September 18, 2023

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

Re: Risk Management Program Regulations for Swap Dealers, Major Swap Participants, and Futures Commission Merchants (RIN 3038-AE59)

Dear Mr. Kirkpatrick:

The Futures Industry Association[1] ("**FIA**") appreciates the opportunity to respond to the Commodity Futures Trading Commission's ("**CFTC**") advanced notice of proposed rulemaking regarding risk management program ("**RMP**") regulations for swap dealers, major swap participants, and futures commission merchants ("**Advanced Proposed Rule**").[2] Many FIA members are futures commission merchants ("**FCMs**") subject to the risk management requirements under CFTC Rule 1.11. Thus, FIA members will be directly impacted by any changes made to FCM RMP requirements and this comment letter focuses on FCM-related concerns.[3] FIA supports the CFTC's proactive efforts to review FCM RMP requirements and appreciates the opportunity to comment thereon.

FCMs are currently subject to robust risk management requirements under a variety of different regulations, rules, and guidance promulgated by the CFTC and self-regulatory organizations ("**SROs**"), in particular, the National Futures Association ("**NFA**"). We summarize certain of these robust requirements in **Appendix A** and support their principles-based, flexible approach to risk management in light of the differences that exist between firms. Responses to certain specific questions included in the Advanced Proposed Rule are included in **Appendix B** hereto.

[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 membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries, as well as technology vendors, lawyers and other professionals serving the industry. 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.

[2] Risk Management Program Regulations for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 88 Fed. Reg. 45826 (July 18, 2023).

[3] FIA supports the comments of the International Swaps and Derivatives Association, Inc. ("**ISDA**") and the Securities Industry and Financial Markets Association ("**SIFMA**") regarding swap dealer ("**SD**") RMPs.

I. FCMs Are Currently Subject to Robust Risk Management Requirements.

As noted, FCMs are currently subject to robust risk management requirements under a variety of different regulations, rules and guidance promulgated by the CFTC and SROs. First and foremost for purposes of the Advanced Proposed Rule, CFTC Rule 1.11 highlights those elements of an FCM's RMP that the CFTC deemed essential following the failure of MF Global Inc. and Peregrine Financial Group Inc.[4] Rule 1.11 requires an FCM's RMP to take into account all applicable risks, including "market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, technological, [and] capital" risks,[5] and focuses on the critical elements of an FCM's RMP with regard to (i) segregation risk, (ii) operational risk, and (iii) capital risk.

"[T]o ensure that there is accountability at the highest levels for the FCM's key internal controls and processes,"[6] the rule requires the FCM's governing body, as defined, to approve the written policies and procedures of the RMP[7] and, thereafter, to receive, along with senior management, quarterly Risk Exposure Reports ("**RERs**"), identifying: (i) any material changes in the FCM's risk exposure; (ii) "any recommended or completed changes to the [RMP];" (iii) "the recommended time frame for implementing recommended changes;" and (iv) the status of any incomplete implementation of previously recommended changes to the [RMP]."[8] Copies of RERs must be filed with the CFTC within five business days of providing the report to senior management.[9]

In addition to Rule 1.11, a number of CFTC rules, combined with NFA rules and interpretive notices, have long, directly or indirectly, imposed on FCMs robust and comprehensive risk management obligations "designed to monitor and manage the risks associated with the activities of the [FCM]."[10] Importantly, NFA's rules and interpretive notices are principles-based "given the differences in the type, size and complexity of operations of Members' businesses including but not limited to their customers and counterparties, markets and products traded, and the access provided to trading venues and other industry participants."[11]

The robust risk management requirements to which FCMs are currently subject are working effectively and efficiently to: (i) help firms manage risk; (ii) alert regulators, on a

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[4] CFTC Staff Advisory 16-24 and Joint Audit Committee Regulatory Alert No. 22-02 enhance and supplement an FCM's obligations under Rule 1.11. *See* Division of Swap Dealer and Intermediary Oversight, Staff Advisory No. 16-24, re: Risk Management Programs (Mar. 2, 2016), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/16-24.pdf; Joint Audit Committee Regulatory Alert No. 22-02, CFTC Regulation 1.11 – FCM Risk Management Program (June 7, 2022), *available at* http://www.jacfutures.com/jac/jacupdates/2022/jac2202.pdf.

