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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:

Texas Cattle Feeders Association (TCFA) is an agricultural trade association representing 200 beef cattle feedyards in Texas, Oklahoma and New Mexico and approximately 5,000 cattle feeders across the United States. TCFA members feed and market around 6.5 million head of cattle annually, which equates to about 30 percent of the nation's fed beef production. TCFA members routinely use commodity futures as a risk management tool, but recent failures within the futures industry have generated significant concern regarding the safety of customer funds.

TCFA appreciates the opportunity to submit comments regarding the proposed rule "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations" (RIN 3038-AD88). TCFA strongly supports additional protections for futures customers; however, we also recognize that added protections have the potential to cause unintended consequences, such as added costs eventually borne by customers.

In particular, TCFA has 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 amendment 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, and any increase in cost given the current state of the U.S. beef industry could be devastating. TCFA sees no need to eliminate the three-day requirement, especially since the most recent failures of large FCMs were not caused by a customer's margin deficiency.

An even bigger concern is the expectation that FCMs will require their customers to maintain excess funds with their broker in order to fulfill 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 operation or cow/calf operation. The proposed changes to rule 1.20(i)(4) and 1.22(a) also are concerning because they will lead to a “pre-funding” situation.

The lack of input solicited by the Commodity Futures Trading Commission (CFTC) in preparation of this rule is also troubling. The cattle industry was not invited to participate in any outreach sessions or stakeholder discussions by the CFTC. In fact, the CFTC was so guarded about this proposed rule that the original comment deadline came with the vast majority of the cattle industry not even knowing about the rule. Only after a last-ditch effort to secure an extension were we able to review the rule and get input from our members.

TCFA is 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 result in real protection. However, this rule does not provide the enhanced protections its name implies and instead will make it more difficult and costly for cattle producers to manage risk. The added financial burden of “pre-funding” margin accounts will drive users away from the futures markets, exposing them to even more risk in a very volatile marketplace.

Given the stated concerns and the lack of opportunity to contribute during preparation of the proposed rule, TCFA requests that the CFTC abandon this rule and start the process over by first convening workgroups of FCM customers and other stakeholders to gather information on actual needs and concerns.

Thank you for considering these comments. If you have any questions or need additional information, please contact Josh Winegarner, TCFA Director of Government Relations, at (806) 358-3681 or josh@tcfa.org.

Sincerely,

Walt Olson

Walt Olson
Chairman