

David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
United States
www.cftc.gov

Chris Barnard
Germany

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- **17 CFR Parts 1, 3, 22, 30, and 140**
- **RIN Number 3038-AD88**
- **Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your Notice of proposed rulemaking: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations.

You are proposing to adopt new regulations and amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (FCMs). The proposal also addresses certain related issues concerning derivatives clearing organizations (DCOs) and chief compliance officers (CCOs). The proposed rules will afford greater assurances to market participants that: customer segregated funds and secured amounts are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; FCMs are monitoring and managing risks in a robust manner; the capital and liquidity of FCMs are strengthened to safeguard their continued operations; and the auditing and examination programs of the CFTC and the self-regulatory organizations (SROs) are monitoring the activities of FCMs in a prudent and thorough manner.

I support your proposals, which will protect customer funds and market participants, promote market integrity and increase the transparency of FCM's and DCO's policies and procedures.

Risk management program for FCMs

The risk management program for FCMs required under proposed § 1.11 will enhance internal risk controls and protect customer funds by preventing general fraud, misfeasance and malfeasance. I strongly support proposed § 1.11(c)(3), which requires that the risk management program and written risk management policies and procedures shall be approved in writing by the governing body of the FCM, and proposed § 1.11(d), which requires an FCM that carries customer accounts to establish a risk unit that is independent from the business unit and reports directly to senior management. This will certainly increase executive and management responsibility and accountability for risk management, and provide stronger independent oversight thereon, which is important given recent market developments and the catastrophic failures at MF Global and Peregrine.

Concerning proposed § 1.11(e)(3)(i)(J), which requires a program for conducting annual training of all relevant officers and employees that covers procedures for reporting of suspected breaches of the policies and procedures to the chief compliance officer without fear of retaliation, I would recommend one change: the procedures for reporting suspected breaches should allow and stress the complete anonymity, where desired, of the reporting party (whistleblower). This would be more complete and transparent, and will increase the readiness of the reporting party to report suspected breaches to the chief compliance officer.

Recordkeeping

§ 1.11(h) establishes the recordkeeping requirements for FCMs. I would recommend that these records should be required to be kept indefinitely rather than for the general five years required under § 1.31. Original documents should be scanned after five years. There is no technological or practical reason for limiting the retention period, and it would be useful to keep this information for future analytical and investigative purposes.

Yours sincerely

C.R.B.

Chris Barnard