



April 1, 2024

Submitted via CFTC Comments Portal

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

**Re: Operational Resilience Framework for Futures Commission Merchants,
Swap Dealers, and Major Swap Participants (RIN 3038-AF23)**

Dear Mr. Kirkpatrick,

The Futures Industry Association (“FIA”)¹ welcomes the opportunity to comment on the Commodity Futures Trading Commission’s (the “CFTC” or the “Commission”) rule proposal for requirements for an Operational Resilience Framework (the “ORF”) for Futures Commission Merchants (“FCMs”), Swap Dealers (“SDs”), and Major Swap Participants (“MSPs”) (the “Proposal”).²

FIA submits this comment on behalf of its members, with particular concerns regarding aspects of the Proposal that impact FCMs noted. FIA is aware that the Securities Industry and Financial Markets Association (“SIFMA”) and the Institute of International Bankers (the “IIB”) (and, together with SIFMA, the “Associations”) are also submitting a comment on the Proposal (hereinafter, the “Associations’ Letter”). FIA aligns with and supports the recommendations in the Associations’ Letter as those recommendations relate to FCMs.³ FIA is also aware that National Futures Association (“NFA”) is submitting a comment on the Proposal, which FIA also supports.

¹ FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA’s mission is to support open, transparent, and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

² Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, 89 Fed. Reg. 4706 (Jan. 24, 2024) [hereinafter *Proposing Release*].

³ The Proposal recognizes that “[a]s proposed, the regulatory text of the ORF rule for swap entities is nearly identical in structure and substance to the ORF rule for FCMs.” *Proposing Release*, at 4711.

I. Executive Summary

FIA welcomes the Commission's collaborative approach with this Proposal and recommends that any future changes go through a Notice of Proposed Rulemaking and Comment process to further take into account stakeholder views, including FCMs, which represent CFTC registrants that vastly differ in terms of their size, resources, risk profile and the complexity of their business activities.⁴

FIA appreciates the efforts of the Commission to strengthen operational resilience across the market and within FCMs. FIA believes that, where FCMs fit within larger organizations and have existing requirements impacting them, including on cybersecurity and operational resilience, such existing requirements should be leveraged. These existing requirements may consist of an enterprise-level framework of standards, laws, rules or regulations from other jurisdictions or international standard-setting bodies with requirements comparable to those proposed by the CFTC. As noted above, FCMs are not uniform in terms of size, resources and placement within an organization, which heightens the need for a flexible, risk-based rule.

FIA is concerned, therefore, that parts of the Proposal undermine the Commission's objective to create a truly principles-based rule on operational resilience, guided by proportionality and adopting a risk-based approach. Instead, the Proposal includes certain prescriptive elements that would create a framework that diverts risk management resources and attention from areas that represent bona fide or heightened risk to an FCM. Where the Proposal is prescriptive, there is risk that it may apply uniformly to all FCMs and be agnostic to their differences. This presents unnecessary challenges for the FCM community, and, in particular, may place a disproportionate burden on small or regional FCMs or FCMs that do not hold customer funds, which may have more limited resources and divergent risk profiles, and, in the case of FCMs that do not hold customer funds, are currently subject to different requirements under existing CFTC regulations.⁵ FIA also notes that the futures industry has experienced a decline in

⁴ The FCM population ranges, for example, in size (from small or regional FCMs to FCMs that are bank-owned) and in business activities.

⁵ For instance, CFTC regulations like 17 CFR § 1.11 or 17 CFR § 1.73 (rules that center on risk management programs) do not apply to non-clearing FCMs or FCMs that do not hold customer funds. Similarly, 17 CFR § 1.20 and 17 CFR § 1.23 (rules that center on customer funds segregation and mitigating fellow customer risk) do not apply to FCMs that do not hold customer funds and only engage in proprietary trading and/or facilitate the proprietary trading of affiliates.

the number of FCMs,⁶ that we believe is, in part, due to rising costs of regulatory compliance post–Dodd Frank.

Therefore, FIA’s recommendations are designed to help the Commission ensure flexibility in the Proposal in the areas that enhance operational resilience. As described more fully in Section II below, FIA offers the following recommendations and considerations on the Proposal as it pertains to FCMs:

- A. The Commission should remove the annual cadence for risk assessments under proposed 17 CFR § 1.13(d)(1) to allow FCMs to determine the appropriate cadence based on the FCM’s size, resources, risk profile and the complexity of its business.
- B. The Commission should not include a recovery time objective for Business Continuity and Disaster Recovery (“BCDR”) plan requirements.
- C. The Commission should apply a proportionate approach to its requirements where certain prescriptive requirements are not possible or necessary given the FCM’s size, resources, risk profile and the complexity of its business.

