

September 18, 2013

The Honorable Gary Gensler
Chairman, Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, D.C. 20581

RE: RIN 3038-AD88: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 Fed. Reg. 67866 (November 14, 2012)

Dear Chairman Gensler:

The undersigned organizations represent a very broad swath of agricultural futures market participants, including crop and livestock producers who use futures directly to manage their risk; agribusiness firms who rely on futures markets as they assist producers with risk management plans and in their own risk management programs; as well as lenders that support the industry's risk management activities.

We support strongly the Commission's efforts to enhance futures customer protections. However, the capital charge and residual interest provisions of this rule will have the opposite impact – if adopted, customers will be exposed to significantly greater financial risk.

If adopted as proposed, these provisions likely will have the following impacts:

- FCMs will be forced either to use their own funds to “top up” residual interest – not feasible given the huge amounts involved – or, most likely, require that customers pre-margin hedge accounts.
- Many producers who use futures directly will be discouraged from using futures markets to hedge their production risk.
- Due to the significantly increased funding requirements of pre-margining – perhaps nearly double the amounts currently required – many small agribusiness hedgers will be forced to consider alternative risk management tools or be forced out of the market.
- Futures customers will be compelled to send excess margin to their FCMs *in anticipation* of future market movement on existing positions – many billions of dollars more than needed to cover existing positions – the last thing customers want to do now, in the wake of MF Global and Peregrine Financial Group.
- Much more customer money – maybe twice as much – will be at risk in the event of another FCM insolvency.

- Futures customers will be compelled to borrow more money just to post margin on *potential* market moves – difficult for both lending banks and for customers to predict, and potentially difficult for smaller local banks. This increased borrowing requirement negatively affects a customer’s ability to invest in their own business.
- The entire hedging process will be made less cost-efficient, thereby discouraging use of futures markets.

Much has been said about the meaning of the Commodity Exchange Act, particularly with regard to the timing of residual interest calculations and FCMs’ receipt of customers’ margin. With respect, we believe strongly that the Commission’s recent public stance is an overly aggressive interpretation that overturns decades of consistent administration of the regulations by the Commission, Congress and the futures industry. As a recent legal review by the Futures Industry Association has shown, there is ample flexibility in the Act to justify the manner in which both capital charge and residual interest rules historically have been implemented.

Clearly, the proposed rules are a huge change to the way the futures industry does business. However, by its own admission, the Commission has performed no credible cost-benefit analysis relative to these specific provisions of the proposal. We believe strongly that this fundamental change of direction by the Commission – after decades of consistent interpretation – deserves a serious effort to quantify benefits relative to the enormous costs and risks imposed on futures customers. We respectfully urge the Commission to undertake a serious and thorough review prior to any action on the capital charge and residual interest provisions of the referenced rulemaking.

Sincerely,

AMCOT

American Cotton Shippers Association

American Farm Bureau Federation

American Feed Industry Association

American Soybean Association

CoBank

Commodity Markets Council

National Association of Wheat Growers

National Barley Growers Association

National Cattlemen's Beef Association

National Corn Growers Association

National Cotton Council

National Council of Farmer Cooperatives

National Grain and Feed Association

National Pork Producers Council
National Sorghum Producers
National Sunflower Association
North American Millers Association
USA Rice Federation
US Canola Association
US Dry Bean Council

cc: The Honorable Bart Chilton
The Honorable Scott O'Malia
The Honorable Mark Wetjen
Members of Senate and House Agriculture Committees