity options (except for options on futures). Lastly, the two associations urged the CFTC to continue to treat certain transactions that have embedded options as forward contracts, and urged the CFTC to address the issue of whether agricultural options should be treated as swaps in the context of a separate rulemaking process being carried out jointly with the SEC.

Position Limits

March 25, 2011

The FIA on March 25 submitted a detailed response to the CFTC's proposed rulemaking on speculative position limits. Although the FIA continues to oppose implementation of hard limits and continues to challenge the view that speculative investments have caused an increase in commodity prices, the FIA set out a number of specific recommendations for revising the proposed rule, such as a different methodology for setting spot month limits, a broader definition of bona fide hedging transactions, an exemption process for liquidity providers, and the re-institution of the independent account controller exemption from mandatory aggregation.

The FIA also expressed its appreciation for the CFTC's decision to adopt a two-phase approach to the imposition of position limits, with the first phase applying only to spot months and the second phase delayed until after the CFTC collects position data on physical commodity swaps, and its appreciation for the CFTC's decision to eliminate a proposal to "crowd out" a trader's ability to take speculative positions once that trader relies on a hedge exemption. The FIA cautioned, however, that the CFTC has not yet provided sufficient empirical evidence to support this rulemaking and therefore asked the CFTC to withdraw the rule until after it has collected and analyzed the necessary data.

CFTC's Whistleblower Proposal

February 3, 2011

The FIA co-signed a Sifma letter submitted Feb. 3 to the CFTC responding to the agency's proposed rule to implement the whistleblower provisions of the Dodd-Frank Act. In the letter, the associations said that it is critically important that whistleblower provisions of the Dodd-Frank Act not undercut internal corporate compliance reporting systems "which are vital to what financial regulators have recognized as the first and foremost line of defense." Sifma and the FIA also urged the CFTC to harmonize its whistleblower rules with the recent proposals drafted by the SEC to encourage cooperation in enforcement matters and to incorporate the whistleblower programs of self-regulatory organizations.

Uniform Legal Identifiers

February 1, 2011

FIA was part of a coalition of financial industry trade associations that submitted on Feb 1. a comment letter to the Treasury Department's Office of Financial Research on a proposal to develop a system of uniform legal entity identifiers to measure and evaluate systemic risk in the financial system. The coalition urged the Treasury Department to coordinate with all the major domestic and global financial services regulators so that there is only one LEI standard. The associations also offered some preliminary observations and said they plan to work together on an industry proposal. OFR is seeking to standardize how parties to financial contracts are identified in the data that it collects, which will be used to measure and evaluate systemic risk in the financial system. Other groups signing the letter included The Clearing House, Enterprise Data Management Council, the Financial Services Roundtable, ISDA, the Investment Company Institute, the Managed Funds Association and SIFMA.

Protection of Cleared Swap Customer Collateral

January 18, 2011

The FIA filed a comment letter with the CFTC on Jan. 18 in response to the CFTC's advance notice of proposed rulemaking regarding the protection of customer collateral posted with futures commission merchants in connection with the clearing of swap transactions. The CFTC's notice asked for comment on several models for dealing with "fellow customer risk," including the full segregation of each customer's collateral in separate accounts. The FIA noted that the "baseline" model, i.e., the existing model used in the clearing of exchange-traded futures and options, has proven to be successful in protecting customers and cautioned that each one of the alternative models would pose "serious policy and operational concerns." The FIA said it has resolved to work with its customers to attempt to address their concerns in a manner that does not inadvertently increase systemic risk generally, and said it would work with the CFTC, self-regulatory organizations and other market participants in any form the CFTC deems appropriate to further enhance the financial integrity of the markets. The FIA also outlined some of the specific policy and operational issues that should be considered, such as the potential impact on margin requirements and clearing member default contributions, the potential impact on the amount of capital held by FCMs and clearinghouses, and the potential for increased systemic risk and changes to market structure.

