January 14, 2013

Via Electronic Submission

David A. Stawick
Secretary, Commodity Futures Trading Commission
3 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," 77 *Fed. Reg.* 67866, RIN 3038-AD88 (November 14, 2012).

Dear Mr. Stawick:

The New England Fuel Institute and the Petroleum Marketers Association of America appreciate the opportunity to submit this letter to the Commodity Futures Trading Commission ("CFTC" or "Commission") in response to the Notice of Proposed Rulemaking on "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations" published on November 14, 2012. We understand that the Commission may extend the comment period an additional thirty days at the request of a number of commenters and we reserve the right to submit additional comments as necessary.

About Us

The New England Fuel Institute ("NEFI") is nation's largest independent home heating oil trade association. NEFI represents approximately 1,200 home heating businesses including heating oil, kerosene and propane dealers and related services companies, most of which are small, multi-generational family owned- and operated-businesses in the Northeastern states. NEFI is a member of the Petroleum Marketers Association of America ("PMAA"), a national federation of 48 state and regional trade associations representing over 8,000 independent petroleum marketers. These companies own 60,000 convenience store/gasoline stations and supply motor fuels such as gasoline and diesel fuel to an additional 40,000 stores. NEFI and PMAA member companies distribute nearly all of the heating oil consumed in the United States

Many NEFI and PMAA members engage in hedging activities to protect their businesses and consumers from price risks in the petroleum markets. This is especially true in the home heating oil industry. Many home heating oil distributors offer customized pricing contracts to residential or commercial customers. These include fixed-price contracts that allow customers hoping to take advantage of off-season prices to "lock-in" a specific per-gallon price for a

heating season, and also include “pre-buy” contracts that allow customers to purchase a specific number of gallons at a set price in advance of the heating season.

In order to provide these kinds of customized pricing agreements, or to simply ensure that their businesses are viable in a very competitive market, many home heating oil distributors engage in futures and swaps agreements to hedge market risks. While some larger companies have more complicated risk management operations, most small-to-mid-sized companies utilize a commodity brokerage firm to manage their hedging needs. These companies put their faith in their broker and commodity market regulators to ensure that their money is properly managed, ensured and protected and that it is segregated from risky trading activities that are unaffiliated with the direct needs of the customer.

Necessary Reforms

On October 31, 2011, however, their faith was shaken with the bankruptcy of MF Global. Three separate NEFI member companies – all in the home heating oil industry – were among those affected, their accounts frozen and their commodity positions in jeopardy. We commend Commission staff for their efforts to reestablish hedging positions and retrieve customer funds. However, as Commissioners are well aware, the MF Global crisis exposed a lack of sufficient protections for commodity brokerage clients and the inadequacy of rules governing management of their funds. In a letter to Agriculture Committees in the U.S. Congress and CFTC Commissioners in November of 2011, we urged that the necessary steps be taken “to make sure that such a crisis is not repeated and that commodity brokerage clients are afforded adequate protections in the future.”[1]

Among the important areas in which reform is needed:

- **Secure and Segregated Customer Accounts** – Futures Commission Merchants (“FCMs”) must be required to properly secure and segregate customer funds. Use of these funds for outside investments, capitalization or collateralization must be restricted or prohibited outright. The Commission should prohibit the use of customer funds for proprietary trading and other risky/speculative activities and strengthen oversight and audit requirements.
- **Disclosure Requirements**– Brokers must be required to disclose information to their customers on how their accounts and positions will be managed and maintained, as well as associated risks and what kinds of financial protections are afforded them by the firm, the exchange and the federal government.
- **Federally-mandated Insurance Protections –** We continue to believe that Congress must extend to commodity brokerage clients the similar bankruptcy protections afforded depositors under the Federal Deposit Insurance Corporation (“FDIC”) and securities investors under the Securities Investor Protection Corporation (“SIPC”).

