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January 14, 2014

Commodity Futures Trading Commission  
Attn: David A. Stawick, Secretary  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: *Proposed Rule: Enhancing Protections Afforded Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, RIN 3038-AD88**

Dear Secretary Stawick,

Deloitte & Touche LLP (“D&T”) is pleased to respond to the request for comments from the Commodity Futures Trading Commission (the “CFTC” or “Commission”) on its Proposed Rule: *Enhancing Protections Afforded Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations* (the “proposal”), RIN 3038-AD88 (as published in the Federal Register on November 14, 2012).

D&T is supportive of the CFTC’s efforts to improve protections of investor assets, including through enhancing auditing and examination programs for futures commission merchants (“FCMs”) and derivative clearing organizations. The CFTC, through its proposal, is suggesting several changes to how audits of FCMs are conducted and who is permitted to perform the audits. In responding to the Commission’s request, we offer the observations and recommendations below which focus on aspects of the proposal related to auditing and reporting by accountants. Because we believe there is overlap with the rules of the Securities and Exchange Commission (“SEC”) and the Public Company Accounting Oversight Board (“PCAOB”), we also encourage the Commission to coordinate with the SEC and the PCAOB in developing potential enhancements that impact audits of FCMs.

1. **Audit Standards for audits of FCMs.** The proposal would require a public accountant to state in his or her audit opinion that the audit was “conducted in accordance with U.S. GAAS after full consideration of the auditing standards adopted by the PCAOB.” The meaning of this statement is not clear, as it is unclear how an audit “conducted in accordance with U.S. GAAS after full consideration of the auditing standards adopted by the PCAOB” would be performed.

Audits are typically conducted under either U.S. GAAS (as promulgated by the Auditing Standards Board of the AICPA) or under the standards of the PCAOB. In some cases, when specifically engaged to do so, auditors may conduct an audit in accordance with both U.S. GAAS and PCAOB standards; in such engagements, the requirements of both set of standards are addressed. However, there is not currently a framework for performing an audit and reporting under one set of auditing standards, after “full consideration” of a separate set of auditing standards.

Because many FCMs are also brokers or dealers, we believe that the same audit standards should be required to be applied in the performance of audits of FCMs and audits of brokers and dealers. The SEC is currently considering changes to its rules regarding the audits of brokers and dealers, including requiring such audits to be performed using PCAOB standards. As part of a coordinated effort, the PCAOB is also considering changes to its standards for performing audits of brokers and dealers, and once the SEC has concluded its rulemaking, the PCAOB plans to finalize its revisions. While the SEC and the PCAOB are considering changes to their rules, the SEC is requiring audits of brokers and dealers to be conducted under U.S. GAAS. As a result, we recommend the CFTC work with the SEC to synchronize the timing of applying PCAOB standards to audits of FCMs with the timing of applying PCAOB standards to audits of brokers and dealers.

2. **Qualifications of Accountants.** The proposal would also require that the auditor “be registered with the PCAOB and have undergone at least one examination by the PCAOB, and addressed any deficiencies noted by the PCAOB within three years of the report noting such a deficiency.” We observe the following practical issues related to this aspect of the proposal:
  - The PCAOB, as guided by the requirements of the Sarbanes-Oxley Act and PCAOB rules, determines when a registered accounting firm will be inspected. For instance, registered accounting firms that audit 100 or fewer issuers are subject to triennial inspections and may not be inspected until the third year following their registration. In addition, registered accounting firms that audit non-issuer brokers and dealers are currently subject to inspection under the PCAOB’s interim inspection program, but may not yet have been selected for inspection. Further, because the interim inspection program for audits of brokers and dealers is subject to change when the program is finalized as a permanent program, it is not yet clear how such firms will be inspected under the permanent program. We therefore foresee situations where, through no fault of their own and due to circumstances beyond their control, registered accounting firms would be unable to audit an FCM because the firms have not yet been inspected.
  - The PCAOB does not currently have the regulatory authority or mandate to inspect audits of FCMs, and therefore would only be able to inspect audits of FCMs that are also registered brokers and dealers. As such, if the proposal that auditors of FCMs be registered with the PCAOB were adopted, this would create a situation for audits of FCMs (that are not registered brokers and dealers) that would be similar to the situation that existed between the passage of the Sarbanes-Oxley Act and the Dodd-Frank Act. During that time frame, auditors of brokers and dealers were required to be registered with the PCAOB, but the PCAOB had no authority or mandate to inspect audits of brokers and dealers. This lack of alignment between the requirement for firm registration and the ability to inspect became an area of significant concern that was remedied in the Dodd-Frank Act. We urge the CFTC to use caution and carefully consider the ramifications of creating a situation in which there is a lack of alignment between the requirements for auditors of FCMs to register with the PCAOB and the inability of the PCAOB to inspect audits of certain FCMs.
  - PCAOB rule 4009 includes a 12 month remediation period with respect to “potential defects in the quality control systems” of the firms under inspection (consistent with the Sarbanes-Oxley Act). However, the proposal refers to a 3 year period for addressing “any” deficiency. As a result, it is unclear how the 3 year period for addressing deficiencies in the CFTC’s proposal

would interact with the 12 month requirement under the Sarbanes-Oxley Act and PCAOB rules. In addition, it is unclear (1) why the proposal refers to “any” deficiency, rather than “criticisms or potential defects in the quality control systems” as referenced in PCAOB rules and (2) what the resulting implications and requirements of such different references would be.

- It is also not clear how the proposed requirement for a registered accounting firm to address any deficiencies identified by the PCAOB would be accomplished. Although the PCAOB has several mechanisms in place for evaluating remediation of PCAOB inspection findings, the PCAOB does not currently provide a positive statement to registered firms or other regulatory agencies that a firm has addressed deficiencies to the satisfaction of the PCAOB. It is not clear how the proposal’s requirements would interact with the mechanisms the PCAOB already has in place in this regard.

In finalizing the proposal, we encourage the CFTC to consider the above issues and related implications.

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D&T appreciates this opportunity to provide our perspectives on this important topic. Our comments are intended to assist the CFTC in analyzing the relevant issues and potential impacts. If you have any questions or would like to discuss these issues further, please contact Joe Ucuzoglu at 202-879-3109 or William Platt at (203) 761-3755.

Very truly yours,

A handwritten signature in black ink that reads "Deloitte + Touche LLP". The signature is written in a cursive, flowing style.

Deloitte & Touche LLP

cc: Gary Gensler, CFTC Chairman  
Jill Sommers, CFTC Commissioner  
Bart Chilton, CFTC Commissioner  
Scott O'Malia, CFTC Commissioner  
Mark Wetjen, CFTC Commissioner  
Kevin Piccoli, Deputy Director