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Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

*Re: Enhancing Protections Afforded Customers and Customer Funds Held by
Futures Commission Merchants and Derivatives Clearing Organizations*

Dear Mr. Stawick:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of Certified Public Accountants.

The CAQ welcomes the opportunity to comment on the Commodity Futures Trading Commission (the Commission) proposal on *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations* (the Proposed Rule). This letter represents the observations of the CAQ, but not necessarily the views of any specific firm, individual, or CAQ Governing Board member.

The Commission plays an essential role in protecting the public from abusive practices and systemic risks related to the futures and swaps markets. We support the Commission's efforts through the Proposed Rule to increase customer protections and disclosures, strengthen risk management programs, and enhance examination procedures for futures commission merchants (FCMs) and derivatives clearing organizations. As outlined below, we have a number of concerns with certain aspects of the Proposed Rule related to auditing and reporting by accountants. However, we believe that most of these concerns could be minimized by aligning, where practicable, the proposed rules for audits of FCMs with the requirements for audits of brokers and dealers. We encourage the Commission to coordinate with other regulators (e.g., the Public Company Accounting Oversight Board (PCAOB) and the Securities and Exchange Commission (SEC)) in considering potential enhancements to the oversight of FCMs.

I. Qualifications of Accountants

The Proposed Rule includes amendments that require a certified public accountant to be registered with the PCAOB and have undergone at least one examination by the PCAOB to qualify to conduct audits of FCMs. Furthermore, any deficiencies noted by the PCAOB during such examination must have been remediated to the satisfaction of the PCAOB within three years of that report.¹ We understand these proposed amendments are designed to enhance the competence of auditors and the quality of audits performed of FCMs; however, we have identified a number of questions and concerns related to how these proposed amendments could be effectively applied in practice.

Required PCAOB Inspections

We are concerned that the Proposed Rule may automatically disqualify many public accountants or accounting firms (collectively “accounting firms” or “firms”) from auditing FCMs solely because the firm has yet to be inspected by the PCAOB. For instance, certain accounting firms that recently registered with the PCAOB and are subject to triennial inspections may not be inspected until the third year following their registration. Furthermore, other accounting firms that audit non-issuer brokers and dealers may be eligible for inspection under the PCAOB’s temporary or permanent inspection program, but may not yet have been selected for inspection. Finally, there may be accounting firms that do not presently audit any issuers or non-issuer brokers and dealers and cannot be inspected under the PCAOB’s existing statutory authority. In each instance such accounting firms cannot elect to be inspected by the PCAOB or otherwise cause an inspection to occur. Accordingly, if the Proposed Rule became operational, accounting firms which otherwise are qualified to conduct audits of FCMs will be precluded from doing so.

We also note that a requirement for a firm auditing an FCM to have undergone at least one PCAOB examination would make the rules governing the audits of FCMs more restrictive than those governing the audits of issuers and non-issuer brokers and dealers. Removing the requirement for the accounting firm to have undergone an examination, while requiring the firm to be registered with the PCAOB, would more closely align the Proposed Rule with the rules applicable to the auditors of brokers and dealers.

Deficiencies Monitoring and Compliance

Under the Proposed Rule, failure to remediate deficiencies to the satisfaction of the PCAOB within three years would force the auditor to resign from the FCM audit. This could result in auditors of FCMs that are dually-registered or subsidiaries of issuers resigning from these audits as well. This provision would be more restrictive than requirements for audits of issuers and non-issuer brokers and dealers, which generally provide (or are expected to provide) for continued registration, ongoing PCAOB monitoring of remediation efforts, and public notice of failure to remediate to the PCAOB’s satisfaction within twelve months of issuance of the inspection report. These requirements help foster continuous improvement in audit quality and provide investors with information regarding firms that have not remediated deficiencies in a timely manner.

It is also unclear how a determination could be made that deficiencies had been “remediated to the satisfaction of the PCAOB,” who would make this determination, and how an FCM would determine that the firm had complied with the proposed remediation requirements. If the Commission intends to look to the PCAOB to indicate whether a firm is in compliance with this requirement, we are unsure how such an indication could be formally provided, as there is currently no precedent for this.

¹ Page 67937 of the Federal Register, Proposed Rule, Part 1 – General Regulations under the Commodity Exchange Act, Section 1.16, *Qualifications and reports of accountants*.

Accordingly, we suggest removing from the Proposed Rule the requirement that a firm be required to have remediated any deficiencies to the satisfaction of the PCAOB within three years in order to conduct audits of FCMs.

II. Representations as to the Audit

The Proposed Rule includes an amendment that would require the firm to indicate in the audit report whether the audit was performed in accordance with U.S. generally accepted auditing standards (GAAS), after giving full consideration to the auditing standards adopted by the PCAOB.²

We are unaware of any existing regulatory framework that requires the application of one set of standards (e.g., GAAS), after considering another set of standards (e.g., PCAOB auditing standards), and we cannot envision how such a framework could be developed and implemented. Additionally, it is unclear what is meant by “full consideration of auditing standards adopted by the PCAOB” and how this concept should be interpreted by auditors or evaluated by those that may be reviewing the work performed by an auditor. Is this concept intended to include only those standards that relate to auditing and not the broader set of PCAOB standards, for example, those related to independence?

We believe that significant confusion would result if this amendment were adopted, and we strongly recommend that each FCM audit be executed in accordance with a single set of appropriate auditing standards.

III. Review of the Self-Regulatory Organizations (SRO) Supervisory Program by an Examinations Expert

The Proposed Rule would require that each SRO supervisory program of its member FCMs be reviewed by an “examinations expert” as defined under proposed changes to Rule 1.52(a).³ We are concerned that several elements of the Proposed Rule related to this requirement are not supported under any current reporting framework, and that implementation of certain elements will not be practicable. For example, it is unclear what criteria the program would be measured against, and under what framework the examinations expert would opine. Depending on the scope and nature of this review, it may fall outside of the expertise of the accounting profession, and auditors may not be able to perform certain of the proposed responsibilities of the examinations expert (such as providing operational or regulatory recommendations in the audit report) under current attestation standards.

The CAQ appreciates the Commission’s consideration of the views set forth herein and we would welcome the opportunity to further discuss any of the matters described above.

² Ibid.

³ Page 67947 of the Federal Register, Proposed Rule, Part 1 – General Regulations under the Commodity Exchange Act, Section 1.52, *Self-regulatory organization adoption and surveillance of minimum financial requirements*.

Sincerely,



Cynthia M. Fornelli
Executive Director
Center for Audit Quality

cc:

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