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August 26, 2019

**Via Electronic Submission and Email**

Christopher Kirkpatrick  
Secretary of the Commission  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Vanessa Countryman  
Office of the Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: Customer Margin Rules Relating to Security Futures (RIN 3235-AM55 / File Number S7-09-19)**

Dear Mr. Kirkpatrick and Ms. Countryman:

The Futures Industry Association (“**FIA**”)<sup>1</sup> welcomes the opportunity to comment on the joint Commodity Futures Trading Commission (“**CFTC**”) and Securities Exchange Commission (“**SEC**”) (together, the “**Commissions**”) notice of proposed rulemaking on “Customer Margin Rules Relating to Security Futures” (the “**Proposal**”).<sup>2</sup> The Proposal would update jointly issued rules finalized in 2002 with respect to the minimum required margin to be collected by security futures intermediaries. FIA supports the updates and provides the following brief comments on the Proposal.

Since Congress passed the Commodity Futures Modernization Act (“**CFMA**”) permitting the trading of security futures, many FIA members registered with the CFTC as futures commission merchants (“**FCMs**”) have opted to serve as intermediaries for security futures, some of which are contained within accounts permitted to be portfolio margined. As long-

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<sup>1</sup> The Futures Industry Association is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA’s clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

<sup>2</sup> 84 Fed. Reg. 36434 (July 26, 2019).

standing participants in the market for security futures, FCMs have a strong interest in changes to the regulatory treatment of these products.

When finalized in 2002, the original rules set minimum initial margin levels at 20% of “current market value,” consistent with the requirements of Section 7(c)(2)(B) of the Exchange Act as updated by the CFMA. The 2002 final rules further permitted Self-Regulatory Organizations (“SROs”) to set margin levels lower than 20% of the current market value for certain security futures positions with certain offset positions. As noted in the Proposal, at the time the Commissions finalized rules for security futures in 2002, SRO risk-based portfolio margining did not exist. Following a pilot program for SRO risk-based portfolio margining for securities futures and the 2008 rules finalizing these programs, SRO risk based-margin levels have been lowered to a minimum of 15%.<sup>3</sup> FIA has long supported both the pilot program and the 2008 rules that set the required minimum initial margin at 15% for these portfolio-margined products and have found it sufficiently robust for intermediaries to risk manage these customer positions.

FIA supports the Proposal and the Commissions’ desire to amend the customer margin requirements for security futures held outside of portfolio margining accounts so that they mirror the required minimum margin for those same products held in an account that is portfolio margined. Harmonized margin requirements will be simpler to administer and risk manage for the intermediaries that facilitate trading in the market, and better aligns with customer use of these products. We see no reason to apply different minimum margin requirements to comparable exchange-traded products.

In promulgating these specific margin rules for security futures under CFTC and SEC regulations, it is important that the Commissions clarify that general margin rules may not apply to these products. Specifically, the Commissions should be clear throughout their rules about the intersection of Part 41 (security futures rules) of the CFTC rules and the CFTC general margin requirements in Part 39 for derivatives clearing organizations (“DCOs”). We ask the Commissions to consider whether clarifications may be required in this and other rulemakings. For example, subsequent to the 2002 final rules, the CFTC issued CFTC Staff Letter 12-08 (“**Letter 12-08**”), exempting security futures transactions from the CFTC general margin requirements in Part 39. The Proposal acknowledges that the CFTC customer margin rules, pursuant to Letter 12-08, “do not apply to customer initial margin collected as performance bond for customer security futures positions.”<sup>4</sup> We strongly urge the Commissions to make clear, where appropriate, that margin rules of general applicability do not apply to security futures.<sup>5</sup> Instead, particular rules for these products exist in other sections

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<sup>3</sup> As noted in the Proposal, SROs and intermediaries may determine higher margin levels based upon market conditions, but 15% is the required minimum initial margin level. 84 Fed. Reg. 36436.

<sup>4</sup> *Id.* at 36437 n. 40.

<sup>5</sup> The CFTC has proposed amendments to the DCO Core Principles. *See* Derivatives Clearing Organization General Provisions and Core Principles, 95 Fed. Reg. 2226 (May 16, 2019). In particular, the proposal seeks to update Regulation 39.13(g)(8)(ii) to incorporate certain interpretive guidance in Letter 12-08 related to margin practices issued since the rules were last implemented. Because the DCO Core Principles set forth minimum

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of the CFTC and SEC rules. Such clarification could avoid unnecessary confusion as to the required margin treatment for these products.

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FIA appreciates the opportunity to comment on the Proposal. Please contact Allison Lurton, Senior Vice President and General Counsel, at 202-466-5460, if you have any questions about this letter.

Sincerely,



Walt Lukken  
President & Chief Executive Officer

cc: Honorable Heath Tarbert, Chairman  
Honorable Brian D. Quintenz, Commissioner  
Honorable Rostin Behnam, Commissioner  
Honorable Dan Berkovitz, Commissioner  
M. Clark Hutchison, Director, Division of Clearing and Risk

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margin requirements generally, we believe it is important to make clear in the CFTC final DCO Core Principles rules that security futures are subject to specialized margin requirements and are, therefore, exempt from the DCO Core Principles for margin set forth in Part 39 of the CFTC's regulations.