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August 15, 2017

**Via Electronic Submission**

Mr. Amir Zaidi, Director, Division of Market Oversight  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Request Pursuant to Commission Regulation 140.99 for Extended and Additional No-Action Relief for Reporting Requirements Under Parts 17 and 20 of Commodity Futures Trading Commission Regulations<sup>1</sup>**

Dear Mr. Zaidi:

The Futures Industry Association (“FIA”) is the leading trade organization for the global futures, options, and over-the-counter cleared derivatives markets. Its members are active users of the commodity futures markets and include derivatives clearing firms of all sizes, as well as leading derivatives exchanges and large commodity firms. Many FIA members are directly impacted by the U.S. Commodity Futures Trading Commission’s (“CFTC” or the “Commission”) Ownership and Control (“OCR”) Final Rule.<sup>2</sup> For the reasons set forth herein, FIA requests no-action relief with respect to various OCR Final Rule requirements for parties that are obligated under that rule to report information on any of New Form 102A, New Form 102B, New Form 102S, and New Form 40/40S (collectively, “Reporting Parties”), pending the Commission’s further consideration of such requirements during a formal rulemaking process.

On February 24, 2016, FIA raised various concerns with respect to the OCR Final Rule and requested no-action relief on behalf of FIA members that have reporting obligations under the OCR Final Rule (the “**February 2016 FIA Letter**”).<sup>3</sup> In the February 2016 FIA Letter, we presented data indicating that Reporting Parties were unable to fully comply with the OCR Final Rule and asked the Commission to consider relief consistent with the Petition for Amendment of the Ownership and Control Reports (the “**Petition**”) that FIA had filed on June 26, 2015. In response to this request, on April 8, 2016, the Division of Market Oversight (“**DMO**”) issued no-action relief in CFTC Letter No. 16-32 (“**NAL 16-32**”) that provided conditional staged relief from various OCR requirements and extended certain OCR-related reporting deadlines.

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<sup>1</sup> This letter is an updated version of the request for no-action relief that we submitted to CFTC staff on June 9, 2017.

<sup>2</sup> Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 Fed. Reg. 69,178 (Nov. 18, 2013).

<sup>3</sup> Letter from Allison Lurton, Senior Vice President and General Counsel, FIA, to Vincent A. McGonagle, Director, Division of Market Oversight, CFTC (Feb. 24, 2016).

Notwithstanding considerable effort, Reporting Parties are still unable to fully comply with certain aspects of the OCR Final Rule and will likely be unable to comply with such aspects due to some of the rule's problematic requirements. FIA has been discussing such requirements with Commission staff since the release of the OCR Final Rule. In addition, the cost necessary for firms to eventually comply with these aspects of the OCR Final Rule would far exceed any benefit to the Commission.

We highlight below a few of the ongoing challenges faced by Reporting Parties under the OCR Final Rules. These challenges, among others, are described in more detail in FIA's Petition and in our previous requests for relief. We respectfully request an extension of the no-action relief provided in NAL 16-32 until such time as these portions of the OCR Final Rule are further considered during a formal rulemaking process.

