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<u>Via Electronic Submission</u>

March 31, 2016

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: CFTC Staff Public Roundtable on the Residual Interest Deadline for Futures Commission Merchants (RIN Number 3038-AE22)

Dear Mr. Kirkpatrick:

FIA[1] is pleased to submit these comments on the "Residual Interest Deadline" for futures commission merchants ("**FCMs**"), as discussed at the Commodity Futures Trading Commission (**"Commission"**) staff public roundtable on March 3, 2016. The Residual Interest Deadline is the time by which an FCM must assure that it is holding in its customer segregated accounts residual interest that is at least equal to the amount by which its customers' segregated accounts, in the aggregate, are undermargined. Rule 1.22(c)(5) sets the Residual Interest Deadline at 6:00 pm (Eastern) on the settlement date, *i.e.*, the business day following the trade date. As a result of recent amendments to Rule 1.22(c)(5), which FIA strongly supported, the deadline cannot be amended absent a Commission rulemaking and opportunity for public comment.[2]

The rule further requires the Commission staff, no later than May 16, 2016, to complete and publish for public comment a report considering, to the extent information is practically available, whether it would be practicable to move the Residual Interest Deadline to the time of settlement (or to some other time of day). The rule also directs Commission staff to solicit public comment and conduct a public roundtable regarding specific issues to be covered by the report. Commission staff held the March 3 public roundtable pursuant to this directive.

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[1] FIA is the leading trade organization for the global futures, options and over-the-counter cleared derivatives markets. Its mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and to promote high standards of professional conduct. FIA's core constituency consists of futures commission merchants, and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions. FIA's regular members, which act as the majority clearing members of U.S. exchanges, handle more than 90 percent of the customer funds held for trading on U.S. futures exchanges. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

[2] Residual Interest Deadline for Futures Commission Merchants, 80 Fed. Reg. 15507 (Mar. 24, 2015).

FIA believes the 6:00 pm (Eastern) Residual Interest Deadline strikes the most appropriate balance between assuring the protection of customer funds and alleviating the significant financial and operational burdens that would be imposed on customers and FCMs alike if the Residual Interest Deadline were set at settlement or such other earlier time.

As we have previously commented,[3] an earlier Residual Interest Deadline will impose significant financial and operational burdens on both FCMs and their customers. Among FCMs represented in a recent survey, FIA found that FCMs collected, on average, more than 90 percent of margin deficits by COB T+1, with a majority of FCMs represented collecting more than 95 percent of margin deficits by COB T+1. Separately, the survey found that the bulk of margin funds collected from customers are received late in the day.[4] Therefore, abbreviating the deadline may result in customers being asked to pre-fund their margin, or alternatively FCMs and their customers will need to finance the increased residual interest obligations. Both scenarios are undesirable because they will raise clearing costs for customers. These costs will drain liquidity from the futures markets and make it significantly more expensive for FCMs' customers to hedge risk, which could acutely impact smaller end users. Given these realities, many buy-side representatives supported the COB T+1 Residual Interest Deadline when it was first considered by the Commission.

The 6:00 pm (Eastern) Residual Interest Deadline protects customer funds while providing operational efficiencies. Specifically, the schedule affords FCMs time to make their margin calls to customers in the morning following the trade date and to receive payment during that same business day prior to computing the sum of their remaining margin deficiencies and adding to their residual amount, if necessary. Although 6:00 pm (Eastern) is the official Residual Interest Deadline, FCMs cannot wait until 6:00 pm to perform a calculation that demonstrates compliance. It takes time to perform and review a residual interest compliance calculation, and if necessary wire in additional residual interest to demonstrate compliance. Therefore, FCMs perform analysis throughout the day in order to understand the funding needs required to meet the 6:00 pm deadline. Further, under this schedule, each FCM meets derivative clearing organization (**"DCO"**) settlement payments within the time required by the DCO and performs its daily segregation calculations.

Finally, the residual interest requirements should be considered in the context of other recent enhanced customer protections. Transparency has increased for both the FCMs' clients and

[3] Letter from Walt L. Lukken, President and CEO, FIA, to Christopher J. Kirkpatrick, Secretary to the Commission, dated December 17, 2014; Letter from Barbara Wierzynski, General Counsel and Executive Vice President, FIA, to Melissa D. Jurgens, Secretary of the Commission, dated June 20, 2013 (attaching Memorandum on the Costs of the Commission's Proposed Residual Interest Requirement Compared with The FIA Alternative); Letter from Walt L. Lukken, President and CEO, FIA, to Melissa D. Jurgens, Secretary to the Commission, dated February 15, 2013.

[4] Letter from Barbara Wierzynski, General Counsel and Executive Vice President, FIA, to Melissa D. Jurgens, Secretary of the Commission, dated June 20, 2013 (attaching Memorandum on the Costs of the Commission's Proposed Residual Interest Requirement Compared with The FIA Alternative).

regulatory authorities. In addition to the FCMs' requirement to maintain residual interest that is at least equal to their customers' aggregate undermargined amounts for the prior trade date, FCMs must establish a targeted residual interest and notify the Designated Self-Regulatory Organization (**"DSRO"**) in the event their residual interest goes below the targeted amount. FCMs must electronically file their daily segregation computations, and the DSROs now require electronic submission of bank, custodial and carry broker balances, which provide them the ability to confirm the segregated assets on a daily basis. Additional reporting obligations have been established requiring Chief Financial Officer, Chief Executive Officer or other qualifying senior official approval for reductions in residual interest greater than 25 percent of the FCM's prior day residual interest. Additionally, FCMs also must meet specific risk management requirements, including notification requirements for material changes in its risk profile.[5] All of these measures work in concert to achieve improved safeguards.

As discussed above and in our prior comments, moving up the residual interest deadline would have a dramatic financial impact on market participants, including, among other things, significant increased costs, loss of liquidity, and potential difficulty hedging risk. In addition, the operational burdens and changes created by moving up the residual interest deadline would undermine the well-established and interconnected structure of the financial payments and settlements that are at the heart of the market. Accordingly, we believe the 6:00 pm (Eastern) Residual Interest Deadline strikes the most appropriate balance between assuring the protection of customer funds and alleviating the significant financial and operational burdens that would be imposed on customers and FCMs alike under an earlier deadline.

FIA appreciates the opportunity to submit these comments on the Residual Interest Deadline following the March 3 public roundtable. If Commission staff has any questions concerning the matters discussed in this letter, please contact Allison Lurton, FIA's Senior Vice President and General Counsel, at (202) 772-3057 or alurton@fia.org.

Sincerely,

Walt L. Lukken

Walt L. Lukken
President and Chief Executive Officer

cc: Honorable Timothy G. Massad, Chairman
Honorable Sharon Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner

Division of Swap Dealer and Intermediary Oversight

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[5] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68506 (Nov. 14, 2013).

Eileen T. Flaherty, Director
Thomas J. Smith, Deputy Director
Joshua Beale, Attorney-Advisor

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