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October 18, 2012

Via Email

Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183
Attn: Director Jennifer Shasky Calvery

Re: Customer Due Diligence Requirements for Financial Institutions
Regulatory Identification Number 1506-AB15
Docket Number FinCEN-2012-0001

Dear Director Shasky Calvery:

The Futures Industry ("FIA")[1] appreciates the opportunity to comment on the Financial Crimes Enforcement Network's ("FinCEN") Advance Notice of Proposed Rulemaking pertaining to Customer Due Diligence ("CDD") Requirements for Financial Institutions (the "ANPRM" or the "Proposal").[2] We understand that the Proposal is intended to elicit input from various industries concerning the potential application of a proposed CDD rule, that would include an express requirement for obtaining beneficial ownership.

FIA strongly supports the efforts of FinCEN in working with financial institutions to implement robust, risk-based anti-money laundering ("AML") compliance programs. We are especially appreciative of FinCEN's outreach to the futures industry, and its willingness to

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[1] FIA is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearinghouses, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

FIA's core constituency consists of futures commission merchants ("FCMs"), who act as the majority clearing members of the U.S. exchanges, handle more than 90% of the customer funds held for trading on U.S. futures exchanges.

[2] Advance Notice of Proposed Rulemaking ("ANPRM"), Customer Due Diligence Requirements for Financial Institutions, 77 Fed Reg. 13046 (Mar. 5, 2012), *available at* http://www.gpo.gov/fdsys/pkg/FR-2012-03-05/pdf/2012-5187.pdf. The comment period for responding to the ANPRM was extended until June 11, 2012. 77 Fed. Reg. 27381 (May 10, 2012).

engage in open and meaningful dialogue on this topic, including through public hearings. We remain committed to continuing our dialogue with FinCEN and welcome this opportunity to provide input into the rulemaking process. We also strongly support FinCEN's goal of creating greater transparency and harmonizing and clarifying expectations relating to CDD, particularly given the industry's historical understanding of the AML statutory requirements, which does not fully comport with guidance issued by FinCEN in 2010.[3]

We note that the Securities Industry Financial Markets Association ("SIFMA") has submitted a letter dated June 8, 2012 to FinCEN on these points in great detail (the "SIFMA Letter"). We join in the comments and recommendations in that letter and submit this letter to emphasize certain issues of particular importance to the futures industry. Below we highlight for you our key comments with respect to the elements of the proposed CDD rule insofar as they are of particular concern to the futures industry. To the extent that these issues are addressed in more detail in the SIFMA letter, we concur in that discussion. Our principal comments are as follows:

I. Complexities of the Futures Industry.

FinCEN should take into account the complexities and unique nature of the futures industry when crafting any proposed CDD rule to ensure that a final rule effectively mitigates potential money laundering risks.

As a preliminary matter, we urge that, in crafting any proposed CDD rule, FinCEN take into account the complexities and unique nature of the futures industry. As FinCEN is aware, the futures industry is comprised of Futures Commission Merchants ("FCMs") and introducing brokers ("IB-Cs"), involves many types of business models(*e.g.,* retail, institutional, clearing, execution and online) and offers various and numerous trading products (*e.g.,* futures, options, forex and other derivatives). Of particular importance, as part of its business, FCMs frequently establish omnibus relationships/accounts with financial intermediaries to engage in transactions. Moreover, give up transactions, which are particularly significant to the futures industry, occur when executing brokers give up trades to a clearing firm. In the clearing context, AML responsibilities have historically been allocated between FCMs and introducing brokers pursuant to a written allocation agreement in a manner that is unique to the clearing firm regulatory context. Finally, clients of FCMS and IB-Cs have the ability to engage in online trading as well.

