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**By Commission Website**

September 5, 2012

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20581

**Re: RIN 3038-AD86: Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act, 77 Fed.Reg. 47170 (August 7, 2012)**

Dear Mr. Stawick:

The Futures Industry Association (“FIA”) is pleased to submit this letter in response to the Commodity Futures Trading Commission’s (“Commission’s”) request for comment on its proposed rules establishing a clearing requirement for swaps under section 2(h) of the Commodity Exchange Act (“Act”). FIA is the leading trade organization for the futures, options and over-the-counter (“OTC”) cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world’s largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearing organizations (“DCOs”), our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

FIA’s core constituency consists of futures commission merchants (“FCMs”), 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 the US exchanges, handle more than 90 percent of the customer funds held for trading on US futures exchanges.

FIA welcomes the proposed rules establishing a clearing requirement for swaps as an important step in implementing congressional intent favoring the centralized clearing of swaps that meet the statutory factors set out in section 2(h)(2)(D) of the Act. We support the Commission’s decision to proceed cautiously and focus first on those swaps that have the highest market shares and are already being cleared *i.e.*, certain indices on credit default swap (“CDS”) and interest rate

swaps (“IRS”) identified in proposed Rule 50.4. As the Commission notes, “for these swaps there is already a blueprint for clearing and appropriate risk management.”<sup>1</sup>

Other categories and classes of swaps, which are not as actively traded and are not yet subject to clearing, may have smaller outstanding notional exposures and limited available pricing data, are certain to pose different risks to the FCMs that carry such swaps and to the DCOs that clear them. The experience that DCOs, FCMs and market participants gain in clearing the CDS and IRS described in the proposed rules will provide critical empirical data that will serve to better inform the Commission’s subsequent analyses in determining whether and when, in accordance with the factors set out in section 2(h), to require the clearing of particular swaps.

Among the statutory factors that the Commission must consider prior to requiring a category or class of swaps to be cleared is the effect of such a determination on competition. To this end, the Federal Register release accompanying the proposed rules presents a full discussion of the potential competitive impact of the proposed clearing requirement for the described CDS and IRS, following which the Commission requests comment on a number of questions, including the extent to which “(1) entry barriers currently do or do not exist with respect to a clearing services market for the identified [swaps] classes; (2) the proposed determinations may lessen or increase these barriers; and (3) the proposed determinations otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market.”<sup>2</sup>

FIA agrees that these and other matters on which the Commission has requested comment are important and should play an essential role in the Commission’s analysis of the effect on competition resulting from a requirement to clear. Regrettably, in light of the relatively brief 30-day period allowed to comment on the proposed rules, we have been unable to conduct the type of analysis necessary to present a meaningful response to the matters on which comment was requested. Given the extensive supporting analysis required for this type of review, we believe the Commission and the public would be better served if the Commission provides for a longer comment period the next time a class or category of swaps is considered for clearing.

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<sup>1</sup> 77 Fed.Reg. 47170, 47172 (August 7, 2012). In this regard, however, we are aware that the International Swaps and Derivatives Association, Inc. (ISDA), in its comment letter on the proposed rules, raises a number of questions regarding the rules, which we believe require careful consideration as the Commission moves forward with adoption of a final rule. For example, ISDA expresses concern regarding the regulatory issues that may arise following a Restructuring credit event of a reference entity in an iTraxx index. We understand that, in such an event, the reference entity is spun out of the index and is traded as a single-name CDS, which would fall within the jurisdiction of the Securities and Exchange Commission.

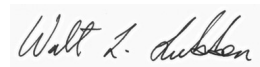
<sup>2</sup> 77 Fed.Reg. 47170, 47185 and 47204 (August 7, 2012).

For this same reason, we are unable to comment on the cost-benefit analysis set out in the Federal Register. This is particularly unfortunate, since the cost-benefit analysis discussion is among the more thoughtful and comprehensive the Commission has ever prepared.<sup>3</sup>

Before closing, we wish to note an apparent conflict between the definitions of “business day”<sup>4</sup> and “day of execution”<sup>5</sup> set out in proposed Rule 50.1 and the Commission’s decision to allow each DCO to define a “business day” for purposes of Rule 23.506(b).<sup>6</sup> We appreciate that the proposed definitions are “intended to avoid difficulties associated with end-of-day trading by deeming swaps executed after 4:00 pm or on a day other than a business day, to have been executed on the immediately succeeding business day,” while “giving the parties the maximum amount of time to subject their swaps to a DCO while still requiring such submission on a same-day basis.”<sup>7</sup> However, in adopting Rule 23.506(b), the Commission explained that it “understands that a DCO may choose to expand its business hours in order to offer a competitive advantage, and that this rule should not prescribe when swaps may be accepted for clearing.”<sup>8</sup> We are concerned that this apparent conflict may have unintended consequences and request that the Commission resolve this issue in adopting final rules.

FIA appreciates the opportunity to submit these comments in support of the proposed rules establishing a clearing requirement for swaps under section 2(h) of the Act.

Sincerely,



Walt Lukken  
President and CEO

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<sup>3</sup> We note, however, that FIA does not collect information from its members concerning fees they charge for particular services. Therefore, FIA would be unable to respond to the specific questions the Commission asked in connection with its discussion of ongoing costs related to FCMs and other service providers. If the Commission desires more detailed information in this regard, we believe it would be more appropriate for the Commission to contact the firms directly.

<sup>4</sup> “Business day” means any day other than a Saturday, Sunday or [legal] holiday.

<sup>5</sup> “Day of execution” means the calendar day of the party to the swap that ends latest, provided that if a swap is (A) entered into after 4:00 p.m. in the location of a party, or (B) entered into on a day that is not a business day in the location of a party, then such swap shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day.

<sup>6</sup> Rule 23.506(b) requires each swap dealer and major swap participant that executes a swap required to be cleared pursuant to section 2(h) of the Act to “submit such swap for clearing to a derivatives clearing organization as soon as technologically practicable after execution of the swap, but no later than the close of business on the day of execution.” 77 Fed.Reg. 21278, 21306 (April 9, 2012).

<sup>7</sup> 77 Fed.Reg. 47170, 47205 (August 7, 2012).

<sup>8</sup> *Id.*, at 21283.

Mr. David A. Stawick

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cc: Honorable Gary Gensler, Chairman  
Honorable Jill E. Sommers, Commissioner  
Honorable Bart Chilton, Commissioner  
Honorable Scott O'Malia, Commissioner  
Honorable Mark Wetjen, Commissioner

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