February 12, 2013

Via website

Ms. Sauntia Warfield
Assistant 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 Proposed Customer Protection Rules
(RIN 3038-AD88)

Dear Ms. Warfield:

Rosenthal Collins Group, LLC ("RCG"), respectfully submits this letter in response to the request of the Commodity Futures Trading Commission ("the Commission") for comments on its proposed rules for Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (the Commission's proposed rules are herein referred to as "the Proposed Rules").[1]

[1] RCG has been a registered futures commission merchant ("FCM") and clearing member of all major futures exchanges for many decades with 30,000+ active customers. One of its founding Members, Leslie Rosenthal, has served on the Board of Directors of the Chicago Board of Trade, the Chicago Mercantile Exchange, the MidAmerica Commodity Exchange and the Board of Trade Clearing Corporation. In addition, his service has included the Chairmanship of the Chicago Board of Trade, the Chairmanship of the Board of Trade Clearing Corporation and the Chairmanship of the CME Clearing House Committee. Mr. Rosenthal was also a founding member of the Board of the National Futures Association. RCG's other founding Member, J. Robert Collins, has served as President of the MidAmerica Commodity Exchange, a Director of the Chicago Board of Trade and a Governor of the Board of Trade Clearing Corporation.

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While the Company lauds the Commission for proposing rules designed to protect customers and customer funds - particularly in light of the catastrophic FCM failures of the last two years - RCG believes that some aspects of the Proposed Rules are not in the public interest. Moreover, we fear that they will have unintended negative consequences for the very customers these rules were designed to protect: farmers, ranchers and other commercial users of the markets who have already been disproportionately adversely affected by recent events. The proposals requiring residual interest to exceed margin deficiencies are sudden, unexpected and drastic new interpretations of regulations that the futures industry has complied with for decades.

These rules, if approved by the Commission, may result in customers needing to pre-fund potential margin obligations. This will have a profound impact, particularly on those that use the futures markets to hedge their commercial and financial risks. These customers constitute the backbone of the futures markets, and many have been devastated by the bankruptcies of MF Global and Peregrine Financial Group. To impose this potentially punitive requirement on this customer base may be inadvisable, particularly since neither firm went bankrupt because of a customer's margin deficiency. The end result may very well be a world in which the cost of hedging product becomes prohibitive and prompts agricultural users to walk away from the futures markets altogether, or take their business either to the over-the-counter market or offshore. The corresponding loss of U.S. jobs would be enormous. Considering that both the Commission and the industry began this process with the goal of assuring market participants that these markets were a safe and cost-effective way to hedge their risk, one assumes that this is an unacceptable end result.

Similarly, the increased financial requirements for FCMs will adversely affect the ability of non-bank FCMs to compete effectively, leading to a greater concentration of customers at the remaining FCMs and potentially greater systemic risk in the market. This will fundamentally change the face of the futures business. As one of the few FCMs that took on MF Global business in November 2011, RCG can attest to the fact that there was little interest on the part of bank FCMs in taking on MF Global's customers who were farmers or ranchers - much less retail introducing brokers or locals trading on the floor of the various exchanges. It should be beyond dispute that middle-market FCMs play a key role by giving customers access to markets where they can hedge their risk and speculators and exchange members an opportunity to provide the necessary liquidity.

1. **FCMs should not have to maintain residual interest exceeding the sum of all margin deficiencies and, practically speaking, it will be virtually impossible to do so**

RCG understands that the above requirement is based on a new interpretation of the language of Section 4d (a) (2) of the Commodity Exchange Act ("Act"), which prohibits an FCM from using the funds deposited by a futures customer to margin or extend credit to any person other than the futures customer that deposited the funds.

This *new* interpretation of a provision of the Act that can be traced back in time to the Commodity Exchange Authority, the predecessor agency to the Commission, ignores an entire regulatory scheme that has functioned well for decades. The current structure allows intermediaries to accept orders for futures trades with the understanding that market moves adverse to a customer's position will require the customer to add more money or liquidate his position within a prescribed period. The fundamental flaw in this re-interpretation of the Act is that it is a solution that bears no relationship to the underlying problem, which is the need for greater transparency in order to protect customer funds. MF Global and PFG did not go into bankruptcy because a customer was undermargined and brought down the firm. In fact, RCG would argue that the possibility of one customer bringing down a firm is a risk issue. If risk is the issue, both FCMs and clearing houses operate subject to many rules designed to make sure that individual customer risk is tightly monitored and controlled 24 hours a day. It is also the focus of many other provisions contained within these Proposed Rules.

