



January 11, 2013

**CONFIDENTIAL**

David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
1155 21st Street NW  
Washington, DC 20581

Received  
CFTC  
2013 JAN 15 PM 3:57  
Office of the  
Secretary

**Re: Notice of Proposed Rulemaking - Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AD88)<sup>1</sup>**

Dear Mr. Stawick

We are submitting this letter in response to the above-referenced proposed rules (the “Proposed Customer Protection Rules”) issued by the Commodities Futures Trading Commission (the “Commission”) in accordance with the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

The Proposed Customer Protection Rules respond to two recent events in which customer funds entrusted to futures commission merchants (“FCMs”) were inappropriately utilized by FCMs in contravention of the Commodity Exchange Act (the “CEA”) and the Commission’s rules. As a result, when these FCMs (MF Global and Peregrine Financial Group) became insolvent, their non-defaulting customers suffered material economic losses that they should never have incurred. These events have placed a cloud over the regulatory regime for futures and cleared swaps, a cornerstone of which is the inviolability of customer funds from misuse by FCMs.

We anticipate that we will engage in cleared swaps through FCMs as the mandatory clearing requirements of the Dodd-Frank Act are implemented. In this regard, we strongly endorse the Commission’s proposals to increase transparency surrounding the financial condition and regulatory compliance of FCMs. We believe the Proposed Customer Protection Rules represent a very cost-effective approach to making FCMs more accountable to their customers by providing current information that will enable customers to conduct appropriate due diligence regarding prospective FCMs and to actively monitor the financial condition and regulatory compliance of the FCMs to which they have entrusted funds. In particular, we support requirements that:

- FCMs post their margin segregation calculation on their Web sites on a daily basis;<sup>2</sup>

<sup>1</sup> See 77 Fed. Reg. 67866-67971

<sup>2</sup> See Proposed Reg. § 1.55(o)

- FCMs prepare “Disclosure Documents” for disclosure on their Web sites with the information material to a customer’s decision to entrust funds to and otherwise do business with the FCM, including information regarding the operations, financial condition, risk profile and affiliates of the FCM;<sup>3</sup> and
- FCMs promptly update the Disclosure Documents “as and when necessary,” taking into account any material change to their business operation, financial condition and other factors material to a customer’s decision to entrust its funds and otherwise do business with the FCM.<sup>4</sup>

We believe the Proposed Customer Protection Rules could be further strengthened by:

- Requiring FCMs to each month post on their Web site, as part of their Disclosure Documents, the Segregation Schedule, the Secured Account Schedule and the Cleared Swaps Segregation Schedule. The Web site should include the schedules for the most recent twelve months;<sup>5</sup> and
- Requiring FCMs to each month post on their Web site, as part of their Disclosure Documents, summary balance sheet and income statement information. The Web site should include such information for the most recent twelve months.<sup>6</sup>

We note that the FCMs would be required to provide the above information to the Commission and their designated self-regulatory organization. Thus, the additional cost of making this information available to the public should be nominal.

Again, we endorse the Commission’s efforts to improve transparency of information regarding the financial condition and regulatory compliance of FCMs. We believe the Proposed Customer Protection Rules will greatly assist customers in performing the due diligence that is warranted in selecting and doing business with FCMs.

We appreciate the opportunity to offer these comments.

Very truly yours,



Chris Swickard  
Vice President & Associate General Counsel  
Security Benefit Life Insurance Company

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<sup>3</sup> See Prop. Reg. § 1.55(i)

<sup>4</sup> *Id.*

<sup>5</sup> Under the Proposed Customer Protection Rules, these schedules are only available upon request to the Commission. See Fed. Reg. at 67872-67873.

<sup>6</sup> Under the Proposed Customer Protection Rules, only the annual certified financial statement is required unless there has been a material change in the FCM’s financial condition. See note 4, *supra*.