[5] CFTC Rule 1.11(e)(1)(i).

[6] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68506, 68517 (Nov. 14, 2013).

[7] CFTC Rule 1.11(c)(3).

[8] CFTC Rule 1.11 (e)(2)(i).

[9] CFTC Rule 1.11(e)(2)(ii).

[10] CFTC Rule 1.11(c)(1).

[11] NFA Interpretive Notice 9070 - NFA Compliance Rules 2-9, 2-36 and 2-49: Information Systems Security Programs (Sept. 30, 2019), *available at* https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=9070&Section=9.

timely basis, where necessary, of issues that may arise; and (iii) accommodate different corporate structures, customer bases, and firm-specific considerations. FIA supports maintaining the CFTC's current risk management requirements in substantially similar form as they exist today. We do not believe significant changes are warranted or justified by a cost-benefit analysis.

II. The CFTC's Current Risk Management Requirements Provide the Flexibility and Principles-Based Approach That Is Needed To Account For Differences Between Firms.

FCMs are different sizes, with varying corporate governance structures, unique customer bases, and varying business strategies. Because of these differences, FIA believes that a flexible, principles-based approach to risk management is needed. Such an approach already exists under the CFTC's *current* risk management regime. Changes to the current regime are unnecessary and are not justified by a cost-benefit analysis.

The CFTC acknowledged the sufficient flexibility of Rule 1.11 when it finalized that rule in 2013.[12] Then, the CFTC stated:

> § 1.11 provides sufficient flexibility for FCMs to establish a risk management program that is appropriate to its business operations. To develop specific requirements for different business activities would not be appropriate in that each FCM may operate in a different manner. The Commission believes that each FCM can develop its own program to meet its business activities using the general framework established by § 1.11.[13]

The Commission carefully considered the components of Rule 1.11 in 2012 and 2013. The larger rulemaking process of which Rule 1.11 was a part included approximately 120 written submissions to the CFTC and two industry roundtables.[14] The result of that rulemaking process was a thoughtful regulation that firms have now successfully implemented and operated under for nearly 10 years. FIA is concerned that revising the RMP regulations, absent demonstrable need, will only increase burden to FCMs and potentially contribute to further consolidation in the industry.

III. FIA Provides Responses to Specific Questions from the Advanced Proposed Rule in Exhibit B; These Responses Support the CFTC's Current Flexible and Principles-Based Approach to Risk Management.

In **Appendix B**, we provide responses to certain specific questions from the Advanced Proposed Rule. These responses align with our comments above; namely: (1) FCMs are currently subject to robust risk management requirements; and (2) a flexible, principles-based approach to risk management is needed to account for differences between firms. More specifically, our responses can be summarized as follows:

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[12] *See* 78 Fed. Reg. at 68517.
[13] *Id.*
[14] *Id*. at 68512.

- **Governance.** The current risk management governance framework prescribed by regulation creates robust oversight and escalation procedures and accommodates varying firm structures. FIA supports revising the definition of governing body, as it relates to an FCM that is a corporation or limited liability company, to include a body performing a function similar to a board of directors and any committee of a board of directors or similar body. Moreover, FIA urges the CFTC to re-frame the definition of senior management as: a person who has the appropriate and requisite seniority and authority to take or instruct necessary action. Senior management should not be considered the same for all aspects of risk management. Lastly, FIA proposes that risk tolerance limits be reviewed annually and when a material change has occurred, rather than quarterly.
- **Enumerated Risks.** The enumerated risks currently in CFTC Rule 1.11(e)(1) should not be added to or defined further. Certain of the potential additional enumerated risks contemplated by the Advanced Proposed Rule are already captured by the broad categories of enumerated risks currently in the rule. With regard to defining enumerated risks, FIA is concerned that definitions may hinder the regulations' longevity; moreover, FIA believes such definitions are unnecessary where there is already transparency into how firms define specific risks.
- **Periodic RERs.** FIA supports maintaining the current RER regime in substantially similar format as it exists today. FIA recommends adding a materiality threshold to the requirement that RERs include information related to: (1) recommended or completed changes to the RMP; (2) the time frame for implementing such changes; and (3) the status of any incomplete changes. A materiality threshold would allow the Commission to more efficiently review, consider, and supervise changes to a firm's RMP that have the highest probability of impacting how that firm manages risk. FIA does not support: (1) changing the frequency with which RERs are required to be filed; or (2) requiring filing of RERs by a certain day. Alternatively, should the Commission wish to change the frequency with which RERs are filed and/or require filing by a certain day, if the definition of governing body was revised as discussed herein such a change could potentially permit FCMs to file quarterly RERs quicker.
- **Segregation of Customer Funds.** CFTC regulations, as a whole, including the RMP, adequately and comprehensively address segregation of customer funds and protection of customer property.
- **Affiliates, etc.** Risks posed by affiliates and related trading activity are addressed by current Commission regulations.