II. New AML Requirements.

With the exception of the Customer Identification Program ("CIP") requirement in the first CDD element (Element One), the remaining prongs of the proposed CDD rule are new

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[3] As noted in the Letter from the Investment Company Institute ("ICI"), SIFMA, and the FIA to FinCEN and the U.S. Securities and Exchange Commission (the "SEC") (June 9, 2010) (hereafter "June 9th Letter") (*see* Attachment A), CDD is not presently required by the AML program rules for the futures industry. As a result, the Joint Guidance on "Obtaining and Retaining Beneficial Ownership Information," FIN- 2010-G001, (Mar. 5, 2010) (hereafter "March 2010 Beneficial Ownership Guidance"), issued by FinCEN and other regulators, has created, and continues to cause, great confusion in the futures industry. We note that this guidance was in consultation with but not in conjunction with the Commodity Futures Trading Commission ("CFTC"), our primary regulator.

requirements for the futures industry, and FinCEN should take that into account in crafting these rules.

For example, aside from Section 312 of the PATRIOT Act,[4] there is no specific obligation under the AML program requirements applicable to the futures industry to collect the information called for in Element Two of the Proposed CDD Rule, *i.e.*, to collect the purpose and intended nature of the account or expected activity for purposes of the AML program. In fact, the FIA has previously expressed its concern in writing about the application of the concept of expected or anticipated activity, even in the context of Section 312.[5]

With respect to Element Three, FinCEN already recognizes that the beneficial ownership requirement does not presently apply to future firms.[6] Finally, unless Element Four refers to the monitoring of suspicious activity under Section 356 of the PATRIOT Act (the existing SAR Rule), ongoing CDD is not presently required in the futures industry.

III. Risk-Based Requirements.

Any proposed CDD rule should be risk-based. The futures industry has been subject to various AML regulations for nearly a decade and thus is well-positioned to identify and assess risks presented by various customer types. Consistent with the risk-based concept that is embedded in AML regulations, any CDD requirements should also be risk-based. In particular, if the collection of beneficial ownership data is to be included in the CDD process, both the collection of the data and the verification requirement should be implemented on a risk-based basis, allowing for FCMs and introducing brokers to make a meaningful assessment that is tailored to their business. A blanket requirement to identify beneficial ownership for all Customers that disregards potential risks presented by the Customer needlessly increases the burden and costs of compliance, without evidence that it advances law enforcement efforts in any significant manner.

IV. CDD Coverage.

Only a "Customer," as defined under the CIP Rule, should fall within the scope of any proposed CDD rule. Any proposed CDD rule should confirm that existing regulatory guidance with respect to the definition of Customer (*e.g.,*CIP and other guidance regarding omnibus and Give Up Arrangements and introducing/clearing relationships and) continue to remain in effect.

Currently, AML programs at FCMs are built upon the concept that an account is held by the Customer, as defined in the CIP Rule. Any new regulations relating to CDD should be applied only to Customers, build on the existing definition of Customer, and as discussed below, incorporate existing guidance. It is critical that these interpretations be preserved, and to the extent CDD requirements are proposed, they should incorporate the existing guidance into the

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[4] USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 312, 115 Stat. 272, 304 and its implementing regulations, 31 C.F.R. §§ 1010.605, 1010.610, 1010.620 (2011).

[5] *See* Letter from Alan Sorcher, Futures Industry Association, and Barbara Wierzynski, Futures Industry Association to William Langford, FinCEN (Mar. 3, 2006) (on file with FinCEN) (hereinafter "March 2006 Letter").

[6] 77 Fed Reg. 13046 at 13048 n.16 (and accompanying text).

proposed CDD rule. Certain of the more significant examples are addressed below. Any difference in approach would require major procedural and technological changes above and beyond those necessary to implement the proposed CDD requirements.

1. Intermediaries/Omnibus Relationships.

The role of the intermediary is integral to the efficient function of the futures industry, particularly in the institutional market place. The CIP Rule recognizes the intermediary as the FCM's Customer.[7] Certain of these intermediaries may be large, well-regarded, publicly traded and highly regulated entities, and some may be subject to the PATRIOT Act or similar anti-money laundering laws and regulations. Regardless of whether the intermediaries are regulated for AML purposes, in *all* cases, they are better suited to perform due diligence functions with respect to their own customers.

