



February 11, 2013

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

Re: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (FR Doc No: 2012-26435)

Dear Mr. Stawick:

The American Institute of Certified Public Accountants (AICPA), is pleased to comment on the Commodity Futures Trading Commission's (CFTC, or Commission) proposed rule, *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations* (Proposed Rule), as it relates to auditors of futures commission merchants. The AICPA is the world's largest association representing the accounting profession, with nearly 386,000 members in 128 countries. AICPA members represent many areas of practice, including business and industry, public practice, government, education, and consulting. The AICPA sets ethical standards for the profession and U.S. auditing standards for audits of private companies, nonprofit organizations, and federal, state, and local governments. The AICPA also develops and grades the Uniform CPA Examination. It is from this diverse perspective that we provide our comments and recommendations.

The AICPA commends and supports the Commission's goal of enhancing "customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures and auditing and examination programs for futures commission merchants (FCMs)."<sup>1</sup> However, we have concerns with the following three aspects of the Commission's proposed amendment to §1.16(b)(1):

- The proposed requirement for public accountants who audit FCMs to be registered with and have undergone an examination by the Public Company Accounting Oversight Board (PCAOB),
- The proposed requirement to remediate to the satisfaction of the PCAOB any deficiencies noted by that body, and
- The proposed requirement for auditors to consider PCAOB auditing standards when such standards are not applicable to the audit engagement.

In this letter we explain our concerns, answer specific questions raised by the Commission and offer recommendations to enhance the quality of audits of FCMs.

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<sup>1</sup> FR Doc No: 2012-26435, page 67866.

First, we believe the Commission’s proposed amendment to §1.16(b)(1) to require the public accountant of FCMs to be registered with and have undergone an examination by the Public Company Accounting Oversight Board (PCAOB) is, in some cases, fundamentally unfair and should not be required. Although any CPA firm can register with the PCAOB, by law only CPA firms with issuer clients (and in certain cases non-issuer broker-dealer clients) can have an inspection performed by the PCAOB. If a CPA firm lacks issuer clients (or certain non-issuer broker-dealer clients), it will not be possible for such firms to qualify to audit an FCM under the proposed rule. As stated above, we applaud the Commission’s goal of enhancing consumer protections, but believe it should not be done by barring firms from auditing FCMs without providing a path for them to meet reasonable standards. This is especially true when there are alternative ways to provide the necessary protections in a less burdensome and proscriptive manner, as we suggest below.

Second, the Commission is proposing to amend §1.16(b)(1) to require any deficiencies noted during a PCAOB examination to be remediated to the satisfaction of the PCAOB within three years. We are concerned with this aspect of the proposal for several reasons. It is unclear what is meant by [deficiencies are to be] “remediated to the satisfaction of the PCAOB” or how the registered FCM would be able to determine that its auditor had complied with such a requirement. Also, if a firm fails to remediate *any* deficiency on *any* of its PCAOB inspected audits (regardless of whether it was an audit of an FCM) to the PCAOB’s satisfaction, that firm would be forced to resign from the audits of its FCM clients. As a result, we believe that this provision, if maintained in the final rule, is significantly more restrictive than current PCAOB requirements for audits of issuers (and potentially non-issuer broker-dealers) and respectfully submit that it should be dropped from the final rule. Specifically, we recommend the requirements of public accountants for all engagements subject to PCAOB inspection be consistent.

Third, the Commission is proposing to require a public accountant to state in the audit opinion “whether the audit was conducted in accordance with U.S. GAAS after full consideration of the auditing standards adopted by the PCAOB.”<sup>2</sup> FCMs, many of which are non-issuers or subsidiaries of issuers, are currently required to be audited under generally accepted auditing standards promulgated by the AICPA (U.S. GAAS). The U.S. GAAS framework does not contemplate issuance of an audit opinion after consideration of other professional standards although it does allow for an audit to be performed in accordance with multiple professional standards (in this case, U.S. GAAS and PCAOB). We do not believe, however, it is desirable for audits of FCMs to be conducted under both U.S. GAAS and PCAOB standards. We recommend that, in its final rule, the Commission clarify its expectations about which auditing standards framework would be required. Specifically, we recommend requiring the application of U.S. GAAS to audits of non-issuer FCMs and the application of PCAOB audit standards to audits of FCMs subject to a permanent PCAOB inspection program.

#### Questions raised by the Commission in its proposed rule

Currently, auditors of non-issuer FCMs follow auditing standards issued by the AICPA’s Auditing Standards Board (ASB). ASB establishes auditing standards for non-issuers; therefore, we provide the following responses to specific questions raised by the Commission from a non-issuer’s perspective:

- ***A purpose of the requirement that FCMs engage only CPAs that are registered with the PCAOB and have been reviewed by the PCAOB is to enhance the quality of the audit examination conducted by CPAs. Does the PCAOB registration and examination process enhance the quality of FCM audit engagements?***

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<sup>2</sup> FR Doc No: 2012-26435, page 67878.

We believe that the PCAOB registration and examination process enhances the quality of audit engagements subject to inspection by the PCAOB, i.e., FCMs that are issuers. However, we do not believe being subject to a PCAOB inspection in and of itself will enhance the quality of audits of non-issuer FCMs. In addition, simply having the FCM's auditor inspected by the PCAOB does not guarantee the inspection will reveal underlying deficiencies in the FCM's system of internal control. Indeed, the auditors of one of the FCMs cited by the Commission in its "Q&A – Proposed Amendments to Enhance Customer Protection" document, is subject to and has been inspected by the PCAOB. As explained below, we believe a practice monitoring program (such as the AICPA Peer Review Program) that evaluates and opines on a firm's system of quality control relevant to its non-issuer accounting and auditing practice as a whole can be more appropriate.