Conclusion

If the CFTC or any member of staff have any questions concerning the matters discussed herein or need any additional information, please contact Natalie Tynan, Associate General Counsel, Head of Technology Documentation Strategy at ntynan@fia.org or (202) 772-3025.

Respectfully submitted,

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Appendix A
Summary of Certain CFTC and NFA Risk Management Obligations

CFTC Rules

- Rule 1.12, *Maintenance of minimum financial requirements by futures commission merchants and introducing brokers*. This rule requires an FCM to notify the CFTC and its designated SRO in the event of a significant change in the FCM's adjusted net capital and other financial requirements, *e.g.*, whenever the FCM knows or should have known that (i) its adjusted net capital at any time is less than the minimum required by CFTC Rule 1.10,[15] (ii) its adjusted net capital at any time is less than 110 percent of the FCM's risk-based capital requirement,[16] or (iii) the total amount of its funds on deposit in segregated accounts on behalf of customers, or the total amount set aside on behalf of customers trading on non-US markets, is less than the total amount of such funds required by the Commodity Exchange Act and the CFTC's rules.[17] Rule 1.12 generally requires that the FCM provide notice either immediately or within 24 hours after the event. Further, Rule 1.11(e)(3)(i)(I) requires an FCM's RMP to include annual training requirements for notices under Rule 1.12.

- Rule 1.14, *Risk assessment recordkeeping requirements for futures commission merchants;* Rule 1.15, *Risk assessment reporting requirements for futures commission merchants*. These rules generally require essentially all FCMs to develop and maintain – and file with the CFTC – written policies, procedures, or systems concerning the FCM's: (i) method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons; (ii) financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the FCM, the structure of debt capital, and sources of alternative funding; (iii) establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the FCM's proprietary and noncustomer clearing activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in securities, futures contracts, commodity options, forward contracts and financial instruments; (iv) policies for hedging or managing risks created by trading activities or supervising accounts carried for noncustomer affiliates, including a description of the types of reviews conducted to monitor positions; and (v) policies relating to restrictions or limitations on trading activities.

- CFTC Rule 1.55, *Public Disclosures by futures commission merchants*. This rule requires each FCM to make certain disclosures regarding its RMP to its customers before entering into a customer account agreement with, or accepting funds from, such customers.[18] Notably, each FCM must disclose: (i) "all information about the [FCM], including its business, operations, risk profile, and affiliates, that would be material to the

[15] CFTC Rule 1.12(a).
[16] CFTC Rule 1.12(b).
[17] CFTC Rule 1.12(h).
[18] This firm-specific disclosure document is in addition to the prescribed Risk Disclosure Statement set out in CFTC Rule 1.55(b).

customer's decision to entrust [ ] funds to and otherwise do business with the [FCM] and that is otherwise necessary for full and fair disclosure;" (ii) "risks to the [FCM] created by its affiliates and their activities, including investment of customer funds in an affiliated entity;" (iii) month-end financial data; and (iv) "[a] summary of the [FCM's] current risk practices, controls and procedures."

