

July 25, 2013

Ms. Melissa Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
secretary@cftc.gov

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

Dear Ms. Jurgens:

The Joint Audit Committee (“JAC”), a representative committee of the Audit and Financial Surveillance departments of U.S. futures exchanges and regulatory organizations, would like to take this opportunity to provide follow-up comments on the proposed new and amended regulations regarding enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (“FCMs”). The importance of these proposed enhancements and their impact to the futures industry cannot be overstated. To that end, we ask the Commodity Futures Trading Commission’s (“Commission” or “CFTC”) to not only carefully and fully consider the comment letters received on the proposals but to reach out to the industry including regulators, exchanges, FCMs, and end user customers for further discussion.

As part of industry meetings including that of the Joint Audit Committee, the Intermarket Financial Surveillance Group, and AICPA Stockbrokerage and Investment Banking Expert Panel, we appreciate the updates and feedback the JAC has received with regards to the proposed amendments to §1.52.

While we are fully committed to enhancing the risk based examination process and the overall financial surveillance of FCMs, based on these discussions we continue to have significant concerns with the proposals as outlined in our original comment letter of February 14, 2013. We ask the Commission to fully consider all the comments within our original comment letter

and would like to restate and emphasize in brief the following comments with regards to the proposed amendments to §1.52.

Comprehensive Oversight without Duplication of Work

The risk based examinations performed by Designated Self-Regulatory Organizations ("DSROs") are compliance reviews focused on the particular and distinctive regulatory requirements and associated risks of the futures industry. We review the internal controls to determine whether they are effective through substantive testing of customer and capital balances and compliance programs. Our risk based examinations are not audits and an opinion on the financial statements is not rendered. Thus the explicit adoption of Generally Accepted Auditing Standards ("GAAS") developed by the Auditing Standards Board of the American Institute of Certified Public Accountants and auditing standards as prescribed by the Public Company Accounting Oversight Board ("PCAOB") is inappropriate for DSRO regulatory reviews.

Public accounting and auditing firms already perform audits of FCMs assessing the internal controls utilized in the preparation of the financial statements and base their materiality levels to the firm overall. They perform their audits utilizing GAAS and the standards prescribed by the PCAOB, as applicable, and issue an opinion on the financial statements as a whole.

This structure in place today allows the regulatory examiners to concentrate on the specific requirements and risks discretely related to the futures industry, their area of expertise, and the public accounting auditors to focus on the internal controls of the firm and the financial statements as a whole, their area of expertise. Currently regulatory examinations and public accounting firm audits complement one another and lead to stronger and more comprehensive oversight while avoiding duplication of work. Further, by applying GAAS and the standards of the PCAOB to the regulatory examination process, work is duplicated and costs rise without a corresponding increase in the effectiveness of the review program.

Proactive Discussions with Auditing Firms and Avoidance of Redundant Work

In the proposed new regulations, the engagement of an examination expert to review the JAC Programs and their implementation at least bi-annually is put forth. The review will require the examination expert to assess the sufficiency of the JAC's risk-based approach and the internal controls testing and also whether the supervisory program is being appropriately applied by the DSRO in its examinations of FCMs. It is important to note that the CFTC already reviews the JAC Programs and has input into their development. Further, the Commission currently performs reviews of the DSRO's risk based examinations of FCMs on a continuous basis. As such, we feel the engagement of an examination expert is redundant to what the Commission already does today. We believe that the Commission holds the expertise relative to the futures industry based on its years of experience regulating the industry and is best placed to review the JAC programs and their implementation. In contrast, public accounting and auditing firms are not exclusively focused on the futures industry and its unique regulations, particularly in the

areas of customer protection. Consequently there does not appear to be added benefit to be gained in relation to the significant cost of engaging an examination expert.

Rather than engage an examination expert after the fact to perform a function already being performed by the CFTC, we would like to proactively invite representatives from nationally recognized accounting and auditing firms to attend our JAC meetings wherein our programs are reviewed and discussed. At such time, the accounting and auditing firm representatives can present new and best practices as detailed in the proposed rulemaking which can be considered and potentially included in the amended JAC Programs for the upcoming year. In this way an interactive and continuous discussion between the regulatory examiners and the public auditors can be achieved to better understand the risks at our FCMs and how they may best be identified and examined.