Existing guidance related to the CIP Rule makes clear that where intermediaries are involved, the FCM's "formal relationship" is with the intermediary, even where an omnibus relationship/account is involved. As Treasury recognized in the preamble to the CIP Rule, with respect to an omnibus account established by an intermediary, "[i]f the intermediary is identified as the accountholder, such as in the case of an omnibus account, an FCM is not required to look through the intermediary to the underlying beneficiaries."[8] In short, under Treasury's existing guidance, as a general matter, an FCM is permitted to treat the intermediary as its customer and should not have to "look through" the intermediary to identify or verify the clients on whose behalf the intermediary is acting.

Consistent with the view that the intermediary is the Customer for purposes of the CIP Rule, the Staff of the Department of the Treasury and the CFTC issued certain guidance to clarify that even where certain information is disclosed to the FCM about the underlying customer and sub-accounts are established, the intermediary can still be viewed as the FCM's Customer. In those instances, if the four conditions set forth in the guidance are satisfied, "the financial intermediary (not the beneficial owner) should be treated as the customer" (the "Omnibus Guidance").[9]

By way of background, it is important to highlight the prevalence of such omnibus accounts in the futures industry. Virtually all futures firms establish omnibus accounts for a financial intermediary which, in turn, establishes sub-accounts for the intermediary's clients, whose information may or may not be disclosed to the FCMs. In some cases, the intermediary may identify the sub-accounts by number; in others, they may disclose the client's name. In all

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[7] *See generally* Customer Identification Programs for FCMs, 68 Fed Reg. 25149, 25151 (May 9, 2003).

[8] *Id.* at 25151; *see also* NFA Interpretive Notice 9045 - NFA Compliance Rule 2-9: FCM and IB Anti-Money Laundering Program (revised November 16, 2006; January 15, 2008; March 28, 2008; and January 3, 2012) (hereinafter "NFA Guidance"), *available at* http://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9045&Section=9.

[9] FinCEN Guidance, FIN-2006-G004, "Frequently Asked Question regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers (31 C.F.R. 103.123)" (Feb. 14, 2006) (guidance relating to omnibus accounts in the futures industry) (hereinafter "Omnibus Guidance"), *available at* http://www.fincen.gov/statutes_regs/guidance/html/futures_omnibus_account_qa_final.html.

cases, the sub-accounts serve a purely administrative purpose, that is, they are set up, not to establish a customer relationship between the FCMs and the intermediary's client, but to provide a recordkeeping service or to facilitate the allocation of trades. Given that there is no real relationship between the FCMs and these non-custodial sub-accounts for the underlying clients, FCMs would be hard-pressed to apply CDD to the underlying sub-accounts.

Given the nature of the relationship and prevalence of such omnibus relationships which are integral to the efficient operation of the futures markets, the importance of the Omnibus Guidance cannot be overemphasized. Altering that guidance would have a detrimental effect on futures trading and the efficiencies of the market place. As FinCEN recognized:

"With respect to omnibus accounts established or maintained for an intermediary financial institution, a securities or futures firm will have a formal relationship with the intermediary financial institution holding the omnibus account. Under the correspondent account rule, a securities or futures firm is required to perform due diligence on a foreign financial institution for which an omnibus account is established or maintained. The securities or futures firm generally is not required to look through an omnibus account to perform due diligence on any foreign financial institutions that may be underlying accountholders."[10]

Moreover, where the relationship with the intermediary fits the criteria set forth in the Omnibus Guidance, firms should be permitted to continue to view the intermediary as the Customer, even in that situation.

