



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Division of Clearing and Risk  
Market Participants Division

**To: Derivatives Clearing Organizations, Futures Commission Merchants, Joint Audit Committee Members, and Market Participants**

**Subject: Extension of Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants**

On July 10, 2019, the Division of Clearing and Risk (DCR) and the Division of Swap Dealer and Intermediary Oversight<sup>1</sup> (together, the Divisions) issued CFTC Letter 19-17, “Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” Letter 19-17 provided “guidance regarding CFTC Regulation 1.56(b)<sup>2</sup> and time-limited no-action relief regarding Regulation 39.13(g)(8)(iii)<sup>3</sup> as these rules relate to the treatment of separate accounts of the same customer, a beneficial owner.” Letter 19-17 stated that the no-action relief regarding Regulation 39.13(g)(8)(iii) “will extend until June 30, 2021, in order to provide Staff with time to recommend, and the Commission with time to determine whether to conduct, and if so, to in fact conduct, a rulemaking to implement appropriate relief on a permanent basis.”

On September 15, 2020, the Divisions issued CFTC Letter 20-28, “Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” Letter 20-28 provided further time-limited no-action relief, further interpretation of Regulation 1.56, and, as relevant here, extended the expiration of the conditional and time-limited no-action relief regarding Regulation 39.13(g)(8)(iii) until December 31, 2021.

In Letter 20-28, the Divisions noted that “[i]f the process described above – *i.e.*, for Staff to recommend, and the Commission to determine, whether to conduct, and if so, to in fact conduct, a rulemaking to implement appropriate relief on a permanent basis – is not completed by that date, the Divisions will consider further extension of this timeframe.”

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<sup>1</sup> The Division of Swap Dealer and Intermediary Oversight has since been re-designated as the Market Participants Division (MPD).

<sup>2</sup> 17 C.F.R. 1.56(b).

<sup>3</sup> 17 C.F.R. 39.13(g)(8)(iii).

It now appears that the process described above will not be completed by December 31, 2021.

On December 15<sup>th</sup>, 2021, the Futures Industry Association requested that the Divisions extend the timeframe for at least nine months, on the grounds that the conditions to this relief have widely been implemented by FCMs, and that both FCMs and customers continue to rely on the relief. The Divisions agree that the rationale for granting the relief remains relevant, and that it is appropriate to extend the deadline in order to provide further time for the Commission to consider whether and, if so, how, to codify that relief. Accordingly, the conditional no-action relief with respect to Regulation 39.13(g)(8)(iii) is now further extended until September 30, 2022.<sup>4</sup> For the avoidance of doubt, this temporal extension of that no-action relief is the sole purpose of this Letter.

This letter, and the position taken herein, represent the views of DCR and MPD only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The no-action relief set forth in Letter 19-17, as modified by Letter 20-28, and as further extended by this Letter, does not excuse persons relying thereon from compliance with any other applicable requirements contained in the CEA or in Commission Regulations.

Questions regarding this advisory and no-action relief can be directed towards Robert B. Wasserman, Chief Counsel, Division of Clearing and Risk, [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), or (202) 418-5092.

/s/ \_\_\_\_\_  
**M. Clark Hutchison**  
**Director**

/s/ \_\_\_\_\_  
**Amanda L. Olear**  
**Acting Director**

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<sup>4</sup> Given that Reg. 39.13(g)(8)(iii) applies, in terms, directly to derivatives clearing organizations, we urge self-regulatory organizations to take similar action with respect to the application to separate accounts of their rules pursuant to Regulation 39.13(g)(8)(iii), to the extent necessary (if any) to provide an analogous extension. In that connection, this extension of relief is a response, pursuant to Commission Regulation 140.99, 17 C.F.R. 140.99, to the Futures Industry Association's request that the relief be extended. *See* Joint Audit Committee Regulatory Alert 20-02, <http://www.jacfutures.com/jac/jacupdates/2020/jac2002.pdf>.