On a practical level, the relevant provisions of the Proposed Rules may not be possible to comply with for the following reasons:

(a) FCMs cannot accurately assess the aggregate customer margin deficiencies in accordance with the requirements of Regulation 1.22, because underlying markets operate on a 24-hour basis and customer fund transfers occur throughout each business day.

(b) Similarly, FCMs cannot assess the margin deficiencies in omnibus accounts intraday because omnibus account offsets are not provided to clearing FCMs until the end of the trading day or, in some instances, the next business day.

(c) Proposed Regulation 1.30 appears to contradict proposed Regulation 1.22 on its face, as it prohibits FCMs from lending money to their customers.

RCG believes that the current proposals, if approved, could have the effect of permanently altering the operation of the futures markets as we know them today. For that reason, it respectfully suggests that the staff take the time to consider alternative proposals. The Commission's adoption of the risk-based capital requirement in 2004 is a good example of a financial requirement in which the Commission worked closely with industry participants prior to implementation. RCG also asks that the Commission consider undertaking a cost-benefit study, with significant industry and customer input, in order to find a way to assess the financial impact of the Proposed Rules and perhaps find a better way to protect customer funds. This issue has been the subject of great debate for the last fourteen months. It is time to gather the various constituencies together to find a long- term solution to help regain customer confidence in the futures business.

In the interim, RCG proposes that the Commission adopt a pilot program that would require non-public daily margin reports (that would include the aging of margin deficiencies) to each FCM's DSRO (or the Commission), instead of the mandatory funding called for in the Proposed Rules. RCG believes that such a program based, as are many of the new customer protection rules, on more frequent disclosure and transparency, would provide a better safeguard for customer funds while still allowing the markets to function successfully as they have for decades.

Moreover, the Commission and NFA quickly adopted (or are in the process of adopting) many new risk management and financial requirements for FCMs which will allow for greater transparency. These include weekly market stress tests, daily reporting of the segregation and secured funds statements, excess segregated and secured funds target levels, and excess segregated and secured funds withdraw approval requirements. RCG believes that these additional safeguards should provide the Commission with a wealth of valuable information if it chooses to take the time to study the issue in greater depth, and possibly implement a pilot program similar to the one described above.

2. Requiring FCMs to take a capital charge for any margin calls outstanding more than one day is unreasonable

RCG understands and agrees with the Commission's resolve that firms maintain sufficient capital to adequately protect one customer against the failure of another. However, RCG urges the Commission not to translate that concern into a rule that ignores the realities of the futures markets

and the customers that use them. It is not realistic to expect that all customers will be able to meet their margin calls within one day. Farmers, ranchers and other commercial users of the markets often use bank checks, rather than wires, to meet margin calls. Expecting these customers to meet margin calls in this short timeframe is unreasonable. In addition, in certain situations foreign customers may have difficulty meeting margin calls in one business day due to time zone differences and varying bank holidays.

For the reasons noted above, RCG believes a better approach is a pilot program that requires FCMs to provide daily non-public margin reports to their DSRO or the Commission and take capital charges for customer, noncustomer, and omnibus accounts that are undermargined after a period of time.

3. Requiring FCMs to separate the risk management function from the "business unit" is unnecessary, counterproductive, and will likely result in increased risk to the FCM and its customers

RCG prides itself on its robust risk control system and has always been a supporter of strong risk controls for all FCMs. It supports the Commission's efforts to implement robust risk management programs at FCMs, particularly with respect to the risks associated with safekeeping and segregation of customer funds. However, RCG is troubled by the blanket requirement that each firm establish a risk management unit that is independent from the business unit, as that term is defined by the Commission. RCG believes that this rule is unnecessary, but more importantly it removes a valuable, mature talent pool from participating in an important risk management function. Moreover, it is counter-productive because it has the potential of blocking the flow of historical and financial information about a customer from the business side to the risk side-information that is crucial to evaluating risk. As the evaluation of risk is very much based on the trustworthiness and financial wherewithal of the particular customer, it is difficult to see how risk can accurately be assessed without input from the business unit.

4. Public disclosure of FCMs' target residual interest would pose substantial risks to FCMs, their customers and the markets

RCG generally supports the concept of allowing each FCM to set target residual interests for each account, as this information will help the Commission assess the financial stability of that FCM. This is a number that each firm chooses based on an assessment unique to that particular firm. Indeed, under proposed Regulation 1.11, FCMs will be required to consider a multitude of factors

when setting their target residual interest, including but not limited to, their particular customer base, the products and markets those customers trade, the customers' trading and payment patterns, and the firm's own liquidity and capital needs.

