



Futures Industry Association

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December 7, 2004

Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Proposed Amendments to Commission Rule 1.55(d)(1)—Distribution of Risk Disclosure Statement, 69 *Fed.Reg.* 64873 (November 9, 2004)

Dear Ms. Webb:

The Futures Industry Association (“FIA”)¹ is pleased to write in support of the proposed amendment to Commodity Futures Trading Commission (“Commission”) rule 1.55(d)(1). If adopted, the amendment would include the consents required under Commission rules 155.3(b)(2) and 155.4(b)(2) among the prescribed disclosures, consents and elections that non-institutional customers are authorized to acknowledge having received and made through the use of a single signature. Rules 155.3(b)(2) and 155.4(b)(2), respectively, authorize an FCM and an introducing broker, with the consent of the customer, to knowingly take the opposite side of a customer’s order.

As noted in the *Federal Register* release accompanying the proposed amendment, the Commission promulgated a similar amendment to rule 1.55(d)(1) in November 2000, in connection with the implementation of its New Regulatory Framework.² The amendment to rule 1.55(d)(1) had the support of all commenters that addressed the proposal, including FIA. Upon enactment of the Commodity Futures Modernization Act (“CFMA”), however, the Commission withdrew all of the rules constituting the New Regulatory Framework to be certain that they did not conflict with the provisions of the CFMA. The majority of those rules, but not the amendment to rule 1.55(d)(1), were repromulgated in October 2001. 66 *Fed.Reg.* 53510 (October 23, 2001). The omission of the amendment to rule 1.55(d)(1) appears to have been nothing more than an oversight. We encourage the Commission’s to adopt the amendment at this time.

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 (“FCMs”) 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 80 percent of all customer transactions executed on US contract markets.

² These amendments were published in the *Federal Register* on December 13, 2000 at 65 *Fed.Reg.* 77993.

FIA respectfully requests the Commission to adopt concurrently an amendment to rule 1.55(f), which would add the consent required under Commission rule 155.3(b)(2) to the prescribed disclosures, consents and elections that institutional customers are not required to acknowledge in opening an account with an FCM. As with the amendment to rule 1.55(d)(1), the Commission had adopted an amendment to this effect as part of its New Regulatory Framework, again with the support of all commenters.³

Specifically, rule 1.55(f) was amended to read:

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an “institutional customer” as defined in §1.3(g) without furnishing such institutional customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, §§1.33(g) and 1.65(a)(3), and §§30.6(a), 33.7(a), 155.3(b)(2) and 190.10(c) of this chapter.

Although the Commission did not propose an amendment to rule 1.55(f) in this *Federal Register* release, the omission appears to have been inadvertent. Since the Commission previously requested comment on this amendment and received uniform support for its adoption, FIA urges the Commission to adopt the above amendment to rule 1.55(f) as a final rule at the same time that it takes action on the amendment to rule 1.55(d)(1).⁴

FIA appreciates the opportunity to comment on the proposed amendment to the Commission’s risk disclosure rules. If you have any questions regarding this letter, please contact Barbara Wierzynski, FIA’s General Counsel, or me at (202) 466-5460.

Sincerely,

John M. Damgard
President

³ As with the amendment to rule 1.55(d)(1), the amendment was withdrawn following the enactment of the CFMA and was not among the rules repromulgated in October 2001.

⁴ The amendment, of course would not affect the obligation of an FCM under rule 155.3(b)(2) to obtain the consent of its institutional customers before taking the opposite side of a customer’s order. The amendment would simply recognize the right of each FCM to obtain the required consent in the manner it deems most appropriate.

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cc: Honorable Sharon Brown-Hruska, Acting Chairman
Honorable Walter L. Lukken, Commissioner
Honorable Fred Hatfield, Commissioner
Honorable Michael V. Dunn, Commissioner

Division of Clearing and Intermediary Oversight
James Carley, Director
Lawrence B. Patent, Deputy Director
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