Each FCM is further required to promptly update and disclose to all customers the required information "as and when necessary, but at least annually, to keep such information accurate and complete." In updating this disclosure, the FCM is directed to "take into account any material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the [FCM] since its most recent disclosure . . . and for this purpose shall without limitation consider events that require periodic reporting required to be filed pursuant to § 1.12," discussed above. This disclosure document provides transparency to customers of both the risks of trading through a particular FCM and the policies and procedures the FCM has adopted to address these risks.

Separately, Rule 1.55 requires each FCM to "adopt policies and procedures reasonably designed to ensure that advertising and solicitation activities by each such [FCM] . . . are not misleading to its [customers] in connection with their decision to entrust funds to and otherwise do business with" the FCM.

- Rule 1.71, *Conflicts of interest policies and procedures*. This rule requires each FCM to adopt and implement written policies and procedures reasonably designed to ensure that the FCM and its employees comply with the provisions of the rule. In particular, such written policies and procedures must require that the FCM disclose to its customers any material incentives and any material conflicts of interest regarding the decision of a customer to use the FCM to execute or clear a derivatives transaction.

- Rule 1.73, *Clearing futures commission merchant risk management*. This rule requires each clearing member FCM to adopt written policies and procedures pursuant to which the FCM, *inter alia*, will: (i) establish risk-based limits in the FCM's proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors; (ii) screen such orders for compliance with the risk-based limits; and (iii) at least once per week, (a) conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each customer account that could pose material risk to the FCM, and (b) evaluate its ability to meet initial and variation margin requirements.

- Rule 75.3, *Prohibition on proprietary trading*. This rule, implementing the Volcker Rule, requires that the liquidity management plan of any "banking entity," including an FCM that is part of a bank holding company, must include written policies and procedures, internal controls, analysis, and independent testing to ensure that the purchase and sale of financial instruments that are not permitted under Rule 75.6(a) or (b) are for the purpose of liquidity management and in accordance with the liquidity management plan.

- Rule 155.3, *Trading standards for futures commission merchants*. This rule requires each FCM to establish and enforce internal rules, procedures and controls to ensure, to the extent possible, that each order received from a customer which is executable at or near the market price is transmitted to the appropriate contract market for execution before any order in the same commodity for any proprietary account, any other account in which an affiliated person has an interest, or any account for which an affiliated person may originate orders without the prior specific consent of the customer.

- Rule 166.3, *Supervision*. This rule requires each FCM (and other registrants) to supervise diligently the handling by its partners, officers, employees and agents of all commodity interest accounts carried by the FCM and all other activities of its partners, officers, employees and agents relating to its business as an FCM.[19]

NFA Compliance Rules

- Rule 2-8, *Discretionary customer accounts*. This rule requires each Member, including an FCM, that initiates discretionary trades to adopt and enforce written procedures that ensure that a principal of the Member regularly reviews discretionary trading activity for compliance with applicable regulatory requirements.

- Rule 2-9, *Supervision*. This rule related interpretive notice requires each FCM to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member.[20] In particular:

    - each FCM must develop and implement a written anti-money laundering program approved in writing by senior management reasonably designed to achieve and monitor the Member's compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et. seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury[21] and, as applicable, the CFTC.

    - each FCM must implement written supervisory procedures governing the use of websites, social media and other internet-based forums that are designed to achieve compliance with the requirements of NFA rules.

    - each FCM must adopt and enforce a written system security program, reasonably designed to provide safeguards, appropriate to the FCM's size, complexity of operations, type of customers and counterparties, the sensitivity of the data accessible within its systems, and its electronic interconnectivity with other entities, to protect against security threats or hazards to their technology systems.

- Rule 2-29, *Communications with the public and promotional material*. This rule and related interpretive notices require each FCM to adopt and enforce written procedures to

[19] As discussed below, NFA Compliance Rule 2-9 and its related interpretive notices set out specific policies and procedures that an FCM must adopt to fulfill their supervisory responsibilities.

[20] We note that NFA Compliance Rule 2-36 imposes a duty to supervise on retail foreign exchange dealers.

[21] 31 C.F.R. Part 1026.

supervise its employees for compliance with the rule and provide guidance on the use and supervision of websites, social media and other electronic communications.