However, should this information be made public, the public will only see the target residual interest amount without realizing and comprehending the many factors that have impacted a particular firm's determination of its target. Customers and potential customers are likely to overweigh the importance of the target residual interest and what that figure means with respect to a particular firm. In turn, FCMs will be tempted to set artificially high targets in an effort to attract customers. Small and medium-sized firms could be disadvantaged as customers gravitate to those firms that have initially set what appears superficially to be a high target, when in fact their funds may not be any more secure

Because of the risk detailed above, RCG respectfully requests that target residual interest not be publicly disclosed. The public has access to a wealth of financial information on NFA's website and should use such data as a part of a comprehensive due diligence review. Disclosure of target residual interest will not be of substantial benefit to customers without their having knowledge of the total array of factors that led a firm to the determination of its target amount.

5. Final rules should not be published until a cost-benefit analysis can be completed and the FCM community has had an opportunity to engage in a productive dialog with Commission staff

The possibility that the Proposed Rules may be finalized without further dialog and input from the futures industry is troubling at best, as these rules represent an extraordinary revision of the current regulations. Moreover, they are almost entirely "operational" in nature. Undefined terms and inconsistencies among these rules - or between the Proposed Rules and the existing regulations - raise the very real possibility of an FCM violating one of the Proposed Rules on the first day they become effective. For this reason, RCG strongly urges the Commission to allow a reasonable amount of time for the industry to engage in a dialog with Commission staff, allowing them to work together to come up with final rules that are clear, unambiguous and consistent with the present regulations.

By way of illustration, below is a sampling of some key rules that have caused considerable confusion among industry participants since they were put out for comment:

- The Proposed Rules contain a provision requiring all firms to have their custodial financial institutions sign standardized customer segregated and secured acknowledgment letters.RCG understands the need for standardization, and the current regulation does provide for this. However, the proposed language goes far beyond the current wording and includes, for example, a blanket statement referring to the financial institution's potential liability under certain circumstances. Early indications are that many financial institutions with extensive experience servicing FCMs are unwilling to sign the proposed acknowledgement letter. This may restrict an FCM's ability to conduct its business and concentrate funds within a few financial institutions that are less experienced in carrying FCM accounts. RCG encourages the Commission to work with the financial institutions that are currently active with the FCM community (e.g. settlement banks) and the appropriate government agencies (e.g. Federal Reserve) to ensure the acknowledgement letters can be effectively executed.

- FCMs need further clarification on when notice to the Commission is required pursuant to Regulation 1.12(m), as FCMs continually receive correspondence from DSROs and other government regulatory agencies.

- Regulations 1.22 and 1.23 (segregation) and 30.7(f) and (g) (secured) are inconsistent as to when an FCM should use its own funds to cover margins deficits. Upon receipt of the margin deficit from the customer, there are significant restrictions, approvals, and notifications required for the FCM to then withdraw its own funds from segregation or secured funds, which may occur on a daily basis. In addition (as previously stated), RCG believes that proposed Regulation 1.30, which prohibits an FCM from making unsecured loans to customers, contradicts proposed Regulation 1.22 as it applies to funding customers' margin deficits.

- The Commission needs to clarify the application of Regulation 30.7(c) as it relates to banks located outside the U.S. which FCMs use for settlement purposes, and how the 10% limitation applies to variation amounts. Moreover, the 10% criteria seems too restrictive. RCG recommends the Commission conduct an analysis on funds held in a secured location before implementing Regulation 30.7(c).

- RCG strongly believes that Regulation 1.55(k) (10) and 1.55(o) should be revised to provide that NFA or a similar regulatory authority should be responsible for hosting FCM financial data, rather than requiring each FCM to provide such information. This will ensure the consistent presentation of information.

RCG is aware that that the Commission will receive, or has received, similar and other comments on the Proposed Rules from others in the broader FCM community. Again, before the final rules are issued, RCG urges the Commission to consider undertaking a cost-benefit study to determine whether the Proposed Rules are the optimal solution to protect customers. In addition, there is no question that implementation of all of these rules will require the development of comprehensive new policies and procedures, new personnel acquisitions, and extensive training.

Consequently, RCG also asks that the Commission provide a period of time of not less than one year from promulgation of the relevant final rules for FCMs to implement them.

We thank you for the opportunity to submit these comments.

Respectfully Submitted,

Leslie Rosenthal	J. Robert Collins	Scott Gordon
Managing Member	Managing Member	Chairman and CEO