- **Form 102A, Question 10(iii): trading account controller; Form 102B, Question 6: volume threshold account controller.** The OCR Final Rule requires Reporting Parties to report data with respect to trading account controllers,<sup>4</sup> volume threshold account controllers<sup>5</sup> and reportable sub-account controllers (collectively, "Natural Person Controllers") and further requires Reporting Parties to report changes to the composition of trading account controllers and volume threshold account controllers on a near real-time basis. This level of reporting continues to be highly problematic for Reporting Parties to achieve on a number of levels. With respect to client accounts, Reporting Parties do not possess or control this data and clients do not have a direct obligation under the OCR Final Rule to provide Reporting Parties with the relevant data. More generally, Reporting Parties have never had an obligation to maintain and report this data on a near real-time basis, and thus, do not have in place the robust and extremely costly processes required to achieve compliance with this aspect of the OCR Final Rule. Additionally, it is important to note that because the Natural Person Controller data as required to be reported under the OCR Final Rule will not be associated with a particular order or trade, even if the CFTC were to obtain accurate Natural Person Controller data as contemplated by the OCR Final Rule and related guidance, the CFTC will still have to take additional steps to contact market participants to identify the individual(s) behind any trade activity in question. Accordingly, we request no-action relief that confirms the DMO will not recommend an enforcement action against a Reporting Party for failure to report any Natural Person Controller information on Forms 102A and 102B. In order to minimize disruption to the existing reporting systems that Reporting Parties have built and rely on today to facilitate automated reporting processes mandated by the current Technical Guidance Document Version 5.1, we ask that you revise this guidance to remove the semantic meaning associated with 0, 1, and 2 values of the Client Reporting Issue attribute (or clarify through no-action relief that the meaning associated with such values in Technical Guidance Document Version 5.1 will be disregarded by the Commission), but still allow these

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<sup>4</sup> See CFTC Rule 15.00(bb); DMO Guidance Regarding the Terms "Owner" and "Controller" in the Ownership and Control Reporting (OCR) Final Rule (Apr. 8, 2016).

<sup>5</sup> CFTC Rule 15.00(cc); DMO Guidance Regarding the Terms "Owner" and "Controller" in the Ownership and Control Reporting (OCR) Final Rule (Apr. 8, 2016).

values to be reflected in the form submissions.

- **Form 102B (DCM and SEF reporting): reporting trigger.** Form 102B requires volume-based reporting,<sup>6</sup> for which the reporting trigger is trading volume of 50 or more contracts per day, under the definition of “reportable trading volume level” in CFTC Rule 15.04. Reporting Parties continue to believe that the 50-contract threshold for Form 102B reporting will result in significant amounts of unnecessary data being filed with the Commission that will not tangibly benefit the Commission’s ability to surveil the market. CFTC NAL 16-32 provides relief from the requirement to report on Form 102B based on a reportable trading volume of 50 contracts, provided that parties relying on the relief report on Form 102B based instead on a reportable trading volume level of (i) 250 or more contracts per day from September 29, 2016 until September 28, 2017 and (ii) 100 or more contracts per day from September 29, 2017 until August 29, 2018, at which point the reportable trading volume level will revert back to the original 50 contracts under CFTC Rule 15.04. We believe permanently raising the reportable threshold from 50 to 250 contracts would better align the obligations of Reporting Parties with the Commission’s market surveillance objectives, without requiring Reporting Parties to incur the significant additional compliance costs related to reporting accounts with relatively small size. We request an extension of the existing relief set forth in NAL 16-32 confirming that DMO will not recommend an enforcement action against a Reporting Party for failure to report accounts with a trading volume below 250 contracts in a product on a given day. Additionally, we also request that DMO extend the relief granted in NAL 16-32 with respect to SEF volume threshold accounts and clarify through additional no-action relief that Reporting Parties will not be required to report volume threshold accounts with respect to activity on a SEF via new Form 102B until such time as the relevant aspect of OCR Final Rule can be considered during a formal rulemaking process.
- **Form 102A, Question 10(ii): trading account owner; Form 102B, Question 5: volume threshold account owner.** Form 102A requires the names of trading account owners in Question 10(ii) to be reported by 9 a.m. on the business day following the date on which the special account becomes reportable,<sup>7</sup> and Form 102B requires the names of volume threshold account owners in Question 5 to be reported by 9 a.m. on the business day following the date on which the volume threshold account becomes reportable.<sup>8</sup> The industry continues to express difficulty with the ability of Reporting Parties to achieve full compliance by the 9 a.m. reporting deadline the day after an account becomes reportable. DMO confirmed in NAL 16-32, that, through August 29, 2018, DMO will not recommend that the Commission commence an enforcement action where Reporting Parties modify the information they previously reported for these fields up to 9 a.m. on the third business day following the date on which the volume threshold account or special account becomes reportable, as applicable. We request an extension of the relief in

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<sup>6</sup> See CFTC Rule 17.01(b).

