



Financial Services

VIA ELECTRONIC SUBMISSION

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

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

Dear Mr. Stawick,

TIAA-CREF appreciates the opportunity to comment on the above-referenced rules¹ (the “Proposed Rules”) proposed by the Commodity Futures Trading Commission (the “Commission”) pursuant to its authority under the Commodity Exchange Act. The purpose of the Proposed Rules is to address the concerns of the Commission and market participants regarding the efficacy and comprehensiveness of certain existing safeguards protecting the property and transactions (“Customer Property”) of the customers of futures commission merchants (“FCMs”). The protection of Customer Property is a fundamental principal of the futures market and a crucial component of Congress’ reasoning in mandating that standardized swap contracts be cleared through central counterparties in the same manner as futures contracts. Accordingly, we strongly support the Commission’s efforts to foster transparency in the derivatives markets and introduce additional safeguards with respect to Customer Property and the financial condition and oversight of FCMs.

I. Background

TIAA-CREF is a leading provider of retirement services in the academic, research, medical and cultural fields, managing retirement assets on behalf of 3.7 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total \$502 billion². Founded in 1918, Teachers Insurance and Annuity Association of America (“TIAA”) is a life insurance company domiciled in the State of New York that operates on a not-for-profit basis. College Retirement Equities Fund (“CREF”) was formed in 1952 to offer variable annuities and is an investment company registered with the SEC under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF’s mission is “to aid and strengthen” the institutions we serve and to provide financial products that best meet their investment and financial needs. Our retirement plans offer

¹ See “Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations”, 77 Fed. Reg. 67866 (proposed November 14, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-26435a.pdf>.

² As of December 31, 2012.

a range of options to help individuals and institutions meet their retirement plan administration and savings goals as well as income and wealth protection needs. TIAA-CREF is also widely recognized for its commitment to promoting sound investment practices and its support for a robust but stable market.

We currently make use of futures in accordance with the regulatory regimes applicable to TIAA and the funds and accounts managed by TIAA's registered investment advisor affiliates. As the mandatory clearing requirement in the Dodd Frank Wall Street Reform and Consumer Protection Act (the "DFA") is implemented and extended over time to additional types of swap transactions, the volume of cleared transactions and resulting reliance upon FCMs will increase accordingly. As a result, we encourage the Commission to remain focused on addressing the concerns of large and small investors that benefit from a level playing field in the financial markets achieved through a clear and informed choice of service providers and counterparties.

II. The Proposed Rules

The Proposed Rules were designed to address two recent circumstances where the inviolability of Customer Property was breached by FCMs. These circumstances, as their underlying facts have come to light, appear to illustrate two of the primary risks in the FCM model. The first risk is direct and intentional fraud, whereby Customer Property is stolen (which is rightly viewed as a remote risk in the case of FCMs that are part of large and well-regulated financial institutions). The second risk is negligent or reckless disregard for the segregation principles found in Commission regulations (an occurrence the likelihood of which arguably increases in times of market stress when large and complex financial institutions are involved).

In order to prevent the recurrence of such events, the Proposed Rules seek to shed more light onto FCM activities and financial condition and to overlay more active Commission oversight on the existing policy safeguards that have been a feature of Commission regulations for decades. We believe that the Proposed Rules are a cost-effective approach to increasing transparency into FCM affairs, which should have a positive impact for end-users of cleared derivatives by facilitating informed choices of FCMs.

A. Disclosure of Material Information by FCMs

We support the Commission's efforts to require FCMs to disclose information regarding the FCM's segregation of Customer Property (e.g., the Cleared Swaps Segregation Schedule), financial health and creditworthiness. We would also support efforts by the Commission to cause such disclosures to be posted on the relevant FCM's Web site, in lieu of requiring customers to make a request to the Commission to receive such information (which may be administratively burdensome). However provided, access to such information will allow end-users to better compare FCMs and make informed choices about those with which they will do business.

We also support the Commission's proposal to obtain account balance and liquidity information from FCMs on an ongoing basis. We agree with the Commission that this will provide additional protection to customers and Customer Property in the event of a sudden development that threatens the FCM's ability to continue operating as a going concern. Further,

the ability of the Commission to review up-to-date financial and account data of the FCM should enable the Commission to act swiftly in making crucial decisions in furtherance of protecting Customer Property.

As a general matter, we encourage the Commission to require the prompt public disclosure of relevant FCM information subject of the Proposed Rules as appropriate in light of confidentiality or proprietary business strategy concerns. We believe that such disclosures would be a positive step towards ensuring a level playing field between each FCM and its customers and among FCMs themselves.

B. FCM Risk Management Program

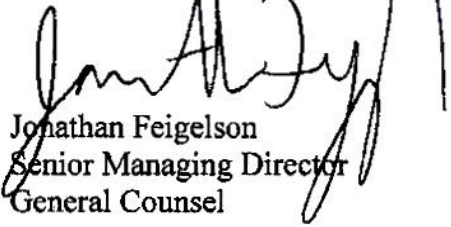
The Proposed Rules would require each FCM to establish a risk management program designed to monitor and manage the risks associated with the FCM's activities, including written policies and procedures managed by a separate risk management division of the FCM. Among the components of such a program, FCMs would be required to establish an adequate target amount of excess funds in customer accounts reasonably designed to ensure that the FCM is at all times in compliance with applicable segregation requirements for customer funds, as well as internal controls ensuring that the withdrawal of property from accounts holding customer funds are in compliance with all Commission regulations. We strongly support these initiatives and encourage the Commission to take an active role in the development of these programs, as well as their execution, oversight and monitoring once instituted by the FCMs.

We appreciate the Commission's efforts to enhance transparency in the derivatives markets and introduce additional safeguards with respect to Customer Property and the financial condition and oversight of FCMs. We believe the Proposed Rules are a welcome step toward those objectives.

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We appreciate and look forward to the continued efforts of the Commission as these matters progress. Please feel free to contact me at (212) 916-4344 any time with questions or concerns.

Respectfully submitted,



Jonathan Feigelson
Senior Managing Director
General Counsel