February 15, 2013

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

RE: 17 CFR Parts 1, 3, 22, 30 and 140
RIN 3038-AD88: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Operations, "Federal Register" Vol. 77, No. 220, pages 67866-67971

Dear Ms. Warfield:

On behalf of the members of the National Cattlemen's Beef Association (NCBA), I am submitting comments regarding the proposed rule "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations" (RIN 3038-AD88).

As the oldest and largest national association for the largest segment of American agriculture, NCBA represents all segments of the beef supply chain. Most every segment of the U.S. beef industry uses commodity futures as a risk management tool. Over the past several years, however, failures within the futures industry have shaken the confidence of its users. We strongly believe these issues should be addressed and that more protection should be given to account holders. We also know that these protections come at a cost and we want to ensure that those costs bring about true benefit. Our concern, however, is that proposals in this rule will have unintended consequences that may drive users of these tools away from the futures market.

In particular, we have significant concerns about the proposed amendments to section 1.17(c)(5)(viii) which would require futures commission merchants (FCMs) to take a capital charge for margin calls outstanding more than one day, rather than the current three-day practice. We understand the need to ensure that FCMs and their customers are protected from a customer who fails to meet a margin call. This proposed change, however, completely fails to recognize the needs of the FCM customers this rule purports to protect.

The provision giving customers three days to make their margin is reflective of a time when checks were used for most transactions. While many customers now utilize other technology such as wire transfer, many customers still use checks. Requiring cattle producers and feedlot operators to use wire transfer increases their cost of doing business. Any increase in cost, given the current state of the U.S. beef industry, could be devastating. We see no need to eliminate the three-day requirement, especially since the most recent failures of large FCMs such as MF Global and Peregrine Financial Group were not attributed to a customer's margin deficiency.

An even bigger concern is the expectation that FCMs will require their customers to maintain excess funds in their accounts in order to fulfill intraday margin calls. This "pre-funding" of

a cattle producer's margin account will add a financial burden by sequestering capital that is better spent in the operation of the feedlot, stocker, or cow/calf operation. This stranglehold on capital would be crippling to our members as most are not flush with cash. We also believe that the proposed changes to rule 1.20(i)(4) and 1.22(a) will lead to a "pre-funding" situation. The additional capital in these accounts will increase a producer's exposure and risk in the event that their FCM fails. Many producers across this country are still waiting for money they had in MF Global and Peregrine accounts.

Further, we are very concerned about the lack of input that was solicited by the Commodity Futures Trading Commission (CFTC) in preparing this rule. The cattle industry was not invited to participate in any outreach session by CFTC if, indeed, any such session was held. In fact, CFTC did so little to talk about this proposed rule that the original comment deadline approached with the vast majority of our industry not even knowing about it. Only after a last-ditch effort to secure an extension were we able to review the rule and solicit input from our members. We are also concerned about the lack of a cost-benefit analysis of this rule. As mentioned above, we understand that protection comes at a cost, but that cost must be understood and it must truly result in protection, not just additional burdens on cattle producers who use the futures markets to manage their risk.

The U.S. cattle industry has suffered through many devastating hits over the past several years. The failures of FCMs and dealers/brokers (such as Eastern Livestock, Inc., MF Global, Peregrine Financial Group), non-tariff trade barriers in overseas markets, increasing regulatory burdens, and a persistent and growing drought have made it difficult for our industry. This rule should be something that producers can support because it gives them adequate protection. We do not believe this rule meets that requirement. We request that CFTC abandon this rule and start the process over by first convening workgroups of FCMs and their customers to see what their needs truly are. This will help CFTC craft changes that help cattle producers rather than making business more difficult. If this rule goes through as proposed, the added financial burden of "pre-funding" margin accounts will drive users away from the futures markets. That will expose them to even more risk in a very volatile marketplace. That risk could result in feedlots, stockers, and cow/calf operations losing vast amounts of money and possibly shutting down.

Thank you for your consideration of our comments. If you have any questions, please contact Colin Woodall, NCBA's Vice President of Government Affairs, at 202-347-0228 or cwoodall@beef.org

Sincerely,

Scott George
President