Furthermore, given the unique nature of omnibus relationships, even the proposed and "alternative" definitions of beneficial ownership create significant issues. Accordingly, we urge FinCEN to 1) reaffirm the FCM's ability to treat the intermediary as the Customer and 2) consistent with the Omnibus Guidance, make clear that for purposes of the final CDD rule, the establishment of such institutional sub-accounts does not trigger any obligation by the firm to conduct CDD or otherwise identify or verify the intermediary's underlying clients.[11]

2. Give-Up Arrangements

It is an established practice in the futures industry that FCMs engage in transactions through give-up arrangements, whereby an FCM, acting as an executing broker, executes an order on an exchange for a commodity customer, or an option customer, which in accordance with applicable exchange rules is then given-up to a clearing broker.[12] Pursuant to a give-up

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[10] *See* FinCEN Guidance, FIN- 2006-G009, "Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities and Futures Industries" (May 10, 2006), available at http://www.fincen.gov/statutes_regs/guidance/pdf/312securities_futures_guidance.pdf (hereafter "May 2006 Guidance").

[11] It is important to note that futures firms generally monitor activity in these accounts and follow-up on an event-driven basis, potentially including asking questions about the underlying owners of assets after detection of possible suspicious activity.

[12] FinCEN Guidance, FIN-2007-G001, "Application of the Customer Identification Program Rule to Futures Commission Merchants Operating as Executing and Clearing Brokers in Give-Up Arrangements" (Apr. 20, 2007) (guidance relating to give-up arrangements in the futures industry), *available at* http://www.fincen.gov/statutes_regs/guidance/html/cftc_fincen_guidance.html (hereinafter "April

arrangement, an executing broker will execute a trade on order of the commodity customer or option customer and then direct it to the account that the customer has established with its clearing broker. The trade thereafter is subject to acceptance by the clearing broker.[13] In April 2007, FinCEN provided guidance regarding the application of the CIP Rule to FCMs operating as executing and clearing brokers in give-up arrangements. FinCEN advised in its guidance that an FCM's CIP will not apply when it is operating solely as an executing broker in a give-up arrangement because in a give-up arrangement, the executing broker, unlike the clearing broker, does not establish a formal relationship with the commodity or option customer.[14]

The importance of give-up arrangements to the futures industry cannot be overstated. It is crucial that this guidance be preserved for purposes of CIP, as well as any potential CDD rule.

3. Pooled Investment Vehicles.

Also of importance is the application of the rule to pooled investment vehicles. As it presently stands, because of the way the industry functions, firms apply their CIP to the investment vehicle, not to the numerous owners of the investment vehicle. In fact, the sheer numbers of the underlying investors in omnibus or pooled investment accounts render it practically impossible to perform CDD in a manner that is not prohibitively costly. For these reasons, the National Futures Association (the “NFA”) recognized in its interpretive notice that if an intermediary opens an account in the name of a collective investment vehicle such as a commodity pool, the FCM or IB-C is not required to apply its CIP to the pool's underlying participants.[15] We ask FinCEN to recognize this issue relating to this type of investment vehicle in crafting the final CDD Rule, and reaffirm this current industry practice.

4. Clearing Firm Relationships.

Likewise, the relationship between introducing brokers and clearing firms presents unique circumstances. The guidance that FinCEN issued in the clearing firm context recognized the important function that clearing firms provide in the futures markets and the historical and different roles of both clearing firms and introducing brokers with respect to their Customers. An alteration or restriction of that guidance would have major and incalculable effects on the industry, without a demonstrated benefit to law enforcement’s goals.[16]

Consistent with this guidance and well-established practice, any proposed CDD rule applied in the clearing firm context should take into account the traditional allocations of AML

2007 Guidance”); *see also* FinCEN Guidance, FIN-2006-G011, “Application of the Regulations Requiring Special Due diligence programs for Certain Foreign Accounts to Certain Introduced Accounts and Give up Arrangements in the Futures Industry” (June 7, 2006) (hereinafter “June 2006 Guidance”), *available at* http://www.fincen.gov/futures_guidance_06072006.pdf; NFA Guidance, *supra* n.8. FIA estimates more than 60% of US trading volume involves give-up arrangements.