- Rule 2-38, *Business continuity and disaster recovery plan*. This rule requires each FCM to establish and maintain a written business continuity and disaster recovery plan that outlines procedures to be followed in the event of an emergency or significant business disruption. The plan must be reasonably designed to enable the FCM to continue operating, to reestablish operations, or to transfer its business to another FCM with minimal disruption to its customers, other FCMs, and the commodity futures markets.

- Finally, we note that NFA has developed a self-examination questionnaire for FCMs that each FCM is required to complete annually.[22] This questionnaire identifies specific policies and procedures that FCMs must adopt to ensure compliance with all relevant CFTC and NFA requirements. This questionnaire also serves as a form of monitoring for the subject areas it covers, which include: (i) cybersecurity; (ii) risk management; and (iii) public disclosures.

[22] NFA, Self-Examination Questionnaire, *available at* https://www.nfa.futures.org/members/self-exam-questionnaire.html.

Appendix B
Responses to Certain Specific Questions From the Advanced Proposed Rule

As a follow-on to the discussion in our comment letter above, FIA offers the following responses to specific questions from the Advanced Proposed Rule.[23]

II.A. – RMP Governance		
Question No.	***Question***	***FIA Response***
N/A	The Commission seeks comment generally on the RMP structure and related governance requirements currently found in the RMP Regulations for SDs and FCMs.[24]	The current RMP governance framework prescribed by regulation creates robust oversight and escalation procedures. Critically, the current framework accommodates varying firm structures. In certain instances, risk management may occur on an enterprise basis. At smaller firms, senior management may also serve as risk management. It is important that the regulations allow for these differences. Indeed, when Rule 1.11 was originally promulgated, the preamble to the final rule acknowledged that "while the requirements of § 1.11 represent prudent risk management practices, they do not prescribe rigid organizational structures."[25] FIA feels strongly that prescriptive, rigid organizational structure requirements for a firm's RMP should be avoided.
1	Do the definitions of 'governing body' in the RMP Regulations encompass the variety of business structures and entities used by SDs and FCMs?[26]	"Governing body" is defined, in part, in CFTC Rule 1.11(b)(3) as "the board of directors if the futures commission merchant is a corporation; the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority if the futures commission merchant is a limited liability company or limited liability partnership." FIA supports adding to the definition of governing body for FCMs that are corporations or limited liability companies to include a body performing a function similar to a board of directors (*e.g.*, a board of managers) or any committee of a board or body. These changes would more

[23] These responses are divided by Section of the Advanced Proposed Rule and each question number from the Advanced Proposed Rule, if applicable, is referenced.
[24] 88 Fed. Reg. at 45828.
[25] 78 Fed. Reg. at 68519.
[26] 88 Fed. Reg. at 45828.

		closely align the FCM definition of governing body with the definition of governing body used for SDs[27] and could potentially permit FCMs to file quarterly RERs more quickly following the end of each quarter.
2	Should the Commission consider amending the definitions of 'senior management' in the RMP Regulations? Are there specific roles or functions within an SD or FCM that the Commission should consider including in the RMP Regulations' 'senior management' definitions?[28]	"Senior management" is defined in CFTC Rule 1.11(b)(5) as "any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the governing body." FIA urges the CFTC to re-frame this definition as: a person who has the appropriate and requisite seniority and authority to take or instruct necessary action. Senior management may not, and indeed should not, be considered the same for all aspects of the RMP. Senior managers are required to make determinations on a broad range of risk topics, requiring different expertise. One senior manager may have subject matter expertise in credit risk, while another has expertise in liquidity risk or segregation risk. Moreover, the most appropriate individual to serve as senior management may be at an enterprise level, not within the FCM. For example, the evaluation of cybersecurity risk (as part of technology risk) is generally managed on an enterprise level. Contrast that with the requirement to evaluate residual interest target amounts, which relates to risk specific to the FCM and is conducted on a legal entity basis. Due to this distinction, the reference to "officer" in the definition of "senior management" is overly restrictive.

[27] CFTC Rule 23.600(a)(4).
[28] 88 Fed. Reg. at 45829.

