

August 28, 2018

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581  
Via CFTC Portal: <https://comments.cftc.gov>

RE: RIN 3038-AE73  
Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations

Dear Mr. Kirkpatrick:

The Joint Audit Committee ("JAC"), a representative committee of Audit and Financial Surveillance Departments of U.S. futures exchanges and regulatory organizations, appreciates the opportunity to comment on the proposed amended regulations regarding the financial surveillance examination program requirements for self-regulatory organizations ("SROs").

Customer protection is the cornerstone of the futures industry and it continues to be critical to ensure that the protections afforded under the customer protection regimes are as strong as they can be for market participants. The JAC, through its SROs, operate a supervisory program which includes the examination of its Futures Commission Merchant ("FCM") members to assess the member registrants' compliance with Commission regulations and SRO rules. As required under the regulations, the JAC uses FCM examination standards approved by the Commission to effectively executed its supervisory program and regulatory examinations.

While the JAC is fully supportive of the proposed amended regulations, we offer the following comments for consideration:

We strongly agree with the Commission's proposal to amend the regulation so that the examination expert's evaluation is revised and limited to recent changes to the Public Company Accounting Oversight Board ("PCAOB") standards which could affect the FCM examination standards. The JAC believes Commission staff to be subject matter experts and are best suited to evaluate, comment and make recommendations on enhancements to our supervisory program and its application against the Commission's own regulatory requirements. Requiring the examination expert to focus on recent changes to the PCAOB auditing standards, an area of their expertise, and their potential impact to the FCM examination standards may provide additional enhancements to our supervisory program.

The Commission has specifically requested comment on the proposed timeframe of five years for the evaluation by the examination expert. While the JAC supports the practical approach in extending the timeframe beyond the current 3-year period, the JAC requests the Commission consider a 10-year timeframe given the infrequency with which PCAOB standards are modified or adopted and, even more rarely, those that would apply to a "non-financial audit". Since the approval of the FCM examination standards by the Commission, the Securities and Exchange Commission ("SEC") has only approved two amendments to the PCAOB auditing standards<sup>1</sup>, neither of which pertained to a non-financial audit.

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<sup>1</sup> Since October 2015, the SEC approved amendments to PCAOB auditing standards pertaining to an Auditor's Report on an Audit of Financial Statements when the Auditor Expresses an Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards on October 23, 2017; and it approved amendments Requiring Disclosure of Certain Audit Participants on a New PBAOB Form and Related Amendments to Auditing Standards on May 9, 2016.

A safeguard exists in the proposed regulation which requires the JAC to review any new or amended PCAOB auditing standards and “promptly” make appropriate revisions to the FCM examination standards, if necessary, and engage an examination expert. The JAC believes this proposed language provides an affirmative and ongoing responsibility on it to promptly update the standards, as necessary, regardless of the timeframe adopted. In any event, if the JAC does not believe revisions or an examination expert evaluation is necessary, the Director of the Division of Swap Dealer and Intermediary Oversight (“DSIO”) can direct the JAC to engage an examination expert at any time.

The JAC also requests the Commission consider amending the existing regulation to allow the Director of DSIO to grant a waiver of any required examination expert evaluation upon a petition by the JAC or an SRO. As both Commission and JAC staff routinely participate in discussions pertaining to upcoming PCAOB amendments and adoptions, both are knowledgeable of and able to identify upcoming changes that would, or would not, affect the FCM examination standards. Therefore, the ability of the Director to grant a waiver is a cost and resource-efficient option when no changes to the FCM examination standards are clearly warranted.

The JAC also requests the Commission consider eliminating the requirement for any examination expert’s evaluation in future rulemaking. Commission and JAC staff are in continuous dialogue, both are participants in the AICPA Stockbrokerage and Investment Banking Expert Panel and regularly engage in industry discussions providing knowledge of best practices which could enhance the examination process and its effectiveness. It should be noted that the adopted FCM examination standards specifically require that the training of the examiner include a review of developments in the industry as “related to examination techniques and standards”.

In conclusion, the JAC supports the Commission’s proposal to revise the scope of the examination expert’s evaluation to any modified or new PCAOB standards as they may affect the FCM examination standards but requests the Commission consider a longer timeframe for such review and provide that the Director of DSIO may grant a waiver as to the timing of any evaluation.

The JAC also respectfully requests the Commission consider the following for amendment or future rulemaking as it pertains to Regulation 1.52.

1. The JAC requests that the Commission confirm that if an interim examination expert evaluation is required due to amended or new PCAOB auditing standards which require the JAC to promptly engage the examination expert or if it is directed to do so by the Commission, it would reset any time-line for the next required examination expert evaluation.
2. Generally, the regulation indicates that all aspects of the supervisory program, including the FCM examination standards, must conform to auditing standards issued by the PCAOB “as such standards would be applicable to a non-financial audit”. The JAC requests the Commission confirm that when auditing standards of the PCAOB are referenced in this regulation, it is the standards that would be applicable to a non-financial statement audit.
3. Commission Regulation 1.52(d)(2)(iii)(B)(6) (proposed Regulation 1.52(d)(2)(iii)(B)(3)) provides that the JAC members must consider issuing risk alerts for their Designated Self-Regulatory Organization (“DSROs”) examiners on an as-needed basis as issues arise. Best practice and the FCM examination standards require an DSRO’s examiners to have adequate technical training and proficiency which makes this wording unnecessary in the regulation and, as such, the JAC requests that it be eliminated. The JAC fully supports and recognizes the value in issuing alerts for FCMs on an as-needed basis for industry issues.

4. Commission Regulation 1.52(d)(2)(ii)(E) requires the JAC's supervisory program to, among other requirements, "address all areas of risk to which the futures commission merchant can reasonably be foreseen to be subject". The JAC continues to believe such an overly broad requirement is impractical and should be amended. The regulatory examination process is designed to assess FCM compliance with customer regulations and net capital requirements to protect customers and the functioning of the futures industry. In addition, the regulation also requires the duplication of work performed by Derivatives Clearing Organizations and public auditors over the risk management practices and procedures required of the FCM.

We thank the Commission for proposing effective and cost-efficient amendments to the regulations regarding the engagement of an examination expert and the scope of its review. We are fully committed to working with the CFTC to enhance the regulatory surveillance and examination process.

If you have any question of comments, feel free to contact me at (312) 930-3235 or [debbie.kokal@cmegroup.com](mailto:debbie.kokal@cmegroup.com).

On Behalf of the Joint Audit Committee,



Debra K. Kokal  
Chairman

cc: Honorable J. Christopher Giancarlo, Chairman  
Honorable Rostin Behnam, Commissioner  
Honorable Brian D. Quintenz, Commissioner

Mr. Matthew Kulkin, Director, Division of Swap Dealer and Intermediary Oversight  
Mr. Thomas Smith, Deputy Director, Division of Swap Dealer and Intermediary Oversight