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August 4, 2014

Via Electronic Submission

Melissa Jurgens, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: General CFTC Request for Comment on Commission's Surveillance Program
(Technology Advisory Committee Request for How to Develop a 21st-Century Surveillance System)**

Dear Ms. Jurgens:

The Futures Industry Association¹ ("FIA") and FIA Principal Traders Group² ("FIA PTG") ("collectively FIA") appreciates the opportunity to provide the Technology Advisory Committee ("TAC") of the Commodity Futures Trading Commission ("CFTC" or "Commission") with comments on how the CFTC should develop a 21st-century surveillance system. FIA considers it important for the CFTC to gather industry and public input into the issues of data collection and CFTC surveillance in determining the appropriate priorities for the Commission and its staff in developing surveillance systems.

¹ FIA is the leading trade organization for the futures, options and cleared swaps markets worldwide. FIA's membership includes clearing firms, exchanges, clearinghouses and trading firms from more than 25 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 member firms play a critical role in the reduction of systemic risk in the global financial markets. FIA along with its affiliated associations, FIA Europe and FIA Asia, make up the global alliance, FIA Global, which seeks to address the common issues facing their collective memberships.

² FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in the futures, options and equities markets. FIA PTG member firms serve as a critical source of liquidity to these markets, allowing those who use such markets, including individual investors, to manage their risks and invest effectively. FIA PTG members engage in manual, automated, and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. Across all these markets, FIA PTG advocates for open access, transparency, and data-driven policy.

I. Interest of FIA and FIA PTG in the Commission's Development of a 21st-Century Surveillance System.

FIA's regular and associate members, including FIA PTG members, their affiliates, and their customers, actively participate in the listed and OTC derivatives markets as designated contract markets (“DCMs”) and swap execution facilities (“SEFs”) (collectively “Exchanges”), intermediaries, principals, and users. Each is required to collect and/or submit data on their futures and other derivatives activities. For example, each day, every clearing futures commission merchant (“FCM”) is required to report the specific positions of accounts which exceed a reportable position threshold. Further, they must identify any accounts unknown to the CFTC by filing a Form 102 which contains very specific data about the owning and controlling parties. Similarly, each morning, all DCMs provide the CFTC with a download of each and every trade made on the DCM for the prior business day. This data is in a standardized FIXML file called the Trade Capture Report (“TCR”). Additionally, the CFTC often asks end clients to complete and submit CFTC Form 40s which requires those clients to provide detailed information on their trading strategies and business activities. Given that any surveillance system the Commission would build will be largely based on data provided by FIA FCM and Exchange members and their customers, including FIA PTG members, we have a significant interest in how a 21st-century surveillance system is constructed.

We agree that the CFTC must leverage the evolving and changing technological landscape and reform its surveillance and oversight mission in a significant and technologically-adept way.³ As further explained below, FIA shares this goal and believes that the following principles are extremely important for the CFTC to consider in developing any significant changes to its surveillance systems:

- Approach this goal in a way that is consistent with the CFTC’s longstanding practice of delegating front-line surveillance responsibilities to Exchanges;
- Increase the analytical expertise of the CFTC staff by increasing training and developing employees with information technology (“IT”) and quantitative analytical backgrounds;
- Use existing large trader and daily transaction reports (i.e. TCRs) to test and validate enhanced cross-DCM surveillance routines that are currently not performed by DCMs;
- Avoid building new systems, data stores, and surveillance routines that replicate those built or commissioned by existing Exchanges, and ensure that any new surveillance routines truly add value for the industry; and
- Maintain data privacy as a priority in the development of all CFTC technology endeavors.

³ See Keynote Address by CFTC Commissioner Scott D. O’Malia, The Future of Financial Standards – SWIFT Institute, SWIFT’s Standards Forum, and the London School of Economics and Political Science, London, England, March 25, 2014.

II. Comments

- **The CFTC Should Not Duplicate Existing Data Collection and Analytical Systems**

DCMs and their clearinghouses already collect massive amounts of data on the traders and trading activities that occur on their markets from FIA members and their customers, including FIA PTG members. This includes data on intraday trades and events, time and sales data, position data, order and cancellation data, large trader reports, market data, margin reports, valuations, financial statements and capitalization. DCMs and their clearinghouses also have sophisticated and tested systems to monitor and scrutinize the data they receive. This information is fed into a comprehensive set of surveillance systems and tools used by DCMs to surveil and investigate potentially abusive or violative activity. Although this represents only a portion of the data collection and analytical resources at DCMs, they demonstrate that DCMs can conduct effective surveillance and provide the CFTC with, or provide the CFTC prompt access to, vast amounts of valuable regulatory information.