3	Should the RMP Regulations specifically address or discuss reporting lines within an SD's or FCM's RMU?[29]	No. FIA is comfortable with the guidance provided by the CFTC in the preamble to the 2013 final rule. There, FIA requested confirmation that, "subject to certain exceptions or requirements, that the requirements of § 1.11: . . . (2) do not require an FCM's risk management unit to be a formal division in the FCM's organizational structure, provided that the FCM will be able to identify all personnel responsible for required risk management activities even if such personnel fulfill other functions; and (3) Allow FCMs to establish dual reporting lines for risk management personnel performing functions in addition to their risk management duties, provided that § 1.11 would not permit a member of the risk management unit to report to any officer in the business unit for any non-risk management activity."[30] The CFTC confirmed FIA's understanding on both of the above points.[31] FIA does not believe that more prescriptive requirements are warranted.
4	Should the Commission propose and adopt standards for the qualifications of certain RMU personnel (e.g., model validators)?[32]	No. Qualifications vary depending upon the function or risk that personnel are designated to cover. FIA believes that each firm is best positioned to assess its personnels' qualifications, given its unique structure and organization. Moreover, qualifications could have the unintended consequence of limiting the talent pool for certain positions unnecessarily.
7	Are there other portions of the RMP Regulations concerning governance that are not addressed above that the Commission should consider changing? Please explain.[33]	CFTC Rule 1.11(e)(1)(i) requires senior management to review and approve risk tolerance limits quarterly. Moreover, the governing body must review and approve risk tolerance limits annually. Similar to the comments made by ISDA and SIFMA, FIA believes that risk tolerance limits are required to be reviewed and approved too frequently. Quarterly reviews by senior management do not provide added value because they occur too frequently to permit risk management staff to conduct a meaningful and time-sensitive analysis of risks and their potential impacts. The frequency of the reviews are an administrative burden and divert attention away from more strategic risk

[29] *Id.*
[30] 78 Fed. Reg. at 68518-9 (footnote omitted).
[31] 78 Fed. Reg. at 68519.
[32] 88 Fed. Reg. at 45829.
[33] *Id.*

		management activities. FIA proposes that risk tolerance limits be reviewed annually and when a material change has occurred.
II.B. – Enumerated Risks in the RMP Regulations		
Question No.	***Question***	***FIA Response***
N/A	(a) Whether specific risk considerations that must be taken into account with respect to certain enumerated risks should be amended; (b) whether definitions should be added for each enumerated risk; and finally, (c) whether the Commission should enumerate and define any additional types of risk in the RMP Regulations.[34]	The enumerated risks currently in CFTC Rule 1.11(e)(1) should not be added to or defined further. With regard to adding additional risk stripes, certain of the potential additional enumerated risks contemplated by the CFTC in the Advanced Proposed Rule are already captured by the broad categories of enumerated risks currently in the rule. For example, cybersecurity risk is captured by technology risk; regulatory and compliance risk arising from conduct in foreign jurisdictions is covered by legal risk. Moreover, Rule 1.11(e)(1) already includes a "catch-all" risk category of "any other applicable risks." FIA has concerns about the CFTC providing prescriptive definitions of enumerated risks. Firms appreciate the current flexibility to define the enumerated risks in a manner that conforms to their specific business. Moreover, providing definitions may hinder the regulations' longevity as technology and products evolve in the future. The CFTC has already advised firms that its RMP "should include a clear description of each applicable risk as it relates to the firm's specific business activities."[35] Moreover, the disclosures required by CFTC Rule 1.55 also provide transparency into how a firm defines certain risks. We believe firm-developed definitions provide better insight for regulators into each firms' risk management activity than conformance across the industry to a regulatorily prescribed standard. Lastly, tracking a CFTC-prescribed definition would be challenging when and if a firm, on a global basis, defines the risk differently.

[34] *Id.*
[35] Staff Advisory No. 16-24, re: Risk Management Programs.