***• Are there viable alternatives that the Commission should consider to enhance the quality of CPA FCM examinations in lieu of PCAOB registration and examination?***

Yes, particularly for non-issuer FCMs. A peer review performed under AICPA Peer Review Standards provides regulators and the public with reasonable assurance that the reviewed audit firm's system of quality control for its non-issuer accounting and auditing practice has been designed in accordance with established quality control standards, and whether the reviewed firm's quality control policies and procedures were being complied with such that the firm performed its audit engagements in conformity with applicable professional standards in all material respects.

AICPA Peer Review Standards require the consideration of engagements for review be based on a risk assessment of the firm's accounting and auditing practice, with the expectation that engagements in industries that have a significant public interest be selected for review. Industries that have a significant public interest are those that benefit the general welfare of the public, such as those that have recent regulatory and legislative developments. Accordingly, the firm's system of quality control for all industries that have a significant public interest would be evaluated.

Since non-issuer FCMs (who are not also broker-dealers that become subject to inspection once the PCAOB permanent program for such entities is in place) will not have their audits inspected by the PCAOB, we believe the AICPA Peer Review Program would better enhance the quality of CPA non-issuer FCM examinations and recommend such a review be required. We further suggest FCMs be required to obtain and evaluate the most recent peer review report of the audit firm so the public can be assured the audit firm's quality has been sufficiently evaluated.

***• Should the Commission consider allowing the non-PCAOB registered CPAs or PCAOB-registered CPAs that have not been subject to a PCAOB review to contractually engage for a peer review from a qualified CPA who is aware of the reason for the peer review as a short-term measure to allow the non-compliant CPAs to continue to conduct audits of FCMs?***

We believe a more robust process, such as the AICPA's Peer Review Program, whereby a team of CPAs (whose combined experience matches that of the reviewed firm) conducts a comprehensive evaluation of a firm's system of quality control and whose work is subject to oversight and approval by a separate group of qualified CPAs (who are not part of the review team), should be required rather than having one CPA firm review another.

With that in mind and related to the above question, the Proposed Rule states:

*It should also be noted that auditors of BDs are now required to register with the PCAOB and follow PCAOB standards; thus, any dually-registered FCM/BDs will already have to comply with this requirement<sup>3</sup>.*

We respectfully note that, currently, audits of all non-issuer broker-dealers and non-issuer FCMs are performed under U.S. GAAS. Furthermore, and only upon issuance and as of the effective date of a final SEC Rule 17a-5 if adopted as currently proposed, auditors of broker-dealers as well as FCMs that are dually-registered as FCMs/BDs may be required to perform their audits under PCAOB standards. We acknowledge that, currently, auditors of these dual registrants are subject to PCAOB inspection under the PCAOB interim inspection program. However, even if such dual registrant's audit is selected for inspection under the interim program, the audit of the FCM may not necessarily be reviewed during the interim PCAOB inspection program. Also, if an accounting firm that audits an FCM decides to register with the PCAOB as a result of this rulemaking, that firm may not necessarily be inspected immediately or even on annual basis and, therefore, may be precluded from auditing an FCM.

The Proposed Rule recognizes that currently 5 FCMs are audited by firms that are not registered with the PCAOB, and audit firms of 12 FCMs are registered with the PCAOB but have not yet been subject to a PCAOB inspection. Under its interim inspection program, the PCAOB cannot inspect each FCM/BD audit. We, therefore, recommend the Commission allow non-PCAOB registered CPAs or PCAOB-registered CPAs that have not yet been subject to a PCAOB inspection to fulfill their practice-monitoring requirement by enrolling in, and having a review performed under, the AICPA Peer Review Program. Such peer review would serve as an effective measure to allow the non-compliant CPAs to continue to conduct audits of FCMs until the PCAOB determines the scope of its permanent broker-dealer inspection program. We further believe this alternative should also serve as a permanent alternative for firms whose engagements are not now, and do not ultimately become, subject to PCAOB inspection.

***• If the Commission adopts the PCAOB registration and examination requirement, how should the Commission implement the effective or compliance dates? What factors should the Commission consider in setting an effective date or compliance date for this provision?***

If the Commission adopts the PCAOB registration and examination requirement as proposed, we recommend the effective date of this requirement at least coincide with, or preferably follow, the effective date of the final SEC Rule 17a-5. As auditors of several FCMs are currently not registered with the PCAOB, they would need extra time and resources to register with the PCAOB and implement necessary revisions to their systems of quality control, as well as conduct training on PCAOB audit standards. We recommend the Commission set an effective date for PCAOB registration with a subsequent effective date for examination.

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<sup>3</sup> FR Doc No: 2012-26435, page 67878.

We appreciate the opportunity to comment and welcome the opportunity to serve as a resource to the CFTC. If we can be of further assistance, please contact me at (212) 596-6197.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Coffey". The signature is fluid and cursive, with a large initial "S" and a stylized "Coffey" following.

Susan S. Coffey, CPA, CGMA  
Senior Vice President – Public Practice and Global Alliances

cc:

CFTC:

Chairman Gary Gensler

Commissioner Bart Chilton

Commissioner Scott O'Malia

Commissioner Jill E. Sommers

Commissioner Mark P. Wetjen