



January 15, 2013

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission (CFTC)
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038-AD88 “Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations”

Dear Mr. Stawick:

We appreciate the opportunity to respond to the Commodity Futures Trading Commission’s (“the Commission’s”) Release RIN 3038-AD88 entitled "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commissions Merchants and Derivatives Clearing Organizations" (“the Proposal”).

PricewaterhouseCoopers LLP is the U.S. member of the worldwide PricewaterhouseCoopers organization. PwC’s banking and capital markets practice provides a broad range of professional services to the financial services industry, including Futures Commissions Merchants (“FCMs”) and Derivative Clearing Organizations (“DCOs”).

Overall, we support the Commission’s efforts to enhance the protection provided to FCM customers by strengthening risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and improving the auditing and examination procedures for FCMs and DCOs. While appreciative of the Commission's efforts towards this end, we have comments about certain aspects of the Proposal related to the provisions governing the audit requirements and form of the audit report. We also have some comments on the review of self regulatory organizations supervisory plans by an examinations expert. Overall, we believe that aligning the provisions of the Proposal to the Securities and Exchange Commission’s proposed changes to Rule 17a-5 regarding audits of broker-dealer financial statements would address the majority of our observations discussed below. In the remainder of our letter, we have organized our observations into the following topical areas:

- Requirements of the Accounting Firms
- Selection of the relevant auditing standards
- Review of the Self-Regulatory Organization’s (“SRO”) supervisory plan by an examinations expert



I. Requirements of the Accounting Firms

In an effort to strengthen the quality of the audits of FCMs and DCOs, the Proposal would require a certified public accountant or accounting firm (collectively, “accounting firm(s)”) to be registered with the Public Company Accounting Oversight Board (“PCAOB”) and to have undergone at least one examination by the PCAOB to qualify to conduct audits of FCMs. Additionally, any deficiencies noted during the PCAOB inspection must have been remediated to the satisfaction of the PCAOB within three years of such report. Finally, the proposed changes to Regulation§ 1.16(b)(4) would impose an obligation on an FCM's governing body to ensure that an accounting firm is qualified to perform an audit of the FCM by evaluating the qualifications of the firm, including the firm's experience in auditing FCMs, the firm's experience and knowledge of the Commodities Exchange Act (the "Act") and Commissions' regulations, and the depth and experience of the firm's auditing staff. We believe clarification of the following items is necessary such that accounting firms and FCMs could apply the provisions of the Proposal:

Remediation to the Satisfaction of the PCAOB

The proposal as written would appear to disqualify accounting firms from being able to audit FCM entities if they fail to address matters raised in the PCAOB's inspection report. We respectfully submit that this reliance on inspection results is misplaced. If implemented, the proposal would make the rules governing the audits of FCMS *more* restrictive than both those applicable to the auditors of issuers and those proposed by the SEC for the auditors of non-issuer broker dealers, which do not contain any restrictions based on inspection results. In neither context are auditors subject to disqualification from conducting audits based solely on failure to remediate PCAOB inspection findings. Rather, the PCAOB's inspection comments are issued in the context of a constructive dialogue to encourage firms to improve their practices and procedures. Disciplinary sanctions such as revocation of a firm's right to audit public company issuers or broker-dealers can only be made only in the context of an adjudicative process in which the firm is afforded procedural rights that do not apply in the inspection context and where the Board makes specific findings of violations of law or regulations or professional standards. The Commission's proposal, by contrast, could effectively bar a firm from auditing FCMs without providing any of the safeguards established by the Sarbanes-Oxley Act.

Additionally, the Proposal is not clear with respect to the consequence of non-compliance with this requirement; specifically, whether if it led to forced resignation from audits of FCM clients, it would also compel the auditor to resign as auditor of issuers and non-issuer brokers and dealers that are also FCMs. It is our view that such a consequence could create significant market disruption, and would conflict with the responsibility currently given to the audit committee or governing body of the entity, under both U.S. GAAS and PCAOB standards, to determine whether to re-appoint the auditor. We suggest that the Commission align this aspect of the Proposal with the requirements for auditors of FCMs with the framework currently in place for the audits of issuers and proposed by the SEC for non-issuer brokers and dealers, by removing the inspection remediation requirement from the final rule



Assessment by the FCM of the Firm's qualification

We note that AICPA and PCAOB standards for audit engagements currently provide a mechanism for the auditor to determine whether it is competent to perform the required work, including evaluating the quality and experience of the engagement team. Also, further clarification of the Commission's expectations for the criteria that would be expected to be used by the FCM's governing body for determining qualification, (for example, years of industry experience, number of FCM clients, etc.) may be helpful if such a requirement is retained so that a consistent framework for determining the qualifications is used across the industry and FCM governing bodies.

II. Selection of the relevant reporting standard

The Proposal would require the accounting firms to indicate in their audit report that 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".¹

We note that there is currently no reporting framework that would allow for application of one set of standards (e.g., GAAS), "after full consideration" of another set of standards (e.g., PCAOB auditing standards). Additionally, the Proposal is not clear about the meaning of "after full consideration of the auditing standards adopted by the PCAOB", i.e., all standards of the PCAOB or only those applicable to the audits of FCMs. If it is the intention of the CFTC to suggest that audits of FCMs be compliant with the standards of the PCAOB, we recommend that the Commission provide explicitly that audits of FCMs be performed under the PCAOB's standards applicable to audits of brokers and dealers.

III. Review of the Self-Regulatory Organization's ("SRO's") supervisory plan by an examinations expert

The Proposal would require that each SRO's supervisory program of its member FCMs be reviewed by an "examinations expert" as defined under proposed changes to Rule 1.52(a). We are concerned that several elements of the Proposal related to this requirement have no current performance or reporting framework, and that implementation of certain elements will not be practicable in the current proposed form. For example, under Attestation Standard ("AT") 601, an accounting firm would be able to provide assurance as to management's compliance with certain specified regulatory requirements; however, clarity would be needed as to the criteria used to determine compliance. Additionally, an audit firm would be precluded from offering operational or regulatory recommendations or best practices in any such report. We encourage a dialogue with the Commission to discuss what options exist under the existing audit, attestation, and consulting standards in order to address its desired outcome.

¹ Page 67938, Proposed Rule, Part 1 – General Regulations under the Commodity Exchange Act, Section 7(c)(2) *Representations as to the audit.*



We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the Commission or its staff may have. Please contact Michael J. Gallagher (973-236-4328), Brian R. Richson (973-236-5615) or Samuel Telzer (646-471-7640) regarding our submission.

Sincerely,

Priscilla Anne Boggs 22P