1	Should the Commission amend Regulation 1.11(e)(3) to require that FCMs' RMPs include, but not be limited to, policies and procedures necessary to monitor and manage *all* of the enumerated risks identified in Regulation 1.11(e)(1) that an FCM's RMP is required to take into account, not just segregation, operational, or capital risk (i.e., market risk, credit risk, liquidity risk, foreign currency risk, legal risk, settlement risk, and technological risk)? If so, should the Commission adopt specific risk management considerations for each enumerated risk, similar to those described in Regulation 23.600(c)(4)?[36]	No, the Commission should not amend Rule 1.11(e)(3) to require that FCMs' RMPs include policies and procedures necessary to monitor and manage all enumerated risks. As a result, specific risk management considerations for each enumerated risk are unnecessary. FIA believes that segregation, capital, and operational risk were carved out for specific reasons in the original rulemaking;[37] namely, because of the collapse of Peregrine Financial Group Inc. and MF Global Inc. Given the prescriptive rules that exist elsewhere for segregation,[38] capital,[39] and operational risk,[40] FIA believes that including policies and procedures necessary to monitor and manage those specific enumerated risks within a FCM's RMP is warranted. However, the other enumerated risks (*e.g.*, market risk, legal risk, technological risk) are not as regulatorily prescribed – and rightly so. The details and meaning behind the remaining enumerated risks are different for each firm, depending upon its particular circumstances. FIA supports this flexibility, and believes it facilitates a robust RMP that each firm tailors to its own unique circumstances.
II.C. Periodic Risk Exposure Reporting By SDs and FCMs		
Question No.	***Question***	***FIA Response***
N/A	How the current RER regime for SDs and FCMs could be improved[41]	FIA supports the CFTC maintaining the current RER regime in a substantially similar form as it exists today. FIA does not support harmonizing or aligning the RER with the NFA's SD monthly risk data filings. Such filings would

[36] 88 Fed. Reg. at 45829.
[37] *See* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 Fed. Reg. 67866, 67874 (Nov. 14, 2012) (Proposed Rule) ("Recent events have emphasized that it is essential that FCMs maintain adequate systems of internal controls, involving the participation and review of the firm's senior management, in order to properly safeguard customer funds.")
[38] *See* CFTC Rules 1.12, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.29, 1.49, 22.2, 22.5, 22.17, and 30.7.
[39] *See* CFTC Rules 1.12, 1.17, and 1.18.
[40] *See* CFTC Rules 1.73 and NFA Interpretive Notice 9046 – Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems (ATS) (Dec. 12, 2006), available at https://www.nfa.futures.org/rulebooksql/rules.aspx?RuleID=9046&Section=9.
[41] 88 Fed. Reg. at 45830.

		have to be significantly revised to align with an FCM's business. The costs of such a transition would substantially outweigh the benefits when the current RER regime for FCM's is fit for purpose in terms of providing the Commission with transparency into each FCM's risk exposure on a quarterly basis. FIA recommends adding a materiality threshold to the requirement that RERs include information related to: (1) "any recommended or completed changes to the [RMP];" (2) "the recommended time frame for implementing recommended changes;" and (3) "the status of any incomplete implementation of previously recommended changes to the [RMP]."[42] We believe a materiality threshold would allow the Commission to more efficiently review, consider, and supervise changes to a firm's RMP that have the highest probability of impacting how that firm manages its risk. FIA's proposed definition of "materiality" for such threshold is: in determining whether or not something is material – consider the totality of the circumstances, including, but not limited to, customer financial loss, financial loss to the firm, negative impact to reputation of the firm, and disruption to overall market integrity.
1	At what frequency should the Commission require SDs and FCMs to furnish copies of their RERs to the Commission?[43]	FIA supports the CFTC maintaining the current quarterly reporting interval. To the extent that the Commission is concerned about stale data, we note that Rule 1.12 contains specific obligations to notify the CFTC closer to real-time on urgent matters. Similarly, material changes to a firm's RERs are required to immediately be provided to senior management and the governing body and sent to the CFTC within 5 business days thereafter.[44] Given these escalation procedures, FIA does not support: (1) changing the frequency with which RERs are required to be filed; or (2) requiring filing by a certain day. Alternatively, should the Commission wish to change the frequency with which RERs are filed and/or require filing by a certain day, FIA feels that if