Additionally, FIA wishes to reiterate and emphasize certain recommendations in the Associations’ Letter for the Commission’s consideration. These recommendations, described more fully below in Section III, include:

- A. The Commission should revise or add certain defined terms, as detailed below in Section III.A. and in Appendix 1.
- B. The Commission should provide greater flexibility for registrants that seek to rely on an enterprise-wide or consolidated program (used interchangeably herein) to satisfy the ORF requirements under proposed 17 CFR § 1.13(c)(4)(ii).
- C. The Commission should remove the requirement that testing be done by an independent party. Alternatively, the Commission should clarify that reviews and testing “may include” independent personnel, and strike “conducted by” to make clear that individuals and teams involved with particular aspects of the ORF can also participate in reviews and testing.
- D. The Commission should modify the definition of “critical third-party service providers” to shift the focus of criticality from the provider level,

⁶ CFTC, Market Risk Advisory Committee Meeting (Dec. 11, 2023), available at https://www.cftc.gov/media/9876/mrac_meetingslides121123/download.

i.e., the third-party service provider, to the actual service that is provided by the third party.

- E. The Commission should take the view and clarify that, for FCMs that rely on a consolidated third-party relationship program, such FCMs would not be required to separately identify the services and providers that an FCM uses as long as the enterprise-wide inventory covers services and providers used by the FCM.
- F. The Commission should reconsider the six-month implementation period and instead provide a tiered implementation approach across a two-year time line, with extended time frames for requirements that covered entities would be unable to implement either at all or meaningfully within the proposed time frame, and to accommodate the substituted compliance determination process.

II. FIA's Recommendations

- A. Remove the Prescriptive Risk Assessment Cadence within the Information and Technology Security Program

The Proposal requires FCMs “to conduct and document the results of a comprehensive risk assessment” and further specifies that FCMs perform such risk assessment “at least annually.” Proposed 17 CFR § 1.13(d)(1). The Proposal fails to account for the fact that additional testing may be done at the enterprise level, rather than at the FCM level. As such, FIA is concerned that the Proposal’s annual cadence is a departure from current practice, where many FCMs conduct risk assessments on a cadence set at least in part at the enterprise level. Moreover, the Proposal’s annual cadence for risk assessments is misaligned with other regulatory and industry requirements, such as the NFA’s Interpretive Notice 9070, which imposes on FCMs a “supervisory obligation to assess and prioritize the risks associated with the use of information technology systems” but does not provide a prescriptive cadence.⁷

Given these concerns, FIA urges the Commission to bring the Proposal more in line with its risk-based objectives and remove the annual cadence requirement. Allowing FCMs to focus on risk assessments at intervals related to an organizations’ risk profile will ensure greater emphasis at the right time, as opposed to a risk assessment that serves to check a box. Removing the annual cadence will also reduce the likelihood of conflicts

⁷ NFA Interpretive National Futures Association, Interpretive Notice to NFA Compliance Rules 2-9, 2-36 and 2-49, available at <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=9070&Section=9> [hereinafter *NFA Interpretive Notice 9070*].

within the risk assessment process between an FCM and the larger enterprise to which it belongs.

B. Maintain a Flexible Recovery Time Objective within the BCDR Plan⁸

The Proposal notes that, under current 17 CFR § 23.603, swap entities are required to “establish and maintain a BCDR plan that is designed to enable the swap entity to continue or resume any operations ‘by the next business day’ with minimal disturbance to its counterparties.”⁹ However, noting that “such a standard may pose some challenges,” the Commission decided to not include a recovery time objective in the BCDR plan requirements. Instead, the Proposal requires FCMs to establish a BCDR plan that allows for sufficiently exigent recovery so as to impose “minimal disruption” to customers, counterparties or the markets. Proposed 17 CFR § 1.13(f)(1).

FIA is supportive of the Commission’s decision to not include an FCM recovery time objective and urges the Commission to stand by its decision. A prescriptive 24-hour or next-business-day approach would be overly burdensome on FCMs and would not achieve a risk-based approach to BCDR because it would deny FCMs the ability to assess the unique circumstances of and risks from particular operational disruptions. Additionally, a strict recovery time objective tethered to the language “resume any operations” used in current 17 CFR § 23.603 may preclude compliance with the recovery provision where an FCM resumes a minimal viable product but not the full service, as in that case, the entity would not yet have resumed all operations, while nevertheless adhering to operational resilience principles by providing a service in a different way, or by relying on a substitutable option available on the market, during a period of disruption.

