February 15, 2013

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
1155 21St Street, NW
Washington, DC 20581

Re: RIN 3038-AD88: Enhancing Customer Protection and Customer Funds Held by Future Commission Merchants and Derivative Clearing Organizations, 77 Fed Reg. 67866 (November 14, 2012)

Dear Ms. Jurgens:

Newedge USA, LLC ("Newedge" or "the Firm") appreciates the opportunity to comment on the enhancements proposed by the Commodity Futures Trading Commission ("CFTC") to certain of its rules aimed at strengthening the protection of customer funds held by futures commission merchants ("FCMs"). Newedge supports the efforts of the CFTC in this important area of customer protection subject to the comments below.

Newedge is a subsidiary of Newedge Group SA, which is owned by Société Générale and Crédit Agricole Corporate and Investment Bank. Newedge and its affiliates are part of one of the largest international brokerage groups specializing in exchange-traded derivatives. Collectively, Newedge Group SA is located in 14 countries and is a member of 102 derivatives and securities exchanges. As of December 31, 2012, Newedge was the third largest FCM on the basis of total customer funds on deposit and Newedge and its affiliates are regularly ranked number one or two on the basis of volume on many of the world's principal derivatives exchanges. Newedge's client base is primarily composed of financial institutions, hedge funds, corporations, asset managers and professional trading groups as clients.

Newedge strongly supports the protection of customer funds and leads by example through its operating model. In particular, Newedge acts as an agency broker, and conducts only minimal amount of proprietary trading and then only in connection with customer facilitation activities. To Newedge, this

is the optimal customer protection as the capital of the FCM is committed to supporting customers instead of proprietary trading.

In addition, Newedge has already instituted many of the measures proposed by the CFTC. As now publicly reported on the National Futures Association's ("NFA") website, Newedge routinely invests its customer funds in among the most conservative permissible investments and maintains a weighted average maturity of its customer funds' investments of no more than 60 days, far less than the two years currently permitted by CFTC rules. Separately, Newedge on its own retained an independent accounting firm to verify its internal controls over customer funds on two separate occasions within the past 18 months.

Newedge supports the overall intent of the CFTC's proposal to enhance protection of customer funds held by FCMs and designated clearing organizations ("DCOs"), but echoes one of the primary concerns of the Futures Industry Association ("FIA") expressed in its comment letter dated February 15, 2013, that some of the proposed rules will have significant and costly unintended consequences on FCMs and their customers.

The CFTC itself observes that adoption of its proposed rules will be costly. For example, the CFTC notes that the proposals are likely to cost individual FCMs between $193,000 and $1.85 million initially and $287,000 and $2.3 million annually to implement them. Newedge believes that these numbers only partially reflect the expense to implement the CFTC's proposed rules, and ignore other material costs such as the increased capital and liquidity necessary to enact many of the proposals. For instance, as the FIA observes, on the Chicago Mercantile Exchange alone, FCMs collectively could be required to maintain in excess of $50 billion in residual interest as a result of the proposal regarding customer margin deficits[1]. It will also further impact FCMs if they are required to take a capital charge after one day for customer margin calls that are not met as opposed to three days currently[2]. As a result, Newedge agrees with the FIA, and urges the CFTC to refine its cost benefit analysis and carefully consider the impact before it adopts any final rules.

Newedge also believes, as previously stated, that the CFTC proposal to require FCMs to maintain a residual interest in an amount at least equal to the sum of the margin deficits of its customers will have significant and costly unintended consequences. In particular, Newedge is concerned that the proposal will result in many FCMs requiring customers to pre-fund and over-margin their positions, which will increase their exposure to FCMs. As a result, we believe it will have a significant impact on customers' own liquidity.

Although some staff of the CFTC during its public forum on February 5, 2013 suggested that FCMs were currently using funds of some customers to pay for obligations of other customers, this statement ignores the fungible nature of most funds in FCMs' customer segregated and secured accounts, in particular, cash. To our knowledge, this practice has not resulted in any customer losses since the inception of the CFTC, is legal under the Commodity Exchange Act, and has been an accepted practice

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[1] See proposed amendments to Rules 1.20(i)(4), 22.2(f)(6) and 30.7(a) (and related rules).
[2] See proposed amendment to Rule 1.17(c)(5)(viii).

without consequences or regulatory challenge for decades[3]. Accordingly, Newedge joins with the FIA in opposing this specific recommendation. We also believe this proposal, over time, could (a) force certain participants out of the markets, thereby decreasing liquidity and widening spreads for hedgers, (b) result in some hedgers withdrawing from the markets entirely thereby increasing the costs of their commercial services, and (c) result in some smaller or mid-size FCMs going out of business (because they are unable to source the liquidity needed to compete with larger FCMs) thereby reducing customer choice in FCMs and concentrating systemic risk in a smaller group of companies.[4]

If, however, the CFTC insists on mandating that FCMs maintain a residual interest in customer funds as described above, Newedge agrees with the FIA that the CFTC should consider alternative less costly measures. For example, FCMs should be able to count guaranty fund deposits with depository clearing organizations as part of their residual interest. In addition, FCMs' residual interest should not be required to exceed the sum of the margin deficits of only a limited number of its largest customers (indeed, the CFTC had proposed that systemically important DCOs need to maintain sufficient capital only to cover the potential default of their two largest clearing members, though ultimately deferred taking action on this proposal[5]).

