N.I.B.A.

National Introducing Brokers Association

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February 15, 2013

Ms. Sauntia Warfield
Assistant Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

RE: RIN 3038-AD88: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 Fed. Reg. 67866 (November 14, 2012)

Dear Ms. Warfield:

The National Introducing Brokers Association (NIBA) is a non-profit organization of Introducing Brokers (IBs), Commodity Trading Advisors (CTAs) and other registrants. Our members are brokers primarily engaged in retail transactions for clients in all futures, options, forex and swaps markets. Founded in 1991, our mission is to provide education which enables our members to succeed and grow. In addition to IBs and CTAs, our membership includes domestic exchanges and trading platforms, and futures commission merchants (FCMs).

NIBA appreciates the Commission's efforts in the past few months with regard to enhancing customer protections and funds. We believe the intent of these proposed rules is correct, but we are concerned the section of the above captioned proposed rule which calls for residual interest to exceed margin deficiencies is a drastic new interpretation of regulations which will actually limit or deny market access to many customers that NIBA members service.

Our members work with farmers, ranchers and other agricultural organizations who use the markets to hedge their financial and commercial risks. Many of those customers have already been through extremely trying times due to the MF Global and PFG BEST failures. This new requirement could raise the cost of hedging product to prohibitive levels. Implementation will likely result in customers being required to pre-fund potential margin obligations, or risk liquidation of those hedging positions if the customer is not able to meet a margin call on a moment's notice. That cost and risk could cause significant numbers of current market users to move their business off-shore, or to leave the futures markets altogether.

There are other concerns for both clients and brokers. Transferring accounts between brokerage houses will become very difficult to accomplish. Open positions carry risk which would seemingly need to be margined at the receiving house as well as the transferring one. That could mean double margining for the client. Brokers will be restrained to remain with one FCM, or completely close customers' positions in order to start up again with a different FCM. These are not viable situations for clients or brokers.

Additionally, the boarder consequence of this proposed interpretation may be to force small to mid-sized FCMs out of business. This will have an extreme impact on the industry as a whole, since many IBs clear those smaller FCMs. The effect of forcing those FCMs out of the business means access to the markets will become limited and more expensive for IBs and their smaller hedge and speculative clients.

NIBA also notes that a cost-benefit analysis of the proposed rules has not been completed. Nor has the brokerage community had the opportunity to engage in a dialog with the Commission with regard to how final rules that are unambiguous and consistent with both present regulations and industry custom should be written and implemented.

Finally, NIBA notes that neither MF Global nor PFG BEST failed because a customer was under-margined. The unintended result of the proposed rule interpretation could undermine the Commission's and the industry's goal of providing customers with a cost-effective place to hedge risk.

Thank you for the opportunity to comment on this important proposed change to current regulations. The NIBA looks forward to a continued discussion.

Regards,

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cc: Honorable Gary Gensler, Chairman
Honorable Jill Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Honorable Mark Wetjen, Commissioner

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