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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

Re: Foreign Futures and Options Transactions (RIN 3038–AE86)

Dear Mr. Kirkpatrick:

The Futures Industry Association ("**FIA**")[1] welcomes the opportunity to comment on the Commodity Futures Trading Commission's ("**Commission**") notice of proposed rulemaking on "Foreign Futures and Options Transactions" (the "**Proposal**").[2] The Proposal would codify the process by which the Commission may terminate exemptive relief issued pursuant to Section 30.10 of its regulations ("**Section 30.10 relief**") governing the offer and sale of futures and options traded on or subject to the regulations of a foreign board of trade ("**foreign futures and options**") to customers located in the United States. It is critical that the Commission has clear rules and that the Commission's processes, and in particular those that may have a significant impact on market participants, are codified in its regulations to the extent practicable. Accordingly, FIA supports the Commission's efforts in the Proposal to clarify, in its regulations, when and how it may terminate Section 30.10 relief for a non-U.S. jurisdiction. However, as explained below, we caution the Commission against adopting a process that does not provide market participants that rely on the relief fair notice and an opportunity to respond to the Commission's intention to terminate the relief.

It is worth noting at the outset that FIA supports the principle of regulatory deference that has underpinned the Section 30.10 exemptive regime since its inception in the 1980s. Indeed, FIA recently co-authored a white paper positing that U.S. swap customers would be better served by the Commission's adoption of a Part 30-like regime for swaps executed and cleared on non-

[1] 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.

[2] 84 Fed. Reg. 32105 (July 5, 2019)

US trading venues and clearinghouses.[3] The Commission should take into account comparable foreign regulatory structures in deciding whether to subject non-U.S. trading venues, clearinghouses and market participants to comprehensive U.S. regulation. No one is served by subjecting firms, whether based in the United States or elsewhere, to overlapping regulations when application of one jurisdiction's rules can accomplish the same results – mainly, protection of customers and financial and market integrity. Regulatory deference also limits the risk of market fragmentation and invites reciprocal treatment of U.S. firms by foreign regulators. Section 30.10 is a success story for the positive impact it has had on U.S. customers and foreign futures and options markets. We applaud the Commission for having the foresight, so many decades ago, to embrace principles of deference and comity in fashioning Section 30.10 and for wanting to enhance the effectiveness of that regime in the Proposal.

Not surprisingly, given the history and benefits of Section 30.10, many firms have come to rely on Section 30.10 relief to offer and clear foreign futures and options for U.S. customers. U.S. customers, in turn, have come to rely on the Section 30.10 relief offered to their brokers and clearing firms to access foreign futures and options markets.[4] As the Proposal notes, the Commission has issued Section 30.10 relief upon application of foreign regulators and self-regulatory organizations "spanning the globe, including those in North America, Europe, South America, Australia and Asia."[5] Firms typically tailor their businesses to Section 30.10 relief in particular jurisdictions, which can include their corporate infrastructure, client coverage, global workflows, customer and other legal agreements, exchange and clearinghouse memberships, regulatory status and internal systems and policies and procedures As a result, clearing firms and their U.S. customers rely extensively on the Section 30.10 exemptions and expect that the exemptions, once issued, will remain in place absent extraordinary circumstances negating the basis on which relief was issued.

It is important, therefore, that Part 30 provide a formal process for the termination of Section 30.10 relief and that the process give fair notice of the Commission's intention to terminate the relief to the foreign regulator or self-regulatory organization that applied for the relief. We understand that there may be unforeseen emergencies, as the Proposal describes, that require

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[3] FIA and Securities Industry and Financial Markets Association, Promoting U.S. Access to Non-U.S. Swap Markets: A Roadmap to Reverse Fragmentation, Dec. 14, 2017, available at https://fia.org/articles/fia-and-sifma-release-white-paper-us-access-non-us-trading-venues-and-ccps. In this regard, FIA welcomes the two pending Commission proposals relating to registration of non-U.S. clearinghouses (Exemption From Derivatives Clearing Organization Registration, 83 Fed. Reg. 39923 (July 23, 2019) and Registration With Alternative Compliance for Non-U.S. Derivatives Clearing Organizations, 84 Fed. Reg. 34819 (July 19, 2019)) and looks forward to commenting on both proposals.

