



May 1, 2013

Hon. Debbie Stabenow  
Chairwoman  
United States Senate  
Committee on Agriculture, Nutrition and Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

The Honorable Thad Cochran  
Ranking Republican Member  
United States Senate  
Committee on Agriculture, Nutrition and Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

*Via Email: [cftcreauthorization@ag.senate.gov](mailto:cftcreauthorization@ag.senate.gov)*

Dear Chairwoman Stabenow and Ranking Member Cochran:

R.J. O'Brien & Associates, LLC (RJO) thanks you for the opportunity to submit this letter in response to your request for issues to consider during the process of reauthorizing the Commodity Futures Trading Commission (CFTC). We appreciate your bi-partisan and open approach and would welcome the opportunity to participate in an ongoing dialogue with you during the course of this process. Founded in 1914, RJO is the oldest and largest independent futures brokerage and clearing firm in the United States. RJO provides hands-on order processing, research and assistance to our clients, many of which are farmers, ranchers and the other agricultural hedgers that are the foundation of the futures markets.

### **Customer Protection**

Our greatest concern is ensuring that our clients have efficient and safe markets to allow them to manage their commercial and financial risks. We are an active member of the Futures Industry Association (FIA) and have been working with the entire industry to enhance protections for market participants. Indeed, new rules have already been put in place to provide customers with more information about the status of their funds and the financial condition of their futures commission merchants (FCMs). Regulators have also put in place systems to receive daily confirmations from banks holding customer funds and have implemented new rules that strengthen internal controls. Numerous

additional regulations have been implemented by the industry's self-regulatory organizations that make it less likely that another MF Global or Peregrine Financial Group collapse can occur in the future.

The failures of MF Global and Peregrine Financial Group resulted in severe and unacceptable consequences for thousands of futures customers and the markets generally, and we agree that an ongoing review of current protections afforded to customers under the Commodity Exchange Act is warranted. And while we applaud the CFTC's recent additional efforts to provide increased customer and market protections, we urge the Committee and the CFTC to be mindful of the potential implications of new legislation and regulations on all market participants and to conduct full cost-benefit analysis when considering new laws and rulemaking.

In November 2012, the CFTC proposed rulemaking entitled "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations." Along with over 100 others, we submitted comments on the CFTC's proposed rules. As detailed in our comment letter, we believe that many of the proposals would go a long way towards the goal of protecting customer funds. However, certain proposals regarding capital charges for outstanding margin calls and increased residual interest requirements for FCMs will dramatically raise the costs of hedging and investing in the futures markets and could result in limited market access for agricultural hedgers and smaller speculative investors. Furthermore, dramatically increased capital requirements for FCMs are likely to force small and mid-sized FCMs out of business, leaving the industry consolidated to bank-affiliated FCMs that have little interest in servicing the accounts of the farmers and ranchers that depend on futures markets to hedge their commercial risks and creating greater systemic risk, as was evidenced in the wake of the MF Global collapse.

In addressing customer protection, we urge the Committee to consider whether the CFTC should be required to fully assess and quantify the costs and benefits associated with the rules and orders they put forward rather than merely "considering" such costs and benefits. As the above discussion explains, without a thorough analysis, new rulemaking can produce unintended consequences that can be harmful to those that are most meant to be protected.

## **Regulation of FCMs**

There are two significantly different main FCM models in the futures brokerage marketplace. The first is an FCM-only model, such as that adopted by RJO for nearly 100 years. Our main focus is providing hand-on customer service and market insight to individuals and smaller businesses, such as farmers and ranchers, to help them adequately hedge their commercial and financial risks or otherwise meet their investing goals. The second model is a dual-registrant BD/FCM that is often affiliated with an international investment bank. As mentioned above, the larger dually-registered broker-dealer/FCMs (BD/FCMs) generally have little interest in servicing smaller clients. These dual-registrant brokers predominately service large institutional investors, such as hedge funds, as well as facilitate their affiliates' proprietary trading activities. Yet BD/FCM's are not required to separately capitalize their futures businesses and securities businesses. Therefore, a BD/FCM often appears to be much better capitalized than any independent FCM when one compares standardized CFTC financial data. Furthermore, regulators utilize leverage formulas that ultimately penalize FCM-only firms for not

engaging in proprietary trading or holding cash and requiring excess margin from customers. The leverage model does not account for the risks associated with a BD/FCM's securities business and proprietary trading activities, which some might argue was the reason for MF Global's downfall.

We therefore strongly urge the Committee to help ensure that the FCM regulatory framework adequately recognizes the differences between dual-registrant FCMs such as those described above and pure FCMs. The CFTC should be required to give proper consideration of the consequences to each of the two models during the rulemaking process. This procedure will help ensure that the characteristics and interests of smaller investors and the FCMs that serve them are properly accounted for in rulemaking.

### **Futures Markets Insurance**

Various industry groups including the FIA, CME Group, NFA, and the Institute for Financial Markets have partnered to conduct an evaluation of the costs and benefits of various asset protection insurance proposals for the futures markets. RJO strongly supports the concept of an insurance model that is appropriate to the futures industry and asks the Committee to carefully consider the results of the study being conducted by these industry groups.

### **Modifications to the Bankruptcy Code**

We believe that the Bankruptcy Code may require amendments to address shortcomings highlighted in the aftermath of MF Global and Peregrine Financial Group bankruptcies. RJO strongly supports the efforts being made by the industry and customers to identify potential changes to the Code that may provide better customer protections.

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We greatly appreciate the Committee's attention to the comments and recommendations of the futures markets industry and its participants throughout the reauthorization process. We understand the complexity and importance of the Committee's task at hand and are grateful to have leaders that value the benefits of an open process.

Sincerely,

/s/ Gerald F. Corcoran

Gerald F. Corcoran  
Chairman and CEO