February 15, 2013*

Via Electronic Mail

Melissa Jurgens
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581

Re: ***Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations: Proposed Rule***

Dear Ms. Jurgens:

TD Ameritrade, Inc.[1] ("TD Ameritrade" or "the Firm") appreciates the opportunity to comment on the above referenced Rule Proposal ("Rule Proposal") by the Commodity Futures Trading Commission ("CFTC") to strengthen the protections afforded futures customers and customer funds held by futures commission merchants. TD Ameritrade currently has 30,000 retail futures customer accounts, with a rapidly growing retail base. TD Ameritrade is generally very supportive of the comment letter submitted on its behalf, as a member, by the Futures Industry Association. Although TD Ameritrade supports the CFTC's goal of strengthening the futures markets by enhancing the protections afforded to futures customers, TD Ameritrade has significant concerns regarding certain aspects of the new proposal. For example, new paragraph (m) to Rule 1.12, which would require a futures commission merchant ("FCM") to file a copy of any notice, examination report, or any other correspondence the FCM may receive from the Securities and Exchange Commission ("SEC") or a self-regulatory organization ("SRO") with the CFTC. Specifically, TD Ameritrade opposes certain aspects of the CFTC's Rule Proposal as they would impose new requirements on member firms that greatly exceed the intended benefits. As noted below, the Firm believes the Rule Proposal should be revised so as the costs imposed are more in line with the benefits that the CFTC seeks to achieve. In addition, the Firm believes the proposal to require firms to take capital charges for undermargined customers should not be reduced to one business day nor should residual interest target be made available to the public. Additionally, the Firm does not believe that the significant additional costs of requiring each FCM to maintain at all times a residual interest in each class of customer funds account sufficient to exceed the sum of all customer margin deficits outweigh the potential benefits.

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1 TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation ("TD Ameritrade Holding"). TD Ameritrade Holding has a 37-year history of providing financial services to self-directed investors. TD Ameritrade serves an investor base comprised of over 5.8 million funded client accounts with approximately $499 billion in assets. During January 2013, the Firm averaged a total of 387,000 client trades per day.

TD Ameritrade's Regulatory Framework

As a dually-registered broker-dealer / FCM, TD Ameritrade is subject to the rules of both the SEC and the CFTC. The Firm clears its client securities transactions on a fully-disclosed basis through TD Ameritrade Clearing, Inc. ("TDAC").[2] The "front-line" supervisory function for the securities activities of broker-dealers is performed by the SROs. The futures activities of financial firms, including related customer segregation requirements, are overseen by the CFTC and the futures SROs, including the National Futures Association ("NFA"), of which the Firm is a member. The NFA is TD Ameritrade's futures designated self-regulatory organization ("DSRO").

TD Ameritrade's designated examining authority ("DEA") is the Financial Industry Regulatory Authority ("FINRA"). As the Firm's DEA, FINRA is responsible for examining TD Ameritrade's financial and operational programs, including our compliance with the SEC's capital and customer protection requirements. In its role as TD Ameritrade's securities DEA, FINRA conducts regular, routine examinations of TD Ameritrade for compliance with financial responsibility rules and other rules, such as sales practice requirements.

TD Ameritrade also is subject to the SEC's national examination program and its risk-based examinations. TD Ameritrade's securities clearing broker, TDAC, is registered under Rules 17h-1T and 17h-2T under the Securities Exchange Act of 1934.[3] As such, TDAC is subject to various reporting requirements regarding both the broker-dealer and its material affiliates. SEC staff analyzes financial dependencies and unregulated business activities which could potentially affect the net capital, liquidity, financing or profitability of the broker-dealer, as well as sources of funding for the broker-dealer and the parent.