[4] Similarly, FCMs and their U.S. customers have come to rely on the exemption from registration as an introducing broker available under Section 3.10(c)(4) of the Commission's rules to non-U.S. firms that have qualified for a Section 30.10 exemption. As the Commission is aware, Section 3.10(c)(4) is the means by which a U.S. FCM may "pass the book" to a non-U.S. affiliate that is not otherwise registered with the Commission.

[5] Proposal at 32106.

the Commission to terminate Section 30.10 relief on an expedited timeframe.[6] We would hope those circumstances would be exceedingly rare, and, that even under these constraints, the Commission would provide as much notice as possible to affected firms recognizing the significant impacts that termination of Section 30.10 relief could have on market participants, including U.S. customers. Consequently, we support the provision in the Proposal that would provide "written notification to the affected party," which the preamble identifies as "the foreign regulator, [self-regulatory organization] or other entity that filed the original petition for relief," of the Commission's intention to terminate the relief and the basis for that intention.[7] And we further support the provision that would provide the affected party an opportunity to respond in writing to the notification.[8] The Commission will benefit from hearing the position of the foreign regulator or self-regulatory organization before making a final decision on the appropriateness of whether to terminate the relief.

It is equally important, though, that the termination process provide market participants that rely on the relief, in addition to the foreign regulator or self-regulatory organization that sought the relief, effective notice and an opportunity to respond to the Commission's intention to terminate the relief. Although FCMs and their U.S. customers may not be "affected parties" as contemplated in the Proposal, they are certainly "interested parties."[9] As noted above, market participants conform their business practices to the relief and come to expect that relief, once issued, will remain effective. Firms will be better positioned to plan for, and potentially mitigate, the business and market disruptions that could result from termination of the relief if they have notice of the Commission's intention to terminate the relief. In addition, we believe that the Commission would stand to benefit from hearing from impacted market participants as it weighs whether to issue an order finalizing the termination of the relief. At the very least, input from market participants will position the Commission to make a more informed decision.

We defer to the Commission on the most efficient means to give affected market participants notice and an opportunity to respond to its intention to termination the relief. One possibility is to post the notice of its intention to terminate on the Commission's website with a portal for feedback. Another possibility is for the Commission to issue a proposed order, published in the Federal Register, announcing the Commission's intent to terminate the relief that includes a formal comment period. Whatever means the Commission adopts, the codified process should include reasonable notice to all impacted market participants of the Commission's intention to

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[6] *See* Proposal at 32107 ("The Commission notes that the proposed amendment to § 30.10 would not impact its ability to suspend immediately the relief set forth in any Order issued pursuant to § 30.10(a) should exigent circumstances occur, e.g., a foreign regulator halts the flow of capital outside its jurisdiction impacting a U.S. customer's ability to withdraw money held in a segregated foreign futures and options customer account.").

[7] Proposal at 32107, 32109.

[8] *Id.*

[9] The non-U.S. firms that have qualified for an exemption under the relevant Section 30.10 order also have a clear interest in any proceeding to terminate the order.

terminate the Section 30.10 relief and a mechanism for such market participants to respond to the proposed termination.

Although the Proposal would require the Commission to issue a public order terminating the relief and further require the order to provide "an appropriate timeframe for the orderly transfer or close out of any accounts held by U.S. customers impacted by such order,"[10] these provisions would not allow the Commission to benefit from market participant feedback in deciding whether to terminate the relief and in establishing an appropriate timeframe if it determines to so. Notice to the market after the Commission has made its decision may come too late for firms to manage the change in regulatory landscape. We also worry that waiting to make a public pronouncement about the termination of relief until a final order is issued may unfairly disadvantage firms, especially smaller firms, that may not have the same level of resources to monitor regulatory developments. In short, we believe that public transparency, at the point of the Commission's intention to terminate Section 30.10 relief, would benefit both the agency and market participants that rely on the relief.

Finally, we stress that the Commission should consider revoking Section 30.10 relief only when there is a compelling need to do so in order to protect U.S. customers. Given that a revocation could lead to market fragmentation and could harm U.S. customers, such a standard is appropriate. We respectfully submit that applying a lower standard, or pursing revocation in response to regulators being unable to agree on regulatory harmonization in other unrelated areas, would be contrary to the public interest.

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[10] *Id.* at 32109.

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
Joshua Sterling, Director, Division of Swap Dealer and Intermediary Oversight
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