

February 15, 2013

Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

***RE: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations (RIN 3038-AD88)***

Dear Ms. Jurgens:

The National Council of Farmer Cooperatives (NCFC) appreciates the opportunity to submit the following comments in response to the Commodity Futures Trading Commission's (CFTC) proposed rule *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations* (Federal Register Vol. 77, No. 220, Wednesday, November 14, 2012).

Since 1929, NCFC has been the voice of America's farmer cooperatives. Our members are regional and national farmer cooperatives, which are composed of over 2,500 local farmer cooperatives across the country. As processors and handlers of commodities, farmer cooperatives – and their farmer-owners – rely on futures markets to hedge the commercial risk inherent to agricultural production, processing and marketing. In addition, there are cooperatively-owned futures commission merchant (FCM) operations that are relatively small and serve a customer base comprised of physical commodity hedgers.

NCFC supports strengthening protections for futures customers and appreciates the CFTC's work to propose new rules in this area. However, we are concerned with the potential unintended consequences that a "one-size fits all" regulation may have on hedgers and small FCMs. For example, it is very common for many agriculture cooperatives and producers to pay their FCM margin by check because they are small businesses and have small accounts. As proposed, the rules would not allow for that practice to continue without adding substantial costs.

Additionally, the proposed rules do not take into account the type of FCM – by size, the risk profile of their customers, or whether or not the FCM also has proprietary trading or is a broker-dealer. This is especially true in the proposed amendments to **Rule 1.11** establishing a risk management program, which will be financially and operationally burdensome for smaller FCM's. We believe those factors should be taken into account as the final regulations are considered.

**Rule 1.17(c)(5)(viii)**

Rule 1.17(c)(5)(viii) would require an FCM to take a capital charge with respect to any margin call that is outstanding for more than one business day, as opposed to the current rule of three business days. This proposed rule would clearly disadvantage smaller FCMs and many retail customers. Many smaller hedgers do not transfer funds by wire, but rather write checks. As such, it is common practice for farmer cooperative-owned FCMs to pay the clearing houses or the clearing FCMs in advance of receiving customer funds. By adding the additional capital charge after just one day, FCMs will possibly be forced to require their customers to wire transfer/ACH funds or maintain excessive funds in their account. The costs associated with either option would disproportionately affect smaller hedgers, while adding little in the way of added customer protection.

## **Rule 1.20(i) and Rule 1.22(a)**

Rules 1.20 and 1.22 would require that an FCM's residual interest in the customer segregated account must at all times be sufficient to exceed the sum of the margin deficits that the FCM's customers have in their accounts. This requirement appears to be more stringent than the current interpretation, which affords an FCM time to "top up" the customer segregated account prior to the time a payment must be made to the clearing house.

In addition to increased costs for hedgers, this proposed rule would be more burdensome to firms like farmer cooperative-owned FCMs, which largely deal only with hedgers. Although the risk profile of the customer base is very low, customers are predominantly on one side of the market -- therefore more susceptible to big swings in the market. To be clear, farmer cooperative-owned FCM customer groups are largely homogenous, with virtually all of their commercial customers going deficit at the same time. To require all deficits to be covered immediately would be overly stringent on these FCMs given the low-risk profile of their customers as hedgers.

Again, we appreciate CFTC's work in the area of strengthening customer protections but reiterate that a one-size fits all approach to the regulations is not appropriate under the circumstances. In addition, there should be further consideration of areas outside CFTC's jurisdiction – such as potential changes to the bankruptcy code – in providing further protections to futures customers.

We appreciate your consideration of our comments and look forward to providing additional input in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "C. F. Conner".

Charles F. Conner  
President & CEO