[13] April 2007 Guidance*, supra*.

[14] *Id*.

[15] *See* NFA Guidance, *supra* n.8.

[16] *See, e.g.*, May 2006 Guidance, *supra* n.10.

functions between clearing firms and introducing brokers with respect to shared clients, and should make clear that the CDD rule does not intend to alter that relationship.

5. <u>Other Guidance Relating to CIP Issued by FinCEN</u>.

In addition, FinCEN has issued various guidance in the form of Frequently Asked Questions ("FAQs") with respect to the application of CIP.[17] This guidance has already been implemented into futures firms' AML programs and should be applied to the proposed CDD rule. Moreover, as many of our firms are dually registered as both FCMs and securities broker-dealers, it is important that the CIP guidance obtained in the context of the securities industry also be preserved.[18]

V. All Four CDD Elements Described in the ANPRM Need Additional Clarification.

Any proposed CDD rule should make explicitly clear that Element One of the proposed CDD rule is satisfied by compliance with the existing and independent CIP Rule.

CDD Element Two relating to obtaining the purpose and nature of account and expected activity does not advance the detection of suspicious activity but in the event that FinCEN still considers it necessary for FCMs and IB-C's to obtain information about the purpose and intended nature of the account and/or to identify expected activity, given the nature of futures accounts which are opened to trade futures and other such products, FinCEN should specifically define its expectations in the context of the futures industry, and specify the type of information that is required.[19]

Likewise, FinCEN's Proposed Definition of beneficial ownership ("Proposed Definition") should be modified because it is vague, difficult to implement from an operational perspective, and may cause confusion because it conflicts with other beneficial ownership definitions (*e.g.,* FATCA,[20] Section 312 of the PATRIOT Act, and Section 766 of Dodd-Frank[21]). Confusion also may arise as a result of the battery of new rules that have been adopted in the wake of Dodd Frank that have prescribed other standards for the definition of ownership or control.[22] Moreover, the Proposed Definition conflates the concept of beneficial ownership and

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[17] *See* FinCEN, Guidance From The Staffs of the U.S. Commodity Futures Trading Commission, Financial Crimes Enforcement Network, and the Department of the Treasury, "Questions And Answers Regarding Customer Identification Program Rule for Futures Commission Merchants And Introducing Brokers (31 C.F.R 103.123)," *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/CustomerID_QandA.pdf ("FCM CIP FAQs"); *see also* Interagency Interpretive Guidance on "Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act, FAQs: Final CIP Rule" (April, 28, 2005) (hereafter referred to as "CIP FAQs") *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/faqsfinalciprule.pdf.; Omnibus Guidance, *supra* n.9.

[18] *See generally* SIFMA Letter, pp. 6-9.

[19] *See generally* March 2006 Letter at pp. 4-6, *supra* n.5.

[20] HIRE Act, 26 U.S.C. §§ 1471-1474 (2010) (a/k/a Foreign Act Tax Compliance Act and commonly referred to as "FATCA").

[21] Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, H.R. 4173 (2010).

[22] For example, the Swap Data Repository Rule, 17 C.F.R. § 45.6 (2012), requires identification of the ultimate parent of each counterparty to any swap, which is determined by control. A person is presumed to control another

control, and does not fit all types of customer relationships (*e.g.,* trusts, omnibus relationships and pooled investment vehicles).

And in CDD Element Four, the term "ongoing due diligence" needs to be clarified to explain 1) whether it is addressing monitoring for suspicious activity pursuant to the existing and independent suspicious activity reporting requirement of Section 356 of the PATRIOT Act (the "SAR Rule"), or 2) whether it pertains to an expectation that FCMs will periodically update CDD. If the first interpretation is correct, any proposed CDD Rule should be explicitly clear that Element Four is satisfied by compliance with the SAR Rule. If the second interpretation is correct, the requirement should be limited to event-driven situations.

