By Electronic Mail

January 31, 2014

Ananda Radhakrishnan, Director Division of Clearing and Risk
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Re: Request for Confirmation of Rule Interpretations with Respect to CFTC Rule 1.73

Dear Mr. Radhakrishnan:

As discussed on January 16, 2014, the Futures Industry Association ("FIA") writes to the Division of Clearing and Risk on behalf of its member futures commission merchants ("FCMs") to request confirmation of certain rule interpretations with respect to CFTC Rule 1.73.

CFTC Rule 1.73(a)(2)(iv) does not apply to agency-executed transactions on SEFs.

As you know, Rule 1.73(a)(2)(iv) provides that, in circumstances in which an FCM executes an order on behalf of a customer but gives it up to another FCM for clearing, the executing firm and clearing FCM must enter into an agreement, pursuant to which the executing firm will screen orders for compliance with the clearing FCM's risk-based limits. Such arrangements are deemed necessary for give-up transactions executed on or subject to the rules of a contract market because such transactions are accepted for clearing before they are made known to the clearing FCM. The clearing FCM, therefore, has no ability to screen the transaction for compliance with its risk-based limits. If the clearing FCM subsequently rejects a transaction, the resulting positions must then be carried by the executing firm, which originally accepted the positions for clearing (or its FCM). The transactions are not voided.

The process by which transactions in swaps executed on or subject to the rules of a swap execution facility are executed and accepted for clearing is significantly different.   First, SEF rules contemplate that swaps will be entered into directly by the parties to the swap, identifying their respective clearing FCM. In those circumstances in which a party uses an agent to execute the swap on the party's behalf, the agent will identify to the SEF the FCM expected to accept the trade for clearing. In either case, before the transaction is executed on the SEF and accepted for clearing, it will be screened automatically, as facilitated by the SEF, either by the clearing FCM or the SEF or through a credit hub, for compliance with the clearing FCM's risk-based limit. If the clearing FCM rejects the transaction, it is deemed *void ab initio*. No transaction in excess of the clearing FCM's limit will exist.

Because the clearing FCM has the opportunity to screen the agency-executed swap transaction on a SEF for compliance with its limits before the transaction is executed and accepted for clearing, the executing agent has no need to screen swap orders for compliance with these limits.

> **In light of the foregoing, we ask the Division to confirm that agency-executed transactions on a SEF are not "give up" transactions under Rule 1.73(a)(2)(iv).**

CFTC Rule 1.73(a)(2)(iv) and (v) are mutually exclusive.
As noted above, Rule 1.73(a)(2)(iv) for "give ups" applies where a firm executes an order on behalf of <u>a</u> customer. Rule 1.73(a)(2)(v), on the other hand, applies where an account manager bunches orders on behalf of multiple customers for execution and post-trade allocation to individual customers. Because bunched orders, by their very nature, do not identify at the time of execution the customers on whose behalf the order is executed or the amount of the order that is due to a particular customer, an initial clearing firm (in futures this is the executing broker or its clearing firm) would not be able to apply and screen an individual customer limit as would be required if the trade were also subject to the requirements for a "give up" under Rule 1.73(a)(2)(iv). As we discussed, however, the bunched order is subject to screening by the initial clearing firm against limits set by that firm with respect to the bunched order. Accordingly, FIA requests that you confirm that the portion of your August 27, 2013 letter dealing with give up of bunched orders is replaced by the following:

> **Bunched orders are subject to Rule 1.73(a)(2)(v) and are not subject to Rule 1.73(a)(2)(iv), even if the bunched order is given up.**

Thank you for your consideration of this request. If you have any questions or need any additional information, please contact me at 202-466-5460 or wlukken@futuresindustry.org.

Sincerely,

Walt Lukken
President & Chief Executive Officer

Cc: Christopher Hower
        John Lawton