Conflicts of Interest at FCMs and Swap Dealers

January 18, 2011

The FIA, ISDA, and Sifma filed a joint letter on Jan. 18 commenting on two proposed rules issued by the CFTC. The proposed rules are aimed at preventing conflicts of interest at futures commission merchants, introducing brokers, swap dealers and major swap participants.

The associations offered a number of suggestions relating to the CFTC's proposed rules regarding conflicts of interest related to research. They asked the CFTC to narrow the scope of the proposed rules and harmonize them with Rule 2711, a comparable rule issued by the National Association of Securities Dealers. The associations also asked the CFTC to allow communications between research departments and sales and trading personnel, citing a number of examples to show the benefits of allowing research analysts to gather market information from sales and trading personnel.

The associations also commented on proposed rules regarding conflicts of interest related to clearing services. The proposed rules would prohibit FCMs from permitting affiliated swap dealers or major swap participants from interfering with the FCM's decision to provide clearing services to customers and would establish a number of specific requirements and "information partitions" between FCMs and affiliated dealers and MSPs. The associations argued that the proposed rules are "far broader" than the requirements of the Dodd-Frank Act and would restrict contact between trading and clearing personnel in ways that would hurt customers and impair the firm's ability to manage risks. The associations asked the CFTC to permit the involvement of trading business units in the establishment and support of customer relationships and asked the CFTC to clarify that the proposed restrictions would not apply to "control and support" functions such as compliance, operations and credit.

The associations also asked the CFTC to delegate oversight and enforcement of these rules to self-regulatory organizations, saying this would allow the requirements to keep up with industry practice.

Chief Compliance Officer Rules

January 18, 2011

The FIA and the Sifma submitted a joint comment letter on Jan. 18 in response to the CFTC's proposed new framework for the responsibilities of chief compliance officers at futures commission merchants, swaps dealers and major swap participants. The FIA and Sifma stated that the proposed framework is "significantly different" from what is currently in place in the financial services industry by other federal regulators, including a compliance model adopted by the CFTC as recently as September 2010. Among other things, the associations warned against changing the role of the CCO to that of a business-line supervisor. "The proposed rules would put an end to the independence necessary to perform the CCO function effectively, and would undermine the long-standing regulatory principle that it is the business managers who have the supervisory responsibility in the firm, not the CCO," the FIA and Sifma said. The associations also recommended that the CFTC modify the proposal to clarify that CCOs are not responsible for guaranteeing absolute compliance. The groups further cautioned that CCOs should not be subject to potential criminal liability for the effective compliance at a firm. The groups further recommended that in the event the CFTC does not modify the proposed framework, the agency should establish an "alternative regulatory regime" for FCMs based on existing compliance practices, especially since many FCMs are also registered as broker-dealers and therefore are subject to the "broker-dealer" model for CCO responsibilities.

CFTC's Manipulation Proposal

December 28, 2010

The FIA, Sifma and ISDA filed a joint comment letter with the CFTC on Dec. 28, 2010 regarding its proposed rules to implement new anti-manipulation authority in Section 753 of the Dodd-Frank Act. The groups urged the CFTC to provide "clear and straightforward guidance" to market participants so that they can distinguish legitimate competitive trading practices from prohibited manipulative conduct. "Failure to give clear and straightforward guidance will only serve to add confusion to the markets and potentially chill legitimate trading activities in a competitive market where traders often make real-time trading decisions without the benefit of hindsight," the groups wrote.

The groups also made the following recommendations: 1) the CFTC should not incorporate the standards and case law under Rule 10b-5 of the Securities Exchange Act of 1934 because they are "inapplicable" to the futures and derivatives market; 2) the CFTC should clarify that the proposed rules will not impose any new duties of disclosure, inquiry or diligence between two sophisticated parties to a bilateral transaction; 3) the CFTC should clarify that nothing in the proposed rule will impede the ability of market participants to take positions and trade on the basis of material nonpublic information they obtain legitimately; 4) extreme recklessness, not recklessness alone, should be the "scienter standard" under the CFTC's proposed rule under Section 6(c)(1) so that it does not capture inadvertent conduct or mere mistakes; 5) the CFTC should clarify the scope of the proposed rule under 6(c)(1) and the Commission's already existing anti-manipulation authority under CEA Sections 9(a)(2); and 6) the CFTC should clarify that Section 6(c)(3) does not extend its enforcement authority beyond existing judicial precedent aside from extending its enforcement authority to cover swaps.