Significant Expansion of Risk Based Examinations Changing their Role

While we acknowledge that it is essential that policies and procedures over customer funds and their protection be part of risk based examinations of FCMs as they are today, proposed §1.52(d)(2)(ii)(A) requires the incorporation of the full and extensive risk management requirements of §1.11 to be reviewed during examinations of FCMs. Further, §1.52(d)(2)(ii)(E) in part requires the JAC Program to “**address all areas of risk to which registered futures commission merchants can reasonably be foreseen to be subject**”. Such an overly broad requirement is impractical and virtually impossible to meet. The additional expertise, time and resources needed to perform such a review would be extensive and add significant costs to the regulatory review programs. For instance, an examination of the controls and risk management policies and procedures over an FCM’s technology systems would require particular expertise very different from the knowledge and expertise of regulatory staff; thus necessitating the hiring of a specialized team of examiners. The regulatory examination process is designed to ensure FCMs are in compliance with customer regulations and net capital requirements to protect customers and the functioning of the futures industry; not to be a guarantee of an FCM’s entire operation. Consequently we request the Commission to remove the requirement that DSROs have an examination program that addresses “all areas of risk to which registered futures commission merchants can reasonably be foreseen to be subject” and only require within the examination program the review of compliance with customer protections and capital requirements.

Further much of the review of an FCM’s risk management policies and procedures are required of Designated Clearing Organizations (“DCOs”) under §39.13(h)(5) which states that “[a] derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members....” While we realize that the goals of JAC and DCO risk reviews are not perfectly aligned, the language of the relevant regulations appear to require significantly overlapping examinations at best and potentially duplicative examinations at worst, depending on regulatory interpretation. Absent further clarification (and potentially a carve out of certain types of risk management from DSRO review requirements), the language in

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§39.13(h)(5) and §1.52(d)(2)(ii)(E) will result in duplicative work by DSROs and the risk management function of DCOs. Not only is this duplication of work unnecessary, but it also appears to be in opposition to the CFTC's obligations under Section 15(a) of the Commodity Exchange Act to consider the costs and benefits of its actions before promulgating a new regulation. The cost/benefit issue is particularly acute in this circumstance since there are minimal, if any, benefits to the review of FCM risk management by both a clearing member's DSRO and DCO risk management staff and the costs to building out a new team with discrete risk management expertise at DSROs would be extremely expensive. At a minimum we request the Commission to at least clarify that there is no obligation for duplicative reviews of "risk management policies, procedures, and practices" by DSRO and DCO risk management staff as having both review the same policies and procedures is redundant and an inefficient use of resources.

Absence of Thorough Cost/Benefit Analysis

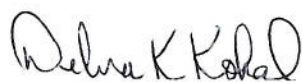
As noted in the proposed rulemaking, the "Commission does not have adequate information to estimate the ongoing costs for biennial reviews by an examinations expert, or the incremental costs of additional controls testing or ongoing compliance with standards that the FCMs develop pursuant to §1.52(c)(2)(iii)." A thorough analysis of the costs of the proposed requirements and additional work, which in many cases are duplicative, is required to ensure a balance is maintained between the added costs to the industry, which ultimately will flow to the end users of our markets, and the benefits to be derived.

The JAC strongly believes that the rules, as proposed, provide for unnecessary duplication of work and are overly broad and subject to interpretation. To ensure full compliance and strong customer protections, specificity is critical and we welcome the opportunity to work with the Commission to provide the details necessary.

The JAC continuously enhances its review programs and will continue to do so going forward. We thank Commission for the opportunity to provide follow-up comments on these significant proposed rule changes and are fully committed to working with the CFTC and industry to enhance customer protections.

If you have any questions or comments, feel free to contact me at (312) 930-3235 or debbie.kokal@cmegroup.com.

On Behalf of the Joint Audit Committee,



Debra K. Kokal
Chairman

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cc: Honorable Gary Gensler, Chairman
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Honorable Mark Wetjen, Commissioner

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