[42] CFTC Rule 1.11(e)(2)(i).
[43] 88 Fed. Reg. at 45830.
[44] CFTC Rule 1.11(e)(2).

		the definition of governing body was revised to add the option of providing RERs to a body performing a function similar to a board of directors (*e.g.*, a board of managers) or a committee of the board or body (where the FCM is a corporation or limited liability company) that change could potentially permit FCMs to file quarterly RERs more quickly following the end of each quarter.
6	In furtherance of the RER filing requirement, should the Commission consider allowing SDs and FCMs to furnish to the Commission the internal risk reporting they already create, maintain, and/or use for their RMP?[45]	FIA supports maintaining the current format of RERs, in lieu of using internal reports. To the extent that the CFTC is concerned about a lack of consistency or comparability between different firms RERs, that would only be exacerbated by permitting firms to submit their own internal reports.
II.D.a. – Potential Risks Related to the Segregation of Customer Funds and Safeguarding Counterparty Collateral		
Question No.	***Question***	***FIA Response***
N/A	The Commission seeks comment generally on the risks attendant to the segregation of customer funds and the safeguarding of counterparty collateral.[46]	CFTC regulations, as a whole, adequately and comprehensively address segregation of customer funds and protection of customer property;[47] not just the CFTC's RMP. *See* **Appendix A** above for a summary of certain of these requirements. With regard to virtual currencies or other digital assets that may be permissible customer property in the future, any action at the regulatory level is currently premature. Circumstances surrounding virtual currencies and other digital assets are likely to change with legislative action.
II.D.b. – Potential Risks Posed by Affiliates, Lines of Business, and All Other Trading Activity		
Question No.	***Question***	***FIA Response***
N/A	The Commission seeks comment generally on the requirements related to	Risks posed by affiliates and related trading activity are addressed by current Commission regulations.[49] *See* **Appendix A** above for a summary of certain

[45] 88 Fed. Reg. at 45831.
[46] *Id.*
[47] *See, e.g.*, CFTC Rules 1.20, 1.22, 1.23, 1.25.
[49] *See, e.g.*, CFTC Rule 1.11(e)(3)(i)(A)(an FCM must have policies and procedures to monitor and manage segregation risk; "[t]he written policies and procedures shall be reasonably designed to ensure that segregated funds are separately accounted for and segregated or secured as belonging to customers as

	risks posed by affiliates and related trading activity found within the RMP Regulations for SDs and FCMs, including non-bank affiliated SDs or non-bank affiliated FCMs.[48]	of these requirements. Rule 1.11(e)(1)(ii) also already expressly states that "[t]he Risk Management Program shall take into account risks posed by affiliates, all lines of business of the [FCM], and all other trading activity engaged in by the [FCM]. The Risk Management Program shall be integrated into risk management at the consolidated entity level." Moreover, in the preamble to the final rule implementing Rule 1.11, the Commission expressly recognized that a parent company, in some instances, "is in the best position to evaluate the risks that an affiliate of an FCM may pose to the enterprise."[50] FIA asserts that this remains true today and believes that a flexible, principles-based approach that allows risk management to occur at an enterprise level, where needed, is best.

required by the Act and Commission regulations and must, at a minimum, include or address the following: . . . [a] process for the evaluation of depositories of segregated funds, including, at a minimum, documented criteria that any depository that will hold segregated funds, *including an entity affiliated with the futures commission merchant, must meet* . . .")(emphasis added).

[48] 88 Fed. Reg. at 45832.

[50] 78 Fed. Reg. at 68519 ("some FCMs will be part of a larger holding company structure that may include affiliates that are engaged in a wide array of business activities. The Commission understands with respect to these entities, that in some instances, the top level company in the holding company structure is in the best position to evaluate the risks that an affiliate of an FCM may pose to the enterprise, as it has the benefit of an organization-wide view and because an affiliate's business may be wholly unrelated to an FCM's activities. Therefore, to the extent an FCM is part of a holding company with an integrated risk management program, the Commission would allow an FCM to address affiliate risks and comply with § 1.11(e)(1)(ii) through its participation in a consolidated entity risk management program.")