Proposed Framework for Rule and Product Approvals for DCOs, SEFs, SDRs

December 23, 2010

The FIA submitted comments on Dec. 23, 2010 in response to the CFTC's proposal related to the certification and approval of new products, rules and amendments submitted to the agency by derivatives clearing organizations, swap execution facilities and swap data repositories. The FIA stated that in general the CFTC's proposal "appropriately implements" the new statutory framework for rule approvals and new product approvals submitted by DCOs, SEFs and SDRs. However, the FIA recommended the CFTC take this opportunity to remedy "a defect in the scheme of self-regulation that allows registered entities to certify rules without the knowledge and participation of their members and other interested market participants."

The FIA said it believes that the Commission should use this opportunity to increase the transparency of the rulemaking processes. The FIA recommended that the CFTC publish a daily notice of all rule and product filings submitted by registered entities and all of the agency's related actions. This would be similar to the *Daily Digest* published by the SEC. The FIA also recommended that the CFTC require registered entities to include a concise explanation of the proposed rule or action that could be published in the *Daily Digest* with a hyperlink to the full text of the rule submission. "We are suggesting that the Commission begin a daily publication containing this information in lieu of a requirement that the rules be published in the *Federal Register*, as is the practice for similar rules in the securities industry," the FIA said. "Immediate notice is, therefore, a far superior alternative to waiting several days for *Federal Register* publication of the rule or product filing."

Proposed Financial Resource Requirements for DCOs

December 13, 2010

The FIA filed a comment letter with the CFTC on Dec. 13, 2010, responding to the agency's proposed financial resource requirements for derivatives clearing organizations. The FIA urged the CFTC to require that all clearinghouses maintain sufficient resources to withstand the default of the two largest clearing members, rather than setting a lower standard for clearinghouses that are not systemically important. The FIA cautioned that the agency's proposed two-tier approach could have the unintended effect of putting systemically important clearinghouses at a competitive disadvantage to other DCOs. "The FIA accordingly recommends that all DCOs, including SIDCOs, be required to maintain resources sufficient to withstand the default of the two clearing members representing the largest financial exposure to the DCO," the FIA said. The FIA further suggested that the CFTC give DCOs a reasonable amount of time to come into compliance with the enhanced requirement. With respect to stress testing, the FIA urged the CFTC to issue guidance regarding minimum standards and suggested several specific recommendations. The FIA also made several recommendations regarding the valuation of clearing member assessments and default insurance policies.

More generally, the FIA cautioned that the subject of clearinghouse financial resources is interconnected with other CFTC proposals under consideration, including alternative models for the segregation of customer funds. "As the Commission moves forward on these proposals, FIA urges the Commission to bear in mind that these subjects are interconnected," the letter said. "Much like the individual legs of a stool, it is important that any rules that may be adopted by the Commission that affect DCOs' ability to discharge their responsibilities in the event of a clearing member default remain in balance at all times."

Phased-in Implementation

December 7, 2010

Eleven financial trade associations including the FIA have urged the CFTC and the SEC to use their discretion in setting the effective dates for the new derivatives regulations mandated by the Dodd-Frank Act. In a letter submitted to the two agencies on Dec. 7, 2010, the associations said participants in derivatives markets need sufficient time to do the work necessary to comply with the new clearing, execution and reporting requirements. They said they are concerned that "market participants will be asked to do too much in too short a time" and warned that some participants may simply stop trading if they cannot comply in time, leading to reduced liquidity and increased risks. The associations therefore urged regulators to take into account the "practical realities" facing market participants and to phase in the application of new regulatory requirements over "a reasonable period of time" determined through discussions with market participants.