C. Provide Greater Flexibility for FCMs to Assess Provisions on a Risk-Based and Proportionate Approach

FIA is concerned that the Proposal includes many prescriptive elements that would be unduly burdensome for FCMs. For example, the Proposal requires an annual cadence for many obligations in addition to senior management involvement, sign-off and escalations for a broad range of relatively minor incidents.¹⁰ Many of the Proposal’s

⁸ FIA notes the Commission’s use of “programs” in connection with operational resilience and third-party risk management and “plan” in connection with BCDR. Depending on the size and scale of the FCM, BCDR provisions may operate across several programs, and there may be multiple BCDR “plans” within an overarching “program” or “programs.” FIA finds that the use of “program” provides greater flexibility, and joins the Associations in urging the Commission to adjust references from BCDR plans to BCDR programs.

⁹ *Proposing Release*, at 4727.

¹⁰ *See, e.g.*, proposed paragraphs (c)(1) (requiring senior management or oversight body approval of each component program or plan at least annually), (c)(2)(ii) (requiring risk appetite and risk tolerance limits to be reviewed and approved in writing at least annually), (d)(1)(ii) (requiring an

requirements are similar to, but differ slightly from, other regulatory requirements to which certain FCMs are subject and will require separate compliance resources and processes without necessarily producing a net benefit in operational resilience outcomes.

For example, Interpretive Notice 9052 lays out certain compliance guidelines on business continuity and disaster recovery for FCMs, including that FCMs should back up or copy “essential documents and data.”¹¹ The Proposal includes a similar requirement that FCMs “identify any resources, including covered technology ... and establish and maintain procedures and arrangements to provide for their backup.” Proposed 17 CFR § 1.13(f)(2)(ii). While both Interpretive Notice 9052 and the Proposal generally require back ups, the Proposal ties this requirement to a broad definition of “covered technology,” which will require a separate and significant compliance workstream to identify resources that stretch beyond what Interpretive Notice 9052 describes as “essential documents and data” without a clear sense of the corresponding gains to operational resilience.

Further, these requirements may place a disproportionate strain on small or regional FCMs and FCMs that do not hold customer funds and may directly conflict with the organizational approach at FCMs that are part of a larger organization. These groups in particular would benefit from additional flexibility in the Proposal to apply a proportionate and risk-based approach to implementing the obligations. First, small or regional FCMs may have more limited resources that may already be stretched to comply with existing requirements related to information and technology security, business continuity and disaster recovery, and third-party relationships.¹² Second, FCMs that do not hold customer funds should be provided with more flexible options in implementing the ORF’s requirements because they have different risk profiles than FCMs that hold customer funds and are subject to different requirements under existing CFTC regulations

independent risk assessment at least annually) and (g)(2) (requiring FCMs to provide and update training at least annually). Additional prescriptive requirements, such as independence in reviewing and testing and specific personnel responsible for certain roles, compound these challenges for small FCMs.

¹¹ National Futures Association, *Interpretive Notice to Compliance Rule 2-38: Business Continuity and Disaster Recovery Plan*, available at <https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=9052&Section=9> [hereinafter *NFA Interpretative Notice 9052*].

¹² For example, under NFA Interpretive Notice 9070, FCMs must adopt and enforce a written ISSP, along with adhering to additional guidance on security and risk analysis, protective measures, incident response and recovery, NFA notifications, ISSP reviews, third-party service providers and recordkeeping. NFA Interpretive Notice 9052 further requires FCMs to adopt a business continuity and disaster recovery plan, while Interpretive Notice 9079 dictates certain third-party service provider requirements. National Futures Association, *Interpretive Notice to Compliance Rules 2-9 and 2-36*, available at <https://www.nfa.futures.org/rulebooksql/rules.aspx?Section=9&RuleID=9079>.

(for example, CFTC Rules 1.11 and 1.73 do not currently apply to such FCMs). Finally, FCMs that are part of a larger organization are likely to run into conflicts in implementing the variety of prescriptive requirements around, in particular, risk assessments, testing and third-party risk management, as those are all areas where the broader enterprise is likely to manage such requirements, set cadences and prescribe internal processes.