DCMs have made significant investments in their systems in order to collect, maintain, and secure vast amounts of data. Additionally, DCMs maintain expensive, off-site backup systems in order to ensure that data is readily available. DCMs are staffed with IT specialists and quantitative analysts who are charged with monitoring the collection, storage, and management of data. There are also dedicated “regulatory” IT staff at each DCM and self-regulatory organization (“SRO”) responsible for developing tools and reports that are effective in monitoring the markets and translating collected data into a form that can be analyzed by the DCM and CFTC surveillance staffs.

The information collected by DCMs has proven to be reliable data that is critical to DCM surveillance efforts and readily available to the CFTC. One can review the many cases brought by DCMs, the CFTC, or other enforcement authorities to see that DCM data and surveillance efforts have been instrumental in successful prosecutions and settlements. The reliability of DCM data is promoted by compliance with Section 5(d) of the Commodity Exchange Act (“CEA”) and Part 38 of the CFTC regulations, which require DCMs to comply with “Core Principles” (which include a number of core principles focused on trade data, recordkeeping and system safeguards). There are also regular CFTC reviews of DCM compliance with Core Principles, which require CFTC staff examinations of the data collection and surveillance programs operated by the DCMs, including the technological programs for trade and other information.⁴

As to the availability of DCM data, much of the data collected by DCMs is provided to the CFTC on a regular, mostly daily, basis. On a daily basis the CFTC receives standardized reports containing data on positions, cleared trade details, and many other data points. Information that is not provided to the CFTC in daily or regular reports is available to the CFTC upon request. This information has historically been provided to the CFTC quickly, as evidenced by the futures order and message data that was made available to CFTC staff on the evening of the May 6, 2010 flash crash.

⁴ See, e.g., Rule Enforcement Review of ICE Futures U.S., Division of Market Oversight (July 22, 2014) *available at* <http://www.cftc.gov/ucm/groups/public/@iodcms/documents/file/rericefutures072214.pdf>; Rule Enforcement Review of the Chicago Mercantile Exchange and the Chicago Board of Trade, Division of Market Oversight (July 26, 2013) *available at* <http://www.cftc.gov/ucm/groups/public/@iodcms/documents/file/rercmecbot072613.pdf>.

FIA therefore takes issue with suggestions that DCM or other SRO data would be more reliable if the CFTC duplicated the collection and storage of that data. The history of CFTC-DCM surveillance and enforcement efforts, along with the statutory underpinnings for data collections and reports, belies the concerns expressed by some about an inherent conflict of interest in DCM/SROs data collections.

As CFTC staff is acutely aware, the cost of replicating the systems already in place for data collection and surveillance at DCMs/SROs would be prohibitively expensive for the CFTC. The presentation of Jorge Herrada at the June 3, 2014 TAC meeting demonstrated the daunting task CFTC staff already has in storing and monitoring the information it currently receives. If the CFTC were to undertake the kind of data collection and surveillance already conducted by DCMs/SROs, the cost of building data storage, maintaining such systems, and ensuring data security would require 24/6 staffing. The costs would be even greater if analytical systems were included. Any CFTC desire for duplicative data must be weighed against the Congressional reality that the current CFTC budget could not support such duplication.

In sum, the Commission should leverage lessons learned by the SEC from the flash crash, reinforce the positive elements evident from how the futures markets performed during the same period, focus its surveillance efforts on different issues from DCMs, and perform a complimentary (not redundant or conflicting) function.

- **The CFTC Should Focus on Increasing Its Analytical Abilities**

The CFTC will not have a 21st-century surveillance system until it strengthens its ability to analyze and understand the data that is and will be collected by Exchanges and/or SROs. Although the CFTC certainly is familiar with surveillance methodology and its complexities, the use of technology in all aspects of derivatives trading will require experienced leadership in quantitative data analysis that goes beyond the usual skill set of market regulators. The fastest, and most cost effective way to gain this analytical capability is for the CFTC to increase the expertise of its “regulatory IT” and analytical staff, i.e. the CFTC employees who will develop tools that will interpret the reports and data sent to the CFTC in a manner that increases the surveillance capabilities of the Commission. Indeed, increasing the data analytics expertise at the CFTC would allow the CFTC to “use its resources to the fullest benefit,” consistent with Chairman Massad’s recent interviews on his vision for administering the Commission.⁵

Another avenue for developing this analytical capability is for the CFTC to communicate with IT experts in the industry, such as the IT staff at Exchanges, FCMs and large market users, including FIA PTG members. While the TAC was a first step in this direction, FIA stands ready to foster such a dialogue and assist in implementing lines of communication, whether by hosting regular meetings or organizing conferences between industry IT and quantitative analytical experts and CFTC staff.

⁵ See <http://www.politico.com/story/2014/07/tim-massad-commodity-futures-trading-commission-109582.html>.