VI. The CDD Rule Should Not be Universally Applied to Existing Customers.

All four elements of any proposed CDD rule (unless Element Four pertains to compliance with the SAR Rule) should not apply to existing customers, unless they are limited to event-driven situations. The application of any proposed CDD rule to existing clients is a costly, and in our view, not particularly efficient use of limited resources. Similar to the CIP Rule, which explicitly excludes from the definition of Customer any person that has an existing account with the FCMs, existing Customers should be exempt from the proposed CDD rule. If deemed absolutely necessary, the application of these procedures to existing clients should be adopted on an event-driven basis, as appropriate, or limited solely to existing categories of Customers determined by the firm or identified by FinCEN as presenting elevated money laundering risks.

VII. At a Minimum, the Existing Exemptions Should be Maintained.

Existing exceptions from the CIP Rule should be applied to the proposed CDD rule and any beneficial ownership requirement, and expanded to include certain lower risk entities.

FIA believes that the present CIP exemptions[23] should apply to any new CDD requirements, as well as any requirement for obtaining beneficial ownership. For many of these CIP-exempt entities, such as U.S. banks or publicly held companies that are listed on U.S. exchanges, information about beneficial ownership is readily available to regulators and law enforcement. Moreover, given the nature of these entities, the identification information of such beneficial owners is not particularly relevant to the money laundering risks associated with such entities. Additionally, the identification of shareholders in publicly traded companies and pooled investment vehicles, because ownership percentages could fluctuate on a daily basis, create unreasonable challenges. In these latter situations, the more relevant person is the person with control over the relationship.

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person if the person directly or indirectly has the right to vote 25 percent or more of a class of voting interest or has the power to sell or direct the sale of 25 percent or more of a class of voting interest, among other enumerated categories; the Proposed Statement of Reporting Trader (Form 40) asks for information relating to owners of commodity pools with an equity interest of 10% or more, and where the operator of the commodity pool is exempt from registration under Section 4.13 of the CFTC regulations, indicate whether that person has an ownership or equity interest of 25% or greater in the commodity pool. See 77 Fed. Reg. 43968, 44025-44026 (July 26, 2012).

[23] *See* 31 C.F.R. §§ 1026.100(d)(2)(ii); 1020.315(b); *see also* 1026.100(a)(2)(definition of "Account").

Based on the evidence presented, requiring firms to collect beneficial ownership on such CIP-exempt Customers adds little value to law enforcement efforts, while unnecessarily increasing the burden and costs of compliance for the futures industry.

VIII. Reliance Should be Incorporated into the Proposed CDD Rule.

Currently, reliance on another financial institution is permitted pursuant to requirements set forth in the CIP Rule with respect to shared accounts. CIP is unique in that it affords the benefit of safe harbor protection to an FCM, should it choose to rely on another financial institution to perform CIP obligations under Section 326 of the PATRIOT Act with respect to the shared account. There is no similar opportunity for reliance under the proposed CDD Rule pursuant to which a futures firm's ultimate compliance responsibility is discharged.

To the extent that a firm is relying on another financial institution with respect to its CIP obligations for a shared client, it would be appropriate for that financial institution to also perform CDD on the same client, including identification/verification of its beneficial owners. Extending Section 326 reliance would allow the financial institution being relied on for purposes of CIP to carry out these additional AML obligations more efficiently and seamlessly. The alternative would result in a bifurcated process, whereby the same client would need to respond to both financial institutions in order to satisfy all elements of CIP and CDD. In addition to any potential confusion, this would impose an unnecessary burden on the shared client and result in unnecessary delay in the account opening process.