As such, FIA urges the Commission to provide greater flexibility for FCMs by ensuring requirements are applied on a proportionate and risk-based basis. This would be done in a way that is consistent with the NFA requirements for Information Systems Security Programs (“ISSP”) under Interpretive Notice 9070, which provides that, “given the differences in the type, size and complexity of [NFA] Members’ businesses ... Members must have an appropriate degree of flexibility to determine how best to diligently supervise information security risks.” Additionally, other regulatory bodies have taken this approach. For example, in FINRA Rule 3110, regulated entities may determine that compliance with certain provisions is not possible “because of the member’s size” or another practical impediment to compliance.¹³ In such circumstances where a regulated entity finds that it cannot comply with a prescriptive requirement, the entity must document (1) the factors it used to reach such determination and (2) how it otherwise complies with the requirement. Similarly, the Commission’s Risk Management Program (“RMP”) for FCMs provides flexibility in that FCMs must *account for*, but need not adopt, policies and procedures for every risk enumerated under 17 CFR § 1.11(e), thereby deferring to the FCMs to determine if they need to develop policies and procedures for certain enumerated risks.¹⁴

Specifically, FIA recommends that the Commission include in the Proposal a provision that allows FCMs to determine, on a provision-by-provision basis, the feasibility of the ORF’s requirements.¹⁵ For example, an FCM may determine that, due to the volume and nature of its business activities, it would not be necessary to conduct a risk assessment under proposed paragraph (d)(1)(ii) at an annual cadence. In that case, the FCM would document its determination and, in doing so, would explain how it is otherwise complying with the risk assessment requirement outside of the prescriptive

¹³ FINRA Rule 3110(b)(6)(C)(ii)(a).

¹⁴ 17 CFR § 1.11(e)(1)(i), (e)(3) (providing that an FCM’s RMP must account for market risk, credit risk, liquidity risk, foreign currency risk, legal risk, operational risk, settlement risk, segregation risk, technological risk, and capital risk, but also that the FCM’s RMP include policies and procedures addressing other specific risk management considerations for segregation, operational, and capital risks).

¹⁵ FIA urges the Commission to consider including such a provision, whether or not it retains certain prescriptive requirements referenced in this letter and the Associations’ Letter.

annual cadence.¹⁶ The Commission may make such documentation subject to retention and production requirements under existing 17 CFR § 1.31. Similarly, an FCM may determine that, due to its limited size and resources, it may not be practical to conduct an annual penetration test under proposed paragraph (h)(2)(i)(C). Again, the FCM would document its determination and explain how it is otherwise complying with the testing requirement, including the date of its most recent penetration test and/or plans for a forthcoming penetration test.

Additionally, FIA believes that the Commission can clarify the Proposal’s ORF standard to help small FCMs scope their ORFs. Currently, the Proposal provides that an FCM’s ORF must be “appropriate and proportionate to the nature, size, scope, complexity, and risk profile of its business activities as a futures commission merchant.” Proposed 17 CFR § 1.13(b)(3).¹⁷ While FIA welcomes this risk-based standard, the Commission should clarify that “size” can relate to the size of the FCM as an entity separate and apart from the volume of the entity’s or enterprise’s business.¹⁸ This is particularly important for small FCMs with limited resources that may belong to a much larger organization; the fact that such FCMs cannot dictate enterprise-wide policies should be reflected in the final rule.

Moreover, all FCMs will remain subject to existing and related NFA requirements under Interpretive Notices 9070, 9052 and 9079, which provide additional layers of security.

¹⁶ Alternatively, if the Commission declines this recommendation, FIA would recommend that small FCMs be subject to staff guidance that substantively mirrors the ORF but lacks the prescriptive elements in the Proposal. FIA specifically recommends staff guidance over Commission guidance because, as Commissioner Pham points out, staff guidance “can be kept up-to-date more easily to address changes in best practices or to adapt to emerging risks.” CFTC, *Statement of Commissioner Caroline D. Pham on Operational Resilience Proposal for Swap Dealers and Futures Commission Merchants* (Dec. 18, 2023), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement121823b>. As such, staff guidance is more flexible and in line with the Commission’s risk-based approach.

¹⁷ FIA aligns with the Associations’ recommendation to adjust the ORF standard to remove the requirement that FCMs “follow[] generally accepted standards and best practices” in constructing their ORFs. See Appendix 1.

¹⁸ FIA’s approach to entity size is consistent with FINRA’s approach, which is to consider a firm as “small” even if it sits within a much larger enterprise. See FINRA, *FINRA-Registered Firms by Size*, available at <https://www.finra.org/finra-data/browse-catalog/industry-snapshot/industry-statistics-reg-firms-size>.

