January 18, 2011

Via courier, email and online
Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Proposed Chief Compliance Officer Requirements
RIN 3038-AC96

Dear Mr. Stawick:

Rosenthal Collins Group, LLC ("**Company**"), respectfully submits this letter in response to the request of the Commission for comments on its proposed rules for the "Designation of a Chief Compliance Officer …." Federal Register, Vol. 75, No.223, 70881. While the Company lauds the Commission for proposing "…rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") (the Commission's proposed rules are herein referred to as the **"Proposal**"), we believe that some aspects of the Proposal are not in the public interest and will have unintended negative consequences upon the public and the FCM industry.

The Commenter

RCG has been a registered futures commission merchant ("**FCM**") and clearing member of all major futures exchanges for many decades, has 25,000+ active customers and currently holds customer funds in excess of 1.4 billion dollars. One of its Managing Members, Leslie Rosenthal, has served on the Board of Directors of the Chicago Board of Trade, the Chicago Mercantile Exchange, the MidAmerica Commodity Exchange and the Board of Trade Clearing Corporation. In addition, his service has included the Chairmanship of the Chicago Board of Trade, the Chairmanship of the Board of Trade Clearing Corporation and the Chairmanship of the CME Clearing House Committee. Its other Managing Member, J. Robert Collins, has served as President of the MidAmerica Commodity Exchange, a Director of the Chicago Board of Trade and a Governor of the Board of Trade Clearing Corporation.

Designation of an FCM Chief Compliance Officer ("CCO")

While we are unaware of any FCM that does not have a designated CCO (or someone performing compliance functions), the Dodd-Frank and Commission proposed, requirement to designate one is appropriate and necessary public step needed to enhance the "culture of compliance" in today's global economy. We believe, however, to say that a CCO of an FCM must also be a "principal" of the FCM does not add any layer of added protection for the public and, indeed, may induce fully qualified persons to not seek such positions, to the public's detriment. Spelling out that a CCO must have "the appropriate background and skills to perform the compliance duties of the Position" and who is not otherwise disqualified from registration under the Commodity Exchange Act ("**Act**"), is a valid pronouncement. To require the CCO of an FCM to also be a principal—and possibly liable outside his/her area(s) of competence or control—adds no incentive for qualified individuals to become or stay as CCOs of FCMs. The

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fact that Dodd-Frank does not "lump" CCOs of FCMs with those of swap dealers and major swap participants (the latter having specific Dodd-Frank statutory requirements), indicates to the Company that Congress recognizes that FCMs, at least those that are neither also swap dealers or major swap participants, do not need the "overkill" of being included together with them. FCMs are intermediaries and must be viewed as such. An FCM that is also a swap dealer or a major swap participant should be required to comply with the more stringent statutory requirements for its CCO; a "pure" FCM should not.

The CCO of an FCM Should Report to the Board of Directors or the Senior Officer

We concur that, among other things, to avoid conflicts of interest or allegiance, and to insulate her/him, the CCO of an FCM must be fairly senior and report directly to the Board or, if the FCM is not a corporation, to the senior officer of the firm. We also believe that the CCO should be prohibited from receiving any transaction- or customer-based compensation (e.g., no compensation based on introducing customer relationships to the FCM). This will further insulate the CCO from potential conflicts.

Only the Broad Duties of the CCO of an FCM should be in the Commission Rules; the Specifics should be left to the National Futures Association ("NFA")

The Commission rule on CCOs of FCMs, in our view, should be in the nature of a "broad brush" and not get involved in detail. The Proposal, in our view, would place an unduly heavy burden on the CCO of an FCM. Words like "full responsibility" to "develop and enforce" rules and procedures at an FCM could have a chilling effect on anyone qualified from taking on the CCO role. To "consult with" senior officers concerning compliance policies is a far cry from having ultimate responsibility for compliance violations. That should be left to the Chief Executive Officer, clearly a principal of the FCM, not the CCO.

In our view, as is the case of FINRA in the securities industry, the details should be left to NFA, the Commission sanctioned self regulatory organization dealing with conduct and compliance. Indeed, we respectfully point to FINRA Rule 3130 ("Supervisory Responsibilities-Annual Certification of Compliance and Supervisory Procedures") as a guideline for the Commission to provide to NFA in this area. The substantial experience of FINRA—and NFA-- in this area should be utilized by the Commission, in the public interest and to best advantage.