Proposed Changes to § 1.12, new paragraph (m)

TD Ameritrade appreciates the CFTC's rule proposal to strengthen its customer protection regime. TD Ameritrade, however, does not agree with the proposal to add a new paragraph (m) to § 1.12 that will require, "an FCM that receives a notice, examination report, or any other correspondence from the SEC or a SRO to file a copy of such notice, examination report, or any other correspondence with the Commission."[4] The CFTC provides its justification for this request as something that will allow it "and the DSRO to identify potential threats to the safety of customer funds."[5] TD Ameritrade respectfully disagrees with the CFTC's conclusion that submitting copies of

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[2] TDAC is an indirect wholly owned subsidiary of TD Ameritrade Holding, and contracts with an external provider on an omnibus basis for futures clearing and related back-office services. The Firm also contracts with external providers to facilitate foreign exchange trading for its clients.

[3] See 17 CFR 240.17h-1T and 17 CFR 240.17h-2T. Broker-dealers subject to the Risk Assessment rules must keep records and file with the SEC information including the holding company organizational chart, risk management policy information, consolidating and consolidated financial statements, securities and other financial product position data of material associated persons, and other categories of financial and securities related information.

[4] Rule Proposal, 77 FR 67866 at 67877.

[5] Id.

any correspondence it receives from the SEC, FINRA, or any other entity is beneficial to the CFTC. The Firm strongly believes that the congressionally mandated framework that allows for the SEC and CFTC to co-exist should be sufficient to address the CFTC's stated concerns.

TD Ameritrade received approximately 1,100 inquiries last year from the CFTC, NFA, FINRA, the Options Clearing Corporation, the International Securities Exchange, and the SEC. Of those, approximately 135 requests originated from the CFTC and 25 came from the NFA. Based solely on the volume of requests TD Ameritrade responds to in a given year, and the amount that are securities-related, we believe it would be unduly burdensome to comply with the CFTC's proposal that we provide it with a copy of every "correspondence" we receive from any other regulator. TD Ameritrade does not believe that merely forwarding copies of almost 1000 regulatory requests to the CFTC will help it in its goals of identifying, "potential threats to the safety of customer funds."[6]

As written, the rule text for §1.12(m) is both unduly broad and overly burdensome. Should the CFTC wish to obtain a copy of our onsite examinations, that request should be made at the time of our CFTC examination. We should not have to be responsible for forwarding every examination result and communication directly to the CFTC for it to review. Further, through interagency sharing agreements and the SEC's Rule 17a-11, the CFTC already receives copies of major notices that the Firm sends to the SEC.[7] We believe that despite the differing natures of the markets and products, consistent regulation and coordination is required. The Firm fully appreciates the fear of a gray area in the middle of a regulatory inquiry; we believe that the appropriate resolution for perceived disputes and ambiguity should be remedied through congressional action, not through this new rule.

If the CFTC determines to adopt §1.12(m), we respectfully request that you narrow its scope. TD Ameritrade would transmit a copy of any communication with the SEC or a securities SRO that pertains to the financial responsibility rules (i.e., those regarding net capital and customer protection). Narrowing the scope of (m) makes the proposal significantly more meaningful to the CFTC, because it is no longer requiring us to forward almost 1000 requests and responses received throughout the year.

Proposed Changes to § 1.17(c)(5)(viii) and (ix): Undermargined capital charges

TD Ameritrade does not agree with the CFTC's proposal to amend §§ 1.17(c)(5)(vii) and (ix) to require firms to take capital charges for undermargined customer, noncustomer, and omnibus accounts that are undermargined for more than one business day after a margin call is issued. TD Ameritrade respectfully disagrees with the conclusion that because of the current trading markets and technology, customers should be able to meet a margin call in one day. The Firm has robust and prudent risk management processes and procedures in place and its systems monitor margin calls in real-time. However, even with ability to wire funds, the Firm believes that its customers and noncustomers should continue to have at least three business days to meet a margin call. A large number of retail customers do not currently utilize a means (such as overnight wires) to satisfy a one day funding requirement. Furthermore, any of our non-U.S. customer accounts are faced with

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6 Id.