Newedge strongly believes that before the CFTC institutes any requirement related to FCMs maintaining a minimum residual interest, the CFTC should consider the historic success of existing measures to protect customers against fellow customer risk, and the other enhanced measures that will be adopted by the CFTC as a result of its rule proposal. The result is stronger protection for customer funds without the negative consequences for FCMs and their customers.

Newedge also concurs with the FIA's views regarding proposed CFTC Rule 1.1. As part of this rule proposal, the CFTC seeks comment on whether Chief Compliance Officers ("CCOs") should be held to a standard of strict liability in connection with that portion of their overall annual certification regarding the adequacy of an FCM's policies and procedures that relates specifically to the safeguarding of customer funds. Newedge opposes the institution of such a standard as it would cause CCOs to be strictly liable for a certification typically made based on internal representations from other FCM employees far more expert regarding these matters. Adoption of such a standard would also likely make it extremely difficult for FCMs to attract qualified persons to serve as CCOs.

Newedge supports and endorses the FIA's comment letter, subject to the three issues identified below:

1. The CFTC has proposed to add a new Rule 1.55(i) and (j) that would require FCMs to disclose to customers certain information that would be material to a customer's decision to do business with an FCM and that is otherwise necessary for full and fair disclosure, including its business, operations, and risk profile.

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[3] See generally, Section 4d(a)(2) of the Commodity Exchange Act.

[4] In this regard, we note that the CFTC is mandated by statute to consider the anti-competitive effects of its rule proposals.

[5] Financial Resources Requirements for DCOs, 75 Fed.Reg. 63113, 63119 (October 4, 2010).

Although some argue that, to the extent a FCM is part of a publicly-traded company, whether US or non-US, the FCM should be permitted to comply with this proposed rule solely by making such annual report available on its website.

Newedge strongly believes that all FCMs should be required to disclose similar information in a standard format. Simply providing a complex and large annual report on a website and asking customers to find information related to the FCM seems contrary to the intent of the CFTC's proposed rule, and places firms without annual report preparation requirements at a competitive disadvantage. As such, we believe this proposal discriminates against smaller to mid-size FCMs.

Newedge encourages the CFTC or the Joint Audit Committee to develop a form template that all FCMs would have to use to disclose the items required by the CFTC. Such completed template should be posted on all FCMs' websites.

2. The CFTC has proposed Rule 1.55(k)(10) to require FCMs to disclose the dollar value of the FCM's proprietary margin requirements as a percentage of the aggregate margin requirement for futures customers, cleared swap customers and 30.7 customers. The FIA agrees that FCMs should disclose whether they engage in proprietary trading, but some in the industry do not support disclosure regarding the dollar value of an FCM's proprietary margin requirements.

   Newedge believes that customers deserve to know whether the capital of their FCM may be at risk to support proprietary activities, and the magnitude of such activities. In our view, proprietary trading is one of the most significant risks to an FCM. Further, for purposes of this proposed Rule, Newedge believes that the definition of proprietary account should be consistent with the definition of proprietary account in CFTC Rule 1.17(b)(3), namely, trading by the FCM itself.[6] Contrary to the assertions of some, a FCM's own proprietary trading presents markedly higher risks to the FCM (and its customers) than does the FCM's clearing of proprietary trading conducted by its affiliates, at least to the extent such affiliates are separate legal entities.

   Also in connection with Rule 1.55(k)(10), the CFTC proposes to require FCMs to disclose the percentage of segregated, 30.7 and cleared swap receivable balances the FCM had to write off as uncollectible during the prior 12-month period (i.e., customer defaults), as compared to the current balances of such fund types. Some in the industry, however, question the relevance of this proposal, claiming that without explanation, such information could be misleading.

   Newedge believes that requiring such information regarding FCM customer defaults will provide customers with valuable insights into the strength of an FCM's credit policies, which ultimately benefits all customers. Nothing in the CFTC's proposed rule would restrict an FCM from providing appropriate explanations regarding such defaults, as it deems necessary.

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[6] See also Joint Audit Committee, Margin Handbook, Chapter 8-1, 2d Edition, July 1999 (as amended).

Finally, an additional item for which Newedge seeks confirmation is that proposed Rule 1.30, prohibiting FCMs to loan funds on an unsecured basis to finance customers' trading or to loan funds to customers secured by customer accounts, would not prohibit a FCM, when computing a customer's margin requirements, from giving credit for the customer's long options value. Our understanding, which we would like the CFTC to confirm, is that long option value may continue to be considered in computing a customer's overall account value and margin requirement, but that any subsequent financing provided by the FCM to such client would have to be secured by permissible collateral.

Newedge applauds the efforts of the CFTC and its staff to enhance the protection of customer funds at FCMs and DCOs, and supports most of the amendments proposed by the Commission. However, Newedge, like the FIA, respectfully cautions the CFTC to consider the overall impact and cost to FCMs as well as their customers before finalizing any rules.

Thank you for your consideration. If you have any questions, please contact the undersigned at (312) 762- 1345, or John Nicholas, Global Head of New Regulation Monitoring and Implementation at (646) 557-8516.

Very truly yours,

Newedge ~~USA LLC~~

Antoine Babule
Chief Executive Officer