III. Recommendations from the Associations’ Letter

A. Revising the Proposal’s Defined Terms

FIA emphasizes its alignment with the Associations’ recommendations to tighten the Proposal’s definitions. As discussed throughout the Associations’ Letter, the Proposal utilizes broad definitions to several key terms, including “covered technology,” “covered information,” “incident,” and “critical third-party service provider,” along with thresholds for incidents requiring notification, that, in turn, bring within the scope of the Proposal and its attendant obligations—including technical controls and testing, internal governance, external reporting and third-party risk management—a very broad range of systems, information, third-party relationships, and disruptions. Additionally, FIA supports the Associations’ recommendation to define “operational resilience” to establish a common baseline understanding of the Proposal’s scope and ensure a risk-based approach. As such, FIA supports the Associations’ recommendations to revise certain definitions, as applied to FCMs, included below in Appendix 1.

B. Operational Resilience Framework

1. *Attestations – paragraph (c)(4)*

FIA shares the Associations’ perspective that the Commission should provide greater flexibility for FCMs that seek to rely on, in whole or in part, an enterprise-wide or consolidated program to satisfy the ORF requirements under proposed 17 CFR § 1.13(c)(4)(ii)¹⁹ by revising the standard to one that is “comparable” or “achieves the same policy outcomes” and that such compliance can be demonstrated through the existing chief compliance officer (“CCO”) report *or* an attestation. FIA believes the attestation requirement is superfluous in that FCM CCOs are already required to prepare an annual report, which must include descriptions of the FCM’s written policies and procedures that the FCM must establish pursuant to Commission regulations as well as the effectiveness of such policies and procedures, areas for improvement and material noncompliance issues.

2. *Independence for Review and Testing – paragraph (h)(3)*

FIA shares the Associations’ concern that the Proposal’s independence requirement for reviews and testing is unduly prescriptive and counter to a risk-based approach. FIA joins the Associations’ recommendation for the Commission to remove the independence requirement. Alternatively, FIA urges the Commission to clarify that

¹⁹ Additionally, FIA shares the Associations’ belief that covered entities should be able to rely on enterprise-wide program risk appetites and risk tolerance limits and that FCMs do not need to create risk appetites and risk tolerance limits specific to the FCM, as long as the enterprise-wide risk appetite and risk tolerance limits are “appropriate to” the FCM.

reviews and testing “may include” independent personnel, as including the individuals and teams involved with particular ORF component parts in reviewing and testing those parts is likely to produce better outcomes. Providing this flexibility is in line with similar requirements to review plans and programs, such as Interpretive Notice 9070, which advises that members should perform a regular review of its information security program “using either in-house staff with appropriate knowledge or by engaging an independent third-party information security specialist.”²⁰

C. Third-Party Relationship Program

1. *Critical Third-Party Service Providers – paragraph (e)(2)*

FIA is concerned that the definition of “critical third-party service provider” would require FCMs to focus on third-party services that present minimal risk to operations. As such, FIA joins the Associations’ recommendation for the Commission to shift the focus in the definition of “critical third-party service provider” to the actual service that the third party provides.

2. *Third-Party Service Provider Inventory – paragraph (e)(3)*

FIA finds the effects of an FCM relying on a consolidated third-party relationship program unclear in the Proposal. FIA does not believe that each FCM should be required to create a third-party service provider inventory at the FCM level. The wording suggests that each FCM must create an inventory at the FCM level rather than relying on inventories that are typically maintained at a regional or entity level. This is not consistent with allowing FCMs to rely on enterprise programs and makes the administration of the overall program unduly complicated where there are shared services. As such, FIA joins the Associations’ request for the Commission to clarify that, for FCMs that rely on a consolidated third-party relationship program, such FCMs would not be required to separately identify the services and providers that an FCM uses as long as the enterprise-wide inventory covers services and providers used by the FCM.

D. Implementation Period

FIA shares the Associations’ concerns regarding the flat six-month implementation period currently in the Proposal²¹ given practical challenges with implementation due to existing structures and practices within entities, necessary reconciliation with similar regulatory requirements, and in making determinations around substituted compliance. FIA urges the Commission to accept the Associations’ recommendation to provide a tiered implementation approach across a two-year time line,

²⁰ NFA Interpretive Notice 9070.

²¹ See Proposing Release, at 4735.

which would be in keeping with implementation periods adopted by other comparable domestic and international regulators. FIA also joins the Associations' recommendation for the Commission to provide an explanation in any potential Adopting Release that the Commission anticipates providing "no-action" letters to FCMs that make a good faith request for substituted compliance.