<sup>7</sup> See CFTC Rule 17.02(b)(2)(i).

<sup>8</sup> See CFTC Rule 17.02(c)(2)(i).

NAL 16-32 that allows Reporting Parties to modify the names of trading account owners and volume threshold account owners by the third business day following the date on which the volume threshold account becomes reportable.

- **Form 102S.** New Form 102S requires reporting of several new data points not required on the legacy 102S filings that predate implementation of the OCR Final Rule. The industry continues to believe that the New Form 102S data utilizes terms that, while generally used in the context of futures and cleared swaps, do not apply in the context of the over-the-counter swaps market, creating confusion and increased risk of the Commission receiving non-responsive data from swap dealers. CFTC NAL 16-32 provides that the following new data points required under the OCR Final Rule will be optional to report on Form 102S, and will not be required to be reported: the name of omnibus account originators and all related address and contact fields (see Question 3(ii) on Form 102S); all consolidated account owner fields (see Question 3(iii) on Form 102S); and all consolidated account controller fields (see Question 3(iv) on Form 102S). To take advantage of the relief set forth in NAL 16-32 with respect to Form 102S reporting, Reporting Parties must instead identify the consolidated account counterparty and must also report the required Form 102S information via the new automated methods introduced by the OCR Final Rule. We request an extension of the relief in NAL 16-32.

In addition to the above issues previously addressed by FIA in the Petition and prior requests for no-action relief, we ask that DMO consider revisiting and clarifying certain other OCR Final Rule requirements addressed below. Because preparation for these items will need to commence soon for Reporting Parties to comply with the requirements discussed below, we ask that this relief be provided as soon as possible.

- **Form 102A, Form 102B and Form 102S: Annual Refresh.** Under the OCR Final Rule, if any change causes the information filed by a Reporting Party on a Form 102A, Form 102B or Form 102S to no longer be accurate, then, subject to the applicable sunset provision, such Reporting Party is required to file an updated Form 102 with the Commission in accordance with the instructions and schedule set forth in CFTC Rule 17.02(b)(3), 17.02(c)(3) or 20.5(a)(4), as applicable. Additionally, each Reporting Party, starting on a date specified by the Commission or its designee and at the end of each annual increment thereafter (or such other date specified by the Commission or its designee that is equal to or greater than six months), and subject to the applicable sunset provision, is required to resubmit every Form 102 that it has submitted to the Commission for each of its special accounts, volume threshold accounts and consolidated accounts. Given that Reporting Parties have an obligation to regularly submit change updates with respect to data reported on a Form 102A, Form 102B and Form 102S, the separate obligation to also submit an annual refresh with respect to a particular form is redundant. Accordingly, we request that DMO provide no-action relief to Reporting Parties with respect to the annual refresh requirements set forth in CFTC Rules 17.02(b)(4), 17.02(c)(4) and 20.5(a)(5).

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FIA appreciates staff's willingness to engage with FIA to discuss implementation of the OCR Final Rule and our related concerns. We commit to make FIA staff and members available to discuss potential permanent solutions to the issues created by the current requirements of the OCR Final Rule. Please contact the undersigned at (202) 772-3057 if you have any questions about the relief requested by FIA herein.

Sincerely yours,



Allison Lurton  
Senior Vice President and General Counsel

Cc: Dan Bucsa, Deputy Director, Division of Market Oversight  
David Aron, Special Counsel, Division of Market Oversight

I hereby certify that the material facts set forth in this letter are true and complete to the best of my knowledge, information, and belief.<sup>9</sup>



Allison Lurton

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<sup>9</sup> In addition, I hereby agree that, if at any time prior to issuance of a no-action letter, any material statement made in this letter ceases to be true and complete, I will ensure that Commission Staff is informed promptly in writing of all materially changed facts and circumstances.