[1] New England Fuel Institute letter to House and Senate Agriculture Committees, November 29, 2011. CFTC Commissioners were copied on the letter.

The Proposed Rule

Regarding the first two bullets above, the proposed rule is a major step in the right direction. Since the MF Global crisis, the CFTC has engaged in an unprecedented dialogue with self-regulatory organizations ("SROs"), FCMs and brokerage clients on the changes needed to enhance consumer protections and prevent another MF Global. The CFTC has clearly benefitted from the two roundtable discussions as well as various Congressional hearings held over the last 15 months. The proposed rule enhances CFTC oversight and strengthens the disclosure of vital information to brokerage clients. It also improves capitalization requirements to ensure that firms are less financially stressed and, as a result, enhances market integrity. We fully support the CFTC's efforts and all of the reforms included in the proposed rules. However, we would like to bring the Commission's attention to a few areas of concern.

First, we question whether or not existing and proposed customer disclosure requirements are sufficient. Proper disclosures of customer protections are equally as important as the disclosure of potential risks to ensure customer confidence. We do not believe that the National Futures Association should be the primary source for customer disclosures.[2] The CFTC should establish standardized disclosure requirements that both educate the customer on legal and financial protections afforded his/her business *as well as* inform the customer of potential risks as required under the proposed rule. Additional disclosures could be required by SROs or FCMs in order to meet customer needs or as the market demands. Further, mandated customer disclosures should be made prior to an initial transaction and annually thereafter, or more frequently as required by changes to firm account management or trading practices and the associated risks, or in light of future modifications to customer protections.

We commend the CFTC for including in the proposed rule a requirement that customer funds held overseas be made subject to the "highest regulatory requirement[s] relevant to those funds, whether it is the United States or the foreign regime."[3] However, we agree with other commenters' concerns regarding the FCM's ability to engage in cross-border transactions with segregated customer funds and/or to transfer customer accounts to off-shore (overseas) subsidiaries for the purpose of evading U.S. rules and regulations – all without the customer's knowledge or approval.[4] This should be remedied in the final rule.

We also side with other commenters who urge that the CFTC must strive to avoid potential burdens on commodity brokerage customers, such as inadvertently requiring customers to increase their cash holdings with a broker as a result of new requirements for pre-funded or intra-day margin calls. As the Commission considers a final rule it is important that potential burdens - especially ones that would increase costs for small hedgers - be identified and avoided to the greatest extent possible.[5]

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[2] At 77 FR 67890, The CFTC asks, "Should NFA act as the primary source for the disclosure of how FCMs hold and invest customer funds?"
[3] *Ibid,* 67925.
[4] See comments by the Scrap Metal Recycling Industry (No. 58962) and Premier Metal Services, LLC (No. 59024).
[5] See comments by the Texas Cattle Feeders Association (No. 59060) and the National Grain and Feed Association (No. 59020).

Finally, concerning the need for insurance protections for small commodity hedgers, we do not believe that the proposed rules or other proposed modifications to industry standards, best practices or rules and regulations by the CFTC, SROs or FCMs are, in and of themselves, wholly sufficient to protect customer interests in the event of another brokerage firm collapse. Federally-mandated commodity investor insurance is still required as a vital means of safeguarding customer funds and renewing consumer trust and confidence in light of recent market events. We will continue to appeal to federal lawmakers on this matter.

Conclusion

Thank you again for the opportunity to submit these comments for your consideration. Again, we commend CFTC Commissioners and staff for their efforts to expand consumer protections and safeguards for commodity brokerage clients. We would be happy to discuss the above comments in detail or answer any questions the Commissioners or their staff may have. Please feel free to contact PMAA Vice President Sherri Stone at (703) 351-8000 or sstone@pmaa.org, or NEFI Vice President for Government Affairs Jim Collura at (617) 924-1000 or jim.collura@nefi.com. Thank you in advance for your consideration and for the opportunity to comment on the proposed rule.

Respectfully submitted,

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