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Written Testimony of Mark D. Young, Kirkland & Ellis LLP on behalf of the Futures Industry Association

Chairmen Schapiro and Gensler, members of the Commissions, I am Mark Young, a partner in the firm of Kirkland & Ellis LLP. I am appearing today on behalf of the Futures Industry Association. Thank you for the invitation to testify on harmonizing the federal securities laws and the Commodity Exchange Act.

These different laws focus on different forms of economic activity: cash security, listed options and futures markets. Each has a unique function and purpose -- capital formation is not price discovery or risk management. Each system of regulation is tailored to its special economic function.

FIA knows first hand how well the futures system weathered the credit crisis last year and how well it continues to serve the public interest in "fair, open and financially-secure" trading. Given this admirable track record, FIA strongly supports the existing futures system.

You have asked witnesses to identify gaps in regulation as well as areas of regulatory difference that should be maintained or reduced. FIA will submit a more extensive statement for the record. For now, we can offer some preliminary thoughts.

In terms of gaps, FIA believes that both regulatory systems generally overlook the importance of clearing firms. Clearing members provide the capital and underwriting of customer credit risk which are the lifeblood of the financial integrity provided by clearing systems. Clearing firms, however, have not always had an adequate voice in how the clearing system is operating, who is admitted to membership or what products will be cleared. When you review your statutes, we ask you to keep these considerations in mind.

What regulatory differences should be retained? There are many. Disclosure of material market information should continue to be the hallmark of securities regulation, but not futures. Futures regulation should focus on the price discovery process embodied in the interaction of bids, offers and executed trades. Insider trading should continue to be prohibited by the securities laws but not the Commodity Exchange Act where hedgers could be miscast as insiders.

FIA agrees with the Treasury's New Foundation Report that the goal of harmonized regulation is well served by a clear delineation of agency jurisdiction to avoid any overlap. The Commodity Exchange Act's exclusive jurisdiction provision mandates that CFTC regulation is the sole legal standard applicable to virtually all futures trading. That fundamental public policy has worked well to prevent duplication and inconsistency. It should be retained.

What could be harmonized? There are differences in product and SRO rule approvals, margin-setting, as well as access to foreign markets and products. FIA agrees with the Administration's call for a better process for CFTC approval of SRO rules. Otherwise, FIA strongly favors the futures model in these areas.

FIA has long supported fair competition among different execution facilities. One aspect of the Administration's proposed swaps legislation is a step in the right direction by requiring clearing systems to offset positions established on multiple trading platforms. In our view, competition can lead to innovation and better service.

Portfolio margining is an important issue. A market neutral, risk-based system should be adopted that would enable market participants to use their capital more efficiently while preserving customer protection and financial integrity.

FIA knows you are embarking on a challenging undertaking at the President's direction. We look forward to working with you on this effort and to answering any questions you may have today.