



Building a better  
working world

Ernst & Young LLP  
5 Times Square  
New York, NY 10036

Tel: +1 202 327 6834  
Fax: +1 866 869 0338  
ey.com

24 November 2014

Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, D.C. 20581

**RE: Proposed Rule Regarding Proceedings Before the Commodity Futures Trading Commission; Rules Relating to Suspension or Disbarment From Appearance or Practice, RIN No. 3038-AE21**

Dear Mr. Kirkpatrick:

Ernst & Young LLP (EY) is pleased to comment on the CFTC proposed amendment to Section 14.8 of its regulations to provide additional guidance with respect to suspension or disbarment proceedings.

We support the adoption of the amendment. We believe it would be helpful for accountants practicing before the CFTC to have, as the rulemaking release states, "the benefit of prominent notice of the specific standards of conduct to which they are held, and the consequences of failing to meet them." Adopting a rule that is modeled after SEC Rule 102(e), which would be the case with respect to the proposed amendment, strikes us as a reasonable approach given the lengthy history and background to the SEC's rule.

We note in this regard that the SEC began rulemaking efforts in this area in the late 1990s, at a time when there was uncertainty as to whether the SEC's rule could sanction accountants for negligent, as opposed to intentional, misconduct. EY urged the SEC to adopt what later became the SEC's final rule, adopted in 1998.<sup>1</sup> It was our position then, and continues to be our view today, that accountants who demonstrate a pattern of repeated failure to comply with professional standards should be subject to the risk of regulatory sanctions. We point out this historical background to emphasize our longstanding backing of regulatory involvement in the sanctioning of professionals and also to endorse the CFTC's proposed adoption of a standard that would require a showing of repeated unacceptably negligent conduct in order for a sanction to be entered. As the rulemaking release states, "[a] single judgment error, for example, even if unreasonable when made, may not indicate a lack of competence to practice before the Commission sufficient to require Commission action."

It also should be noted that, while the SEC and the CFTC unquestionably have an important and continuing role to play with respect to the disciplining of accountants, much has changed since the

---

<sup>1</sup> See EY Comment Letter, Proposed Amendment to Rule 102(e) of the Commission's Rules of Practice, File No. S7-16-98 (August 20, 1998).

SEC adopted its rule in 1998. The Sarbanes-Oxley Act established the PCAOB, and the accounting firms are now regulated entities. The PCAOB has contributed significantly to the goal of improved audit quality through its inspections, its new auditing standards, and its own enforcement actions. Also, the PCAOB and the SEC have made efforts to avoid conducting duplicative or overlapping investigations; we appreciate such continued efforts by all federal regulators.

In sum, we urge the adoption of the proposed amendment. If the Commission or its Staff has any questions about our views please feel free to contact us.

Respectfully submitted,

*Ernst + Young LLP*

EY