



July 13, 2020

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

RE: RIN 3038-AE67, “Part 190 Bankruptcy Regulations”

Dear Mr. Kirkpatrick:

The National Grain and Feed Association (NGFA) appreciates the opportunity to comment on this rulemaking by the Commodity Futures Trading Commission (CFTC) that updates the Commission’s Part 190 Bankruptcy Regulations. As noted in the proposal, this is the first comprehensive revision of Part 190 since 1983, and the NGFA commends CFTC for this needed response to significant changes in the marketplace, especially the vastly increased speed of transactions and trade processing as well as the sheer size of the U.S. futures marketplace.

The NGFA is the national nonprofit trade association representing more than 1,000 companies that operate an estimated 7,000 – 8,000 facilities nationwide in the grain, feed, processing, and export industry. Member firms range from small country elevators to very large multinational companies; are organized as cooperatives, privately-owned, and publicly traded; and handle or process an estimated 80% of all U.S. grains and oilseeds annually. NGFA-member companies include grain elevators, feed mills, flour mills, oilseed processors, biofuels producers/co-product merchandisers, futures commission merchants and brokers, integrated livestock operators, and many other related commercial businesses. NGFA also consists of 33 affiliated state and regional agribusiness associations and has strategic alliances with the North American Export Grain Association and the Pet Food Institute.

### **Complement to Customer Protections**

The NGFA’s member companies rely heavily on grain and oilseed futures markets to manage their business risk and, in turn, to have the confidence to offer highly competitive bids to their farmer-customers for wheat, corn, soybeans and other products. Futures commission merchants (FCMs) serve the role of placing orders and executing the trades on commodity exchanges that

underpin the industry's highly developed hedging and risk management practices. A healthy and thriving FCM sector is critically important to NGFA's member firms.

That importance was dramatically underscored in 2011 when MF Global went bankrupt, followed by the insolvency of Peregrine Financial Group in 2012. Especially in the case of MF Global, many agribusiness hedgers had significant funds held by MF Global that immediately became at-risk when the firm imploded. Customers who previously had believed that holding funds at their FCM was nearly perfectly safe quickly discovered that was not the case. While virtually all customer funds eventually were returned to customers, the process dragged on for months, a period during which large amounts of segregated customer funds that had been held by MF Global on behalf of its customers were unavailable. The entire episode illustrated the importance to customers of sound, consistent bankruptcy regulations and procedures.

This proposal reinforces and codifies a number of principles that are absolutely necessary for the purpose of protecting customers' segregated funds. It syncs up elements of CFTC's Part 190 regulations with the Commodity Exchange Act, the U.S. bankruptcy code and other regulations. Importantly, the proposal also serves as a complement to customer protection rules put in place by the Commission in the wake of MF Global and Peregrine. The NGFA was deeply involved in helping to develop and refine such customer protections and appreciates the CFTC's continuing efforts through updates to its bankruptcy regulations.

### **NGFA-Supported Principles**

In the case of an FCM insolvency, the NGFA believes strongly that priority should be placed on policies and procedures that will minimize potential for business disruption and also minimize the amount of time before public customers have full access to their segregated funds. The following elements of the proposal seem consistent with that philosophy:

- Shortfalls in segregated customer property should be recoverable from general assets of the FCM. This was an issue during the MF Global insolvency. Even though the trustee eventually was able to claw back significant assets from affiliates and proprietary business units, it took a very long time. The NGFA is supportive of changes that support quicker return of customer property and clarify various sources from the debtor's estate from which funds can be accessed.
- Priority should be given to public customers over non-public customers as customer property is recovered and distributed on a *pro rata* basis by account class, consistent with the proposal.

Mr. Christopher Kirkpatrick  
July 13, 2020  
Page 3

- The proposal also strengthens an existing preference for prompt transfer of customer accounts and positions to another FCM as opposed to liquidating customer accounts.

### **DCO Bankruptcy**

While an insolvency of a designated clearing organization (DCO) affecting the grain, feed and processing industry is very difficult to fathom, the NGFA commends the CFTC for this initial effort to establish policies and procedures in that unlikely event.

### **Conclusion**

In summary, the NGFA appreciates the Commission's efforts to craft a practical and pragmatic update of Part 190 bankruptcy regulations that continues to build on previous customer protections. We would be happy to discuss our comments or answer any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "MJ Anderson".

MJ Anderson  
Chairman, Risk Management Committee