7 See 17a-11(g) noting that every notice or report required to be given to the SEC also supplies a copy to the DEA and the CFTC.

automatic time lags and inherent delays. Thus, our customer base may face undue monetary hardship, even though this proposal was intended to enhance customer protection.

TD Ameritrade further notes that by decreasing the amount of time available to the Firm to have its customers meet a margin call, the corresponding capital charge will increase, thus tying up more of the Firm's capital. As TD Ameritrade's business grows, the increase in the capital charge could become material to the Firm. The Firm believes that the proposed new treatment of undermargined accounts effectively treats these margin calls as unsecured debts, thereby, conflating the two different concepts.

In response to the question asked by the CFTC in the Rule Proposal, we believe that the CFTC should reconsider its current timeframe for the imposition of a capital charge for undermargined accounts.[8] TD Ameritrade believes that three business days allows our customers and noncustomers to meet a margin call on a timely basis, while still allowing us to exercise our prudent risk management and risk analysis.

Public Disclosure of Targeted Residual Interest and Calculation of Residual Interest

As noted above, the Firm is generally supportive and in agreement with the view set forth in the Futures Industry Association letter. However, as to the CFTC's proposal to make our targeted residual interest calculation public, the Firm has great concerns. The Firm carefully sets and evaluates our target residual funds and examines a wide variety of factors, including reviewing customer trading activity, customer creditworthiness, and the volatility and liquidity of markets where we participate. In addition to daily monitoring, the Firm's Regulatory Reporting Committee, which is a subcommittee of our Enterprise Risk Committee, reviews the financial position and reports of our futures business on a monthly basis. This committee, which includes members of the senior management of the futures business, along with the Firm's CFO, discussed and approved the considerations used when we first established the targeted amount.

The Firm believes, however, that making this information public, without any additional context, information, or analysis, is harmful to its propriety interests and perhaps harmful to the markets as a whole. Public users of the data will not be privy to any of the numerous internal discussions or analyses that have taken place when establishing the target. Any changes that we make to our residual interest targets would have to be made public, which could lead to market upheaval, volatility, and unintended consequences.

Finally, TD Ameritrade strongly disagrees with the requirement that an FCM maintain a residual interest exceeding the sum of all current margin deficiencies. We find this to be impractical and overly burdensome. Currently the Firm examines the settlement price at the close of each market daily to start calculating potential margin requirements and make preliminary risk assessments. Each night the Firm receives both the batch files and the SPAN risk arrays, which allow us to finalize our futures margin calculations. Although our preliminary analysis helps us mitigate risk and understand the nature of any open positions, it is not until we receive the final nightly downloads that we are able to fully calculate any margin calls. Thus, it would be difficult, if not impossible, to assess the

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[8] Id. at 67881.

aggregate customer margin deficiencies at any moment in time, because the markets have not closed, and the margin requirements are not always known.

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In conclusion, the Firm believes that many of the CFTC's recent rule proposals made in the last six months have made significant changes to the futures industry and have helped bolster confidence in the futures market following the collapse of MF Global, Inc. and Peregrine Financial Group Inc. The Firm urges the CFTC to allow these new rules to take effect and give both the industry and its regulators an opportunity to evaluate the effectiveness of the new rules before adopting these additional requirements.

Members of the Firm watched the CFTC's recent roundtable on January 29, 2013, "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations," with great interest. We found much of the conversation enlightening and informative. Because of our growing retail business, the Firm is interested in becoming more active and engaged in these conversations with other industry members.. TD Ameritrade encourages the CFTC to host more roundtables and public forums for discussion, because many market participants have views which should be considered. The Firm believes that the costs of the proposed rules vastly exceed any intended benefit that may be derived. TD Ameritrade appreciates the opportunity to comment on the Rule Proposal. If you have any questions regarding these comments, please contact me at 773-435-3216.

Respectfully submitted,

/s/

Donald E. Roberts

Managing Director
Futures and Forex