If a proposed CDD rule with the beneficial ownership sub-requirement is proposed, we recommend that Section 326 CIP reliance be broadened to cover CDD, including the requirements relating to beneficial owners. To do otherwise would vitiate the reliance provisions of the CIP Rule. It would make no sense for a financial institution to be required to identify/verify the beneficial owners of a Customer for purposes of CDD but not the Customer itself because it is subject to a reliance agreement.[24] Indeed, the FIA urges FinCEN to expand the concept of reliance beyond its present limitations to the CIP Rule, to permit reliance on non-U.S. Financial Institutions, including Affiliates, and in the context of the application of Rule 312 of the Patriot Act.

IX. No Additional Procedures Are Necessary With Respect To the Use of Agents.

Institutional Customers frequently operate through multiple agents, *i.e*. traders who often change based on the trading needs of the institutional customer. At the time of the issuance of the CIP Rule, industry members commented extensively on this issue and the difficulties of requiring institutional traders to be treated as Customers. FinCEN responded appropriately by eliminating from the CIP Rule the requirement for obtaining information on these traders.[25] It

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[24] *See* 31 C.F.R. § 1026.220(a)(6); FCM CIP FAQs, p. 8; *see also* CFTC Letter 0505 (March 14, 2005) No Action Letter from Division of Clearing and Intermediary Oversight, p. 3, *available at* http://www.cftc.gov/files/tm/letters/05letters/tm05-05.pdf (Setting out the terms and conditions under which an FCM or IB may rely on a Commodity Trading Advisors or Investment Advisors to perform CIP).

[25] *See generally* 68 Fed Reg. at 25151.

would be very burdensome and disruptive, and difficult to implement, if futures firms were required to obtain such information on institutional traders.

X. Proposed CDD Rule Timing.

Any proposed CDD rule should include 1) a sufficient time period to implement the rule (at least 18 months to 2 years), 2) provide for a reasonable time period to perform CDD consistent with the CIP Rule, and 3) provide for an effective implementation date going forward, as material aspects of any proposed CDD rule will be new requirements.

As FinCEN is no doubt aware, because these are new AML requirements, the futures industry will require an extensive amount of time to implement CDD, as proposed, and even more if it applies to existing clients. Moreover, the futures industry has been deeply involved in the implementation of Dodd-Frank, and will be under serious time constraints with respect to that legislation. We therefore recommend that FinCEN take those other requirements into account in proposing time periods for the implementation of these rules.

XI. Cost Considerations.

Costs will be substantial. FinCEN should therefore conduct a cost-benefit analysis as the ANPRM does not clearly articulate the benefits to law enforcement from the proposed CDD rule that would outweigh the costs to the industry, and should evaluate whether the proposed CDD rule will mitigate the risks that FinCEN is attempting to address. Significant costs would include, among others, any necessary technology enhancements, additions to staff to handle increased workload and updates to relevant documentation (*e.g.,* applications, policies, procedures and training). Given the ongoing burden of implementing the Dodd Frank rules, FinCEN needs to carefully evaluate the additional burdens imposed on FCMs by these rules, and weigh them against the benefits to law enforcement.

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For the reasons set forth above, the FIA believes that the Proposal requires further refinement and modification before it is implemented. To that end, we are available to meet with FinCEN staff to discuss these complicated issues, as well as other ways to improve AML compliance.

Thank you for giving FIA the opportunity to comment on the Proposal. We look forward to the continued partnership between government and industry to strengthen the regulatory structure surrounding futures firms and other U.S. financial institutions. If you have any questions regarding this comment or any related issues, please contact me at (202) 466-5460 and bwierzynski@futuresindustry.org.

Sincerely,

Barbara Wierzynski
General Counsel
Futures Industry Association

Attachment

cc: Ed Riccobene, Esq.
Counsel to the Director, Division of Enforcement
Commodity Futures Trading Commission

Helene Schroeder, Esq.
Special Counsel, Division of Clearing and Intermediary Oversight
Commodity Futures Trading Commission

Attachment A