- **Use Existing Large Trader and Daily Transaction Reports (TCR) to Test and Validate Enhanced Cross-DCM Surveillance Routines that are Currently Not Performed by DCMs**

The CFTC is the unique position of having mandated, over 35 years ago, a Large Trader Position reporting system. This system has been a great asset for the futures industry, as it gives the CFTC and the SROs detailed information on position holders, and is a significant tool to detect and prevent market manipulation and other potential abuses. The system has been the envy of Exchanges and Government regulators worldwide, and has been emulated in many jurisdictions over the years.

Similarly, DCMs have been reporting daily transactions to the CFTC for at least 30 years, and since 2006 that reporting has been done in the form of a standardized FIXML report (called Trade Capture Report or “TCR”). More recently, the CFTC has put through the Ownership and Control reporting (“OCR”) rules.⁶ While these rules will be very expensive for the industry to implement, and will take some time to deploy⁷, ultimately these rules will modernize and automate Form 102 reporting and give the CFTC (and SROs) new data on trading account ownership and control.

FIA believes that CFTC efforts would be better focused on more fully using the Large Trader and TCR data to review trading across unrelated DCM and SEF markets. For example, the CFTC could view related product position and transaction data for potential cross-exchange abuses such as front-running customer orders, cross-market manipulation, or marking the close. In SEF markets, the CFTC could perform surveillance reviews across SEFs in related markets. However, in making this recommendation, we believe it is important that the Commission recognize the differences in the various markets, and ensure that any surveillance routines that it initiates truly answer a regulatory need.

Similarly, since the imposition of the Swap Data Repository rules, CFTC has required the reporting of a large amount of swap data which includes live price reporting, detail reports of every swap transaction, and end-of-day position reports by each reporting entity to a Swap Data Repository (“SDR”).⁸ As has been publicized at the TAC, the CFTC has much work to do to make sense of the data at each SDR, and it has a task to aggregate data across SDRs. FIA believes it would be fruitful for the CFTC to spend resources to make SDR data useful for systemic risk monitoring and regulatory reviews, as was envisioned in the passage of Dodd Frank. This would allow review of swap data across SEFs, or more importantly, would give the CFTC a picture of swap activity that may be occurring outside of SEFs that is not subject to any SRO review. Eventually the CFTC might also spend efforts to build surveillances between SDR swap data and the futures data that it already receives; however, this cannot be done until substantial capabilities to mine, interpret, and aggregate SDR data have been put in place.

⁶ See CFTC, Ownership and Control Reports, Forms 102/102S/40/40S and 71; Final Rule 78 FR 69178 (Nov. 18, 2013).

⁷ See <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-95.pdf>

⁸ See generally CFTC Part 45.

- **Privacy Concerns and Cybersecurity Issues Must Be Considered in Any 21st-century Technology Surveillance System**

Before the terms "cybersecurity" and "data privacy" became popular jargon, Congress recognized and addressed cybersecurity and data privacy concerns in Section 8 of the CEA. With only a few very narrow exceptions, Section 8 prohibits the release of data or information which would disclose business transactions or market positions of any person, trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person. Likewise, many foreign countries have and are implementing data privacy laws that bleed into information that is provided in connection with derivatives trades.

Exchanges and many others provide and make available to the CFTC vast amounts of data that are subject to confidentiality under Section 8. Market participants world-wide expect the integrity and confidentiality of the data provided and made available to the CFTC to be maintained consistent with Section 8.

Privacy concerns and cybersecurity issues must be a material consideration in the development of 21st-century CFTC technology surveillance systems. The duplication and centralization of data may raise significant issues regarding both that should be carefully examined.

The increase in cybersecurity attacks and the heightened need for data privacy is an enormous challenge that requires significant expertise and budget to:

- Construct systems and applications with protections to secure data and protect it from threats;
- Put detection processes in place to recognize when systems are threatened;
- Monitor for potential threats and make adjustments accordingly;
- Establish communication protocols to alert appropriate internal and external parties in the event threats are realized; and
- Establish regular audits to ensure protections continue to remain effective.

III. Conclusion

FIA respectfully requests that the CFTC take into consideration the above comments in developing its recommendations on how to develop a 21st-century surveillance system. The CFTC should be proud of the requirements that it has put in place over the past 20 years to obtain data to ensure fair and orderly markets. The CFTC was able to reconstruct the flash crash quicker than any other regulator. FIA stands ready to help the CFTC continue this longstanding tradition by providing input to the CFTC as it considers improving its surveillance program.

Melissa Jurgens, Secretary
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Sincerely,

A handwritten signature in cursive script that reads "Walt L. Lukken".

Walt Lukken
President & Chief Executive Officer FIA

cc: Honorable Timothy G. Massad, Chairman
Honorable Scott D. O'Malia, Commissioner and Chairman of the Technology Advisory Committee
Honorable Mark P. Wetjen, Commissioner
Honorable Sharon Y. Bowen, Commissioner
Honorable J. Christopher Giancarlo, Commissioner