The 11 associations also urged the two agencies to adjust the rulemaking process so that the definitions of swap dealers and major swap participants come before the requirements that depend on those definitions. In their letter they noted that the CFTC has proposed rules that would apply to swap dealers and major swap participants before the terms have been addressed, and said this makes it difficult for many firms to know whether they should submit comments on particular rules. The associations therefore recommended extending the deadlines for commenting on proposed rules so that they are at least no earlier than the deadlines for commenting on the proposed definitions.

"We are committed to working with the SEC and CFTC to develop and implement the rules mandated by Dodd-Frank and we strongly support completion of these efforts in a prompt and timely fashion," said the 11 associations. "We urge the Commissions to use their discretion to propose, adopt and implement rules in a sequence that will achieve these important goals."

The 11 associations are: American Bankers Association, ABA Securities Association, The Clearing House Association, Financial Services Forum, Financial Services Roundtable, FIA, Institute of International Bankers, ISDA, Investment Company Institute, MFA, and Sifma.

Reporting of Commodity Swaps Positions

December 2, 2010

The FIA filed a comment letter with the CFTC on Dec. 2, 2010 responding to the agency's proposed rule for the reporting of positions in physical commodity swaps. The proposed rule is intended to serve as a "transitional tool" for gathering information until swap data repositories are operational, the FIA noted. Once the data repositories are operational, mostly likely sometime after July 2011, they will become the primary source for swap position data. The FIA said that the derivatives industry does not yet have the operational infrastructure in place to provide the proposed reports. The FIA therefore suggested that rather than requiring a new data collection infrastructure that could be in place for possibly less than one year, the CFTC should instead rely on the reports that futures commission merchants have been providing through the agency's special call process since 2008. The FIA suggested a modified special call process for collecting that data more frequently by shifting to weekly rather than monthly filings. This approach would be "less burdensome and disruptive" than building a new reporting system that may be used for only a year or less, the FIA said. If the agency decides against taking this approach, the FIA recommended providing reporting entities with more time to develop the necessary reporting systems, narrowing the data that must be reported, and setting reporting levels based on the liquidity of each contract.

Proposed Amendments to CFTC Rules 1.25 and 30.7

December 2, 2010

The FIA and ISDA on Dec. 2, 2010 filed a joint comment letter responding to proposed amendments to Rules 1.25 and 30.7, which govern the investment of customer funds in connection with trades on U.S. futures exchanges and foreign boards of trade. The proposed amendments were drafted by the CFTC in response to the financial crisis of 2008-2009 and would significantly curtail the range of securities into which customer funds can be invested. The CFTC is also currently seeking separate comment on the investment of customer funds related to customer collateral for uncleared swaps, an issue not covered in this rulemaking.

The two trade associations expressed support for the CFTC's goals and supported the proposed requirement that any investment securities must be "highly liquid." The associations expressed opposition to the proposed restrictions, however, and objected in particular to the proposed ban on investments in foreign sovereign debt and securities issued by government sponsored enterprises that are not guaranteed by the U.S. government, the proposed limits on investments in money market mutual funds, and the proposed ban on repos and reverse repos with affiliated banks and broker-dealers.

Ownership of Clearinghouses, Swap Execution Facilities

November 17, 2010

The FIA recommended that the CFTC and the SEC withdraw or defer acting on rules to limit ownership of clearinghouses and swap execution facilities. "FIA believes that the adoption of ownership restrictions—and, in particular, the 40% aggregate ownership restrictions that have been proposed for clearinghouses—are likely to have unintended and undesirable consequences," the FIA wrote in its Nov. 17, 2010 comment letter. The FIA stated that restrictions on ownership of clearinghouses and SEFs are "inappropriate, at least at this time" and noted that the Dodd-Frank Act does not specifically mandate such limits.

