

February 15, 2013

Via electronic submission

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

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

Dear Ms. Jurgens:

CHS Hedging, Inc. ("CHI") respectfully submits this letter in response to the request of the Commodity Futures Trading Commission ("CFTC") for comments on the proposed rules for Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations.

Background

CHI was incorporated in 1986 and has been registered as a registered Futures Commission Merchant ("FCM") for over twenty-six years. The company is organized as a cooperative and provides commodity price risk management services primarily to commercial businesses such as grain elevators, agricultural processors and energy retailers and to individuals such as farmers and ranchers. CHI has always been a wholly-owned subsidiary of CHS Inc., a leading global agribusiness owned by farmers, ranchers and cooperatives across the United States. CHS supplies energy, crop nutrients, grain marketing services, livestock feed, food and food ingredients, along with business solutions including insurance, financial and risk management services.

CHI is very disconcerted by the failures of two fellow FCMs, MF Global and Peregrine, in the last year and a half and the resulting losses that may be incurred by their customers. These events struck at the core of the industry and have caused everyone connected to the industry to take stock and work to ensure that nothing like this can happen again. Toward that end, CHI supports the efforts of the CFTC to protect customers and customer funds, such as requiring FCMs to grant regulators the ability to verify balances in segregated bank and security accounts on a daily basis. However, parts of the proposed rules may have major unintended negative consequences and warrant further consideration and possible revision. It is very important to note that these failures were not caused by the FCM operating in the normal course of business, but rather by outright fraud and misappropriation of customer funds.

Capital Charges for Undermargined Accounts

The proposed amendment to section 1.17(c)(5)(viii) and (ix) would require and FCM to take a capital charge for accounts that are undermargined for more than one business day. CHI provides hedging risk management to a significant number of farmers and ranchers, many of whom pay by check and are

located in many different states. It is highly unlikely that a check mailed from out of state on the day it was requested would arrive prior to a haircut being required on that margin call. Likewise, it is unrealistic to expect all of these customers to settle by wire transfer as it is simply not cost effective for the size of their accounts. Such a change could create a disincentive to service these accounts and may limit the number of FCMs available to these customers who utilize the markets as a tool to manage risk within their operations. The rule as it currently stands allows for a more level playing field for all types of customers. It should be noted that every FCM is already obligated to ensure that it has adequate segregated deposits to satisfy its obligations to each of its customers on a daily basis. In addition, the current requirements require the FCM itself to cover any customers' debit equity balances such that no fellow customers' funds may be used to offset it.

Residual Interest and Margin Deficits

The proposed amendment to sections 1.20(i) and 1.22(a) would require FCMs to maintain residual interest in segregated accounts in an amount which exceeds the sum of all margin deficits for futures customers. This change alone has the potential to affect this industry like no other so CHI very strongly encourages the CFTC to reconsider the potential ramifications before moving forward. It would substantially increase the amount of capital an FCM would need on hand at all times. In the current economic environment, the difference between the cost of capital and the return an FCM could reasonably expect through investment of funds in a compliant and prudent manner would result in a material effect on the business of all FCMs. Additionally, if an FCM has a majority of customers that are similarly situated like CHI does, an adverse market movement would affect all the customers in a similar manner and this requirement would be unduly burdensome, especially when the customers are hedging.

Alternatively, FCMs could require that customers pre-fund their accounts in anticipation of adverse market movement. This would likely result in hardship with regard to working capital and may encourage customers to seek alternative methods to hedge their risk such as physical grain contracts that do not involve a futures component at all. Further, pre-funding accounts concentrates additional funds at FCMs, which seems to contradict the spirit of the proposed changes.

CHI would also like to point out that the purpose of having margin requirements is to establish a level of funding that provides a buffer against adverse market movement. Margin calls are part of the normal course of business and don't, in and of themselves, indicate of potential risk of non-performance on the part of the customers. Therefore, there should be no need for FCMs to carry residual interest in an amount that exceeds margin deficiencies as long as each FCM meets its net capital and daily segregation requirements as discussed above.

Public Disclosure

With regard to public disclosures outlined in section 1.55, CHI is not opposed to additional risk disclosures, provided that they are standardized. In addition, the public should have access to certain information regarding an FCM for the good of the industry. However, CHI would like to caution that FCMs come in many different sizes and types. Each FCM is structured differently in terms of ownership, business structure, access to and management of capital and many other factors. For example, CHI is a cooperative and may have financials that look very different to an FCM that is a bank. Similarly, it appears that the proposed leverage calculation would not be an effective comparative tool as it currently stands based on research done by the NFA. It is imperative that any public information be fair, comparative and representative for all FCMs and that the public be able to reasonably understand it.

Risk Management Unit

Section 1.11 proposes that each FCM that handles customer business be required to establish an independent risk management unit. It is not realistic or cost effective for smaller FCMs to establish an entirely separate unit. Provided that supervisory risk management personnel report to senior management separately from the business side to avoid conflict of interest, a standalone unit should not be required. In addition, there is valuable information regarding customers and risk that should be shared between all areas of the FCM to promote a holistic view of customer relationships and potential risks that may easily be lost if the risk management unit is completely carved out.

Notices

The changes proposed in section 1.12 relate the timeliness and types of notices that an FCM must file with regard to minimum financial requirements. The vagueness of the changes in several areas will likely cause concern and confusion between FCMs and the regulators that they report to. For example, there is a great deal of correspondence that can go on between a DSRO and an FCM in the normal course of business. If read literally, this proposed change would encompass every phone call, email, etc. and impose an unnecessary burden on both the FCM and the CFTC. Similarly, the requirement for every notice to include a discussion of how the event occurred and how the FCM is addressing it seems contradictory to the timeliness in which the CFTC expects to receive notification since it can take time to effectively research and remediate an issue.

Summary

In conclusion, CHI is committed to the futures industry and appreciates the CFTC's efforts to provide protections to customers and restore confidence to the public. CHI respectfully requests that the CFTC consider these comments and those of others and not to rush the adoption of such radical changes. More work needs to be done to study the potential impacts of these proposed rules on the industry and the wide variety of customers it serves.

Sincerely,



Julie Streit
Principal & Controller