The Historic Role of the CCO of an FCM as Advisory should Remain So

Clearly, the evolving emphasis on compliance (witness, Dodd-Frank) is increasing. Nevertheless, it is the firm's responsibility to comply with applicable rules, regulations, policies and procedures. Historically, it has been the CCO's role to advise on how to comply, to monitor the firm and its employees on such matters, including advising as to potential violations, and to play an integral support role for FCM compliance programs. The ultimate responsibility, however, for ensuring firm compliance has been, and should be, the firm's senior management and significant supervisors. The role of the CCO varies from FCM to FCM, depending on the particular business model. The CCO position is not a "one size fits all." The Commission's rules should keep it so for the most efficient, appropriate implementation and compliance.

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Annual Certification should not be "Self-Incriminating;" Responsibility for the Certification should be Shared

We believe that by making the CCO of an FCM "liable" for infractions by the firm and, by the proposed CCO's annual detailed certification, giving potential "disgruntled" customers a "roadmap" for frivolous lawsuits, the Proposal does a disservice not only to FCMS, but also to the public interest. Thus, we strongly recommend that the Commission adopt the SEC/FINRA model in this area and enlist the NFA to tailor an approach in this area similar to that model and submit it to the Commission for review and comment, etc.

In this vein, we believe that the annual certification requirement in the Proposal will be overly burdensome on the CCO. If, in fact, the goal is to ensure compliance of the firm, then responsibility for compliance belongs on the shoulders of those of the firm's senior executive personnel who are in a position to enforce compliance. For example, the FINRA approach is to have the CEO certify annually that the firm has in place processes to establish, maintain, review, test and modify written supervisory procedures and policies reasonably designed to maintain compliance with applicable requirements, and, that the CEO has met at least once during the year with the CCO on these matters. Here, the CEO's certification is principally based on the report of the CCO to the CEO, without which the CEO would not be in a position to reach the conclusions set forth in the certification. In fact, the FINRA rule requires the CEO to consult not only the CCO but also "such other employees" the CEO believes appropriate.

We believe that compliance responsibility should devolve on the firm's leaders as a group and not be "dumped" upon the CCO. To be sure, the CCO should be responsible for reviewing the firm's compliance policies and recommending appropriate adjustments, for conducting inquiries into potential or actual conflicts and recommending resolutions for assisting in establishing procedures for remedial actions when noncompliance is found, and for being substantially involved in the preparation of the annual certification the contents of which should be more in the nature of the FINRA required certification, to be signed by the CEO—not the CCO—after the CEO consults with others the CEO deems appropriate to enable her/him to sign the report. To require otherwise, in our view, is inapposite to the public interest when weighed against the burden it would place on the FCM and its CCO. Indeed, the Proposal in this regard, in our view, is taking a ten year step backward in FCM governance, from the current climate, having senior management create a "culture of compliance," where everyone at the firm knows what will not be tolerated, to returning to placing the CCO in the position of being an "enforcer" that people try to maneuver around. Sharing the responsibility will be, in our estimation, more efficacious in implementing and achieving the goals set by Dodd-Frank and just makes good business sense.

Finally, we do not believe that attorneys should be precluded from being CCOs--indeed, persons with legal training (and with a license as an "officer of the court") may well be eminently so suited—and we certainly can understand the need for a person to have the appropriate tools to act in a CCO capacity and to demonstrate compliance proficiency. But to require a CCO to be a "principal" and to file "as if" he/she were applying for registration is adding a wholly unnecessary step to the process. If compliance is to be achieved by a firm, it must be a joint effort of the firm's executive officers and senior supervisors and not devolved upon an individual to shoulder the entire burden of compliance. If it is to be one person, it should be the CEO, not the CCO.

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We expect that the Commission will receive, or has received, similar and other comments on the Proposal from others in the broader FCM community. Thus, in the interest of the Commission's time and effort, we have limited our comments to the foregoing. We thank you for the opportunity to submit these comments. Should the Commission or Staff desire to discuss this matter, please do not hesitate to contact me (312.795.7636 or gfishman@rcgdirect.com).

Respectfully Submitted,

Gerald L. Fishman
Executive Vice President and
General Counsel

cc: Hon. Gary Gensler, Chairman
Hon. Michael Dunn, Commissioner
Hon. Jill E. Sommers, Commissioner
Hon. Bart Chilton, Commissioner
Hon. Scott D. O'Malia, Commissioner

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