FIA said it supported aspects of the CFTC/SEC proposals that would require at least 35% of the board of directors of a clearinghouse or SEF be public directors but highlighted the risks of requiring that risk management committees be comprised largely of outside directors. "FIA is concerned that public directors and customer representatives, who can provide meaningful knowledge and insight when serving on the board of a DCO or SEF, will typically lack the specialized knowledge and hands-on experience with margin and other risk systems," FIA wrote.

Reporting Requirements for Pre-Enactment Swaps

November 12, 2010

The FIA co-signed an ISDA letter submitted on Nov. 12, 2010 to the CFTC on the agency's interim final rule for reporting swap transactions that were entered into prior to the enactment of the Dodd-Frank Act. The letter asked the CFTC to clarify certain requirements and also proposed alternatives to some of the reporting requirements, leveraging from existing reporting standards. The letter also recommended that the CFTC consider having swap transaction data recorded under a single electronic data standard. The associations also proposed requiring that transactions be recorded by the parties involved or third-party data services, rather than providing electronic confirmations of the trades to the CFTC. The ISDA FIA letter also noted that having one designated single swap data repository per asset class "would provide the commission and market participants with valuable efficiencies." In addition, the letter raised concerns about the treatment of confidential customer information, cautioning that compliance with the terms of potentially thousands of confidentiality agreements will be challenging and time-consuming.

Treatment of Agriculture Commodity Swaps

October 22, 2010

Responding to an advanced notice of proposed rules published by the CFTC, the FIA on Oct. 22, 2010 filed a letter arguing that agricultural swaps should be treated in the same way as other types of OTC derivatives. The FIA also argued against the "onerous" capital requirements that currently apply to agricultural options traded over-the-counter, saying treating them like other swaps would make them more available to market participants.

"We are not arguing for agricultural swaps to be subject to any lesser degree of regulation than other swaps," the FIA said. "To the contrary, we believe agricultural swaps should be subject to all of the same requirements and restrictions as other types of swaps. Under Dodd-Frank and the CFTC's regulations, virtually all derivatives that were previously traded over-the-counter will in the future be traded on regulated platforms and cleared through regulated clearinghouses, subject to public reporting, disclosure and other protections. As a result, any concerns that might previously have existed with respect to agricultural swaps should not prevent them from being regulated in the same manner as other swaps."

Pre-Rulemaking Comment on Dodd-Frank Position Limits

October 1, 2010

The FIA on Oct. 1, 2010 submitted a letter to the CFTC on the application of speculative position limits on listed and over-the-counter derivatives involving exempt and agricultural commodities. The FIA submitted the letter ahead of the CFTC's proposed rulemaking. Under the Dodd-Frank law, the CFTC must finalize a position limit rule for energy and metals contracts by January 17 and for agricultural contracts by April 17. The FIA recommended that the limits be set on an interim rather than permanent basis and that they be flexible. The FIA also recommended that any interim position limits apply only to net positions in economically equivalent contracts and "be set at a level that will not reduce market liquidity or cause migration of the price discovery function to foreign markets." In addition, the FIA recommended that the CFTC consider proposing an interim rule that aggregates positions only in commonly controlled accounts. The FIA stressed the need for the agency to provide guidance on the definition of a bona fide hedge position and requested that it issue guidance on the process for granting exemptions for these and other types of positions that perform similar risk-reducing functions.

Dodd-Frank Definitions

September 20, 2010

The FIA on Sept. 20, 2010 filed a comment letter with the CFTC and the SEC outlining its views on certain definitions in the derivatives section of the Dodd-Frank Act. The FIA letter argued against requiring futures commission merchants to register as swap dealers if they are acting as clearing brokers and not holding themselves out as swap dealers. The FIA letter also argued that swap dealers should not be required to register as FCMs if they are acting only in a dealer capacity and are not providing clearing services or other services characteristic of an FCM. The FIA letter also asked the regulators to clarify the associated person requirement for swap dealers and major swap participants and the legal distinctions between forwards, futures and swaps.