As noted at the outset, FIA welcomes the opportunity to comment on the Proposal. We appreciate the Commission's consideration of our comments as they pertain to FCMs and hope that they serve as an aid to the Commission's deliberations. FIA would welcome the opportunity to continue to participate in this valuable process. Please feel free to contact me at ALurton@FIA.org if you would like to discuss these issues further.

Sincerely,



Allison Lurton
General Counsel, Chief Legal Officer

cc: Honorable Rostin Behnam, Chairman
Kristin N. Johnson, Commissioner
Christy Goldsmith Romero, Commissioner
Summer K. Mersinger, Commissioner
Caroline D. Pham, Commissioner

Market Participants Division
Amanda L. Olear, Director
Pamela Geraghty, Deputy Director
Fern Simmons, Associate Director
Elise Bruntel, Special Counsel

Appendix 1 – Proposed Revisions to Definitions from the Associations’ Letter

Term	Proposal Section	Proposed Revision	Cited in the Associations’ Letter
Operational resilience standard	17 CFR § 1.13(b)(3)	The Operational Resilience Framework shall be appropriate and proportionate to the nature, size, scope, complexity, and risk profile of its business activities as a futures commission merchant; following generally accepted standards and best practices.	Section II.A.1.
Operational resilience	N/A	<u>the ability of a firm to deliver critical operations through disruption</u>	Section II.A.2.
Covered technology	17 CFR § 1.13(a)	any application, device, information technology asset, network service, system, and other information-handling component, including the operating environment, that is used by a futures commission merchant to conduct its business activities, <u>where, as reasonably determined by the futures commission merchant, if an incident occurred involving it, the incident could have a material adverse impact on the futures commission merchant’s ability to deliver critical operations through disruption; or including its ability to meet its regulatory obligations as a futures commission merchant</u>	Section II.B.1.a.
Covered information	17 CFR § 1.13(a)	any sensitive or confidential data or information maintained by a futures commission merchant in connection with <u>that, as reasonably determined by the futures commission merchant, relates to its business activities as a futures commission merchant, residing on the futures commission merchant’s covered technology, the tampering with</u>	Section II.B.1.b.

Term	Proposal Section	Proposed Revision	Cited in the Associations' Letter
		<p><u>which, or unauthorized disclosure, access or use of which, could cause a material adverse impact on the futures commission merchant's ability to deliver critical operations through disruption</u></p> <p>or, in the alternative:</p> <p>any sensitive or confidential data or information <u>required to be maintained according to applicable regulatory requirements</u> by a futures commission merchant in connection with its business activities as a futures commission merchant</p>	
Incident	17 CFR § 1.13(a)	<p>any <u>unplanned, single or linked event(s), occurrence(s), or circumstance(s)</u>, that could jeopardize <u>actually causes an adverse impact to:</u> (A) <u>information and technology security;</u> (B) <u>the ability of the futures commission merchant to continue its business activities as a futures commission merchant;</u> or (C) <u>the assets or positions of a customer of the futures commission merchant</u> including if it occurs at a third-party service provider</p>	Section II.B.3.
Incident notification trigger (to Commission)	17 CFR § 1.13(i)(1)(i)	<p>Each futures commission merchant shall notify the Commission of any incident that <u>actually causes</u>, or is reasonably likely to <u>actually cause material</u> adversely impacts, to: (A) information and technology security; (B) the ability of the futures commission merchant to continue its business activities as a futures</p>	Section II.B.3.

Term	Proposal Section	Proposed Revision	Cited in the Associations' Letter
		commission merchant; or (C) the assets or positions of a customer of the futures commission merchant.	
Incident notification trigger (to affected counterparties)	17 CFR § 1.13(j)(1)	Each futures commission merchant shall notify a customer as soon as possible <u>without undue delay</u> of any incident that <u>actually causes, or is reasonably likely to cause material</u> have adversely affected <u>impact to</u> the confidentiality or integrity of the customer's covered information, assets, or positions.	Section II.B.5.
Critical third-party service provider	17 CFR § 1.13(a)	Critical third-party service provider means a third-party service provider , the disruption of whose <u>which</u> performance would be reasonably likely to: (a) Significantly disrupt a futures commission merchant's <u>critical</u> business operations as a futures commission merchant; or (b) Significantly and adversely impact the futures commission merchant's customers.	Section II.C.1.