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February 22, 2012

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Consolidated Audit Trail (Release No. 34-62174)

Dear Ms. Murphy:

The Futures Industry Association (“FIA”)¹ would like to take this opportunity to thank Chairman Schapiro for her recent statement that the benefits of a consolidated audit trail can be achieved without incurring the costs and risks of real-time reporting². We agree that the Commission must have efficient access to a robust and effective cross-market order and execution tracking system, and further agree that this system does not require real-time data to achieve this goal.

We support the creation of a Consolidated Audit Trail (“CAT”) to enhance surveillance of our Nation’s securities markets.³ We believe, however, the “real time” nature of many of the data elements are not necessary to achieve the Securities and Exchange Commission’s (“Commission’s”) goals and, therefore, would impose unnecessary and costly burdens on both regulators and the industry. Indeed, we believe that audit trail information received on a delayed basis would provide the same benefits as real-time information, at a substantially reduced cost. Further, rather than requiring the creation of an entirely new system, we believe the Commission could require the self-regulatory organizations (“SROs”) to construct a CAT by building upon available technologies, which would be a significantly lesser burden and cost. We also believe that the Proposal needs to be implemented in lieu of the existing FINRA Order Audit Trail System (“OATS”) process, and coordinated with the Large Trader Reporting System to avoid duplication.

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA’s regular membership is comprised of approximately 30 of the largest futures commission merchants (“FCMs”) in the United States. Among FIA’s associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

² See letter from Mary L. Shapiro, Chairman, Commission to Senator Michael D. Crapo, dated February 10, 2012.

³ See Consolidated Audit Trail, 75 Fed. Reg. 32,556 (June 8, 2010) (the “Proposal”).

Rather than repeat views expressed by others, we note that we are supportive of the positions set forth in letters to the Commission by the Investment Company Institute⁴ and the Securities Industry and Financial Markets Association.⁵ While our firms might approach some of the following issues from a different perspective, we agree with many of the policy implications raised by these letters.

Real-Time Reporting Requirements

We believe the Commission's Proposal overvalues any potential benefits achieved by real-time reporting as compared to reporting on day after trade, or "T+1," basis. Based on our understanding of the Commission's surveillance requirements, we believe that such surveillance is best performed by "looking back" at data at the end of the day and that there are few, if any, violations that need to be, or even could be, detected or interdicted in real time. Moreover, T+1 data would provide a better opportunity for any erroneous data to be eliminated from the audit trail.

Further, we agree with the many commentators who believe that real-time reporting accounts for a significant portion of the considerable costs associated with the CAT, while adding minimal operational benefit to the Commission. SROs and broker-dealers that are already accustomed to and set-up for end-of-day reporting via FINRA's OATS system would be required to develop and implement substantial new technologies to be able to capture and relay information in real time. In addition to the cost of implementing this system, the operating and maintenance costs for such a real-time system would be extraordinary. For many broker-dealers, it would be extremely costly to provide for the submission, validation, and consolidation of data into a usable format in real time. It is not apparent to us from the Proposal that the additional costs associated with a real-time audit trail, compared to a T+1 audit trail, would be offset by any incremental benefits to the Commission. It would be highly impractical for the Commission to seek to intervene in markets on a same-day basis based on the kind of data that would be available in a consolidated audit trail. Many potential uses for the data, including enforcement inquiries probing market behavior, may require either multiple days' worth of data, or data from other markets that is not available on a real-time basis. Further, some required data simply would not be available in real time, including information regarding subaccounts and short sale borrow information. Moreover, a real-time requirement would not leave sufficient time for market participants to correct any errors in the data, making it less valuable to regulators.

We believe that reporting information at T+1 would better meet the Commission's stated purposes, including enforcement inquiries probing market behavior, at a dramatically lower cost. Especially during the initial implementation phases, this system would more properly balance the costs of development and implementation with the benefits of having a CAT.

Alternative Approaches

We believe the Commission should consider basing the CAT on existing SRO audit trails. Although none of the current systems provide all of the information that would be necessary for a CAT, existing systems could be modified or expanded in a way that meets the Commission's goals, while also significantly reducing the costs associated with establishing such a system and the time needed to implement such a system.

⁴ See letter from Karrie McMillan, General Counsel, ICI, to Elizabeth M. Murphy, Commission, dated August 9, 2010.

⁵ See letter from James T. McHale, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Commission, dated August 17, 2010.

We respectfully suggest the Commission use a tool already at its disposal, FINRA's OATS, as the base for a CAT: This system already addresses many of the Commission's data needs and OATS infrastructure is a cost already borne by much of the marketplace. (Of course, we would like to see the CAT eliminate the requirement for "OATS" per se, as there would be no need for two distinct, yet duplicative, regulatory reporting systems.)

Alternatively, we would also support the Commission mandating some level of standardization or uniformity among current exchange and ATS audit trail systems. Despite the "lack of uniformity in, and cross-market compatibility of"⁶ the various audit systems in the marketplace currently, it is impractical and cost prohibitive to create a new system rather than leveraging existing SRO experience with current audit trail systems. Specifically, it may be possible to allow the SROs to capture more information at the time of order entry that could then be sent in by each SRO or alternative trading system directly to the CAT for consolidation. While there are differences between exchanges in terms of current abilities to capture information, those differences could be ameliorated over time. Therefore, we believe it would be possible to require current audit trail systems to pool data into a single database that would adequately meet the Commission's needs. By using the existing SROs' audit trails, the Commission could greatly reduce the burdens on the industry overall as the SROs, rather than broker-dealers, would generally be in a position to submit data for consolidation.

Conclusion

We look forward to playing a constructive role in helping the Commission achieve its regulatory goals in the most cost effective manner and thank you again for the opportunity to provide you our thoughts on the Commission's Proposal.

Sincerely,



John M. Damgard
President

cc: Chairman Mary Schapiro
Commissioner Luis Aguilar
Commissioner Elisse Walter
Commissioner Troy Paredes
Commissioner Daniel Gallagher

⁶ *Id.* at 32557.