



**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 Position 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 No. 19-17, “Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” CFTC Letter No. 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.” CFTC Letter No. 19-17 stated that the no-action position 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 No. 20-28, “Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” CFTC Letter No. 20-28 provided a further time-limited no-action position (related to Regulation 1.56), further interpretation of Regulation 1.56, and, as relevant here, extended the expiration of the conditional and time-limited no-action position regarding Regulation 39.13(g)(8)(iii) until December 31, 2021.

In CFTC Letter No. 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.”<sup>4</sup>

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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).

<sup>4</sup> CFTC Letter No. 20-28 at page 4.

Because it appeared that this process would not be completed by December 31, 2021, on December 15, 2021, the Futures Industry Association (FIA) requested that the Divisions extend the timeframe for at least nine months, on the grounds that the futures commission merchants (FCMs) have widely implemented the practices described in CFTC Letter No. 19-17, and both FCMs and customers continue to rely on the no-action position. The Divisions agreed that the rationale for providing the no-action position remained relevant, and that it was appropriate to extend the deadline in order to provide further time for the Commission to consider whether and, if so, how to codify the no-action position. Accordingly, on December 21, 2021, the Divisions issued CFTC Letter No. 21-29, which extended the conditional no-action position with respect to Regulation 39.13(g)(8)(iii) until September 30, 2022.

On April 1, 2022, FIA requested that the Divisions recommend that the Commission propose for comment amendments to its rules to codify the time-limited and conditional no-action position with regard to Regulation 39.13(g)(8)(iii). On August 25, 2022, FIA requested that the Divisions further extend the conditional no-action position with respect to Regulation 39.13(g)(8)(iii) until the earlier of (a) September 30, 2023 or (b) the effective date of any Commission final action on any recommendation that the Divisions may make to codify the no-action position. On September 15, 2022, the Divisions issued CFTC Letter No. 22-11, which extended the conditional no-action position with respect to Regulation 39.13(g)(8)(iii) until the earlier of September 30, 2023 or the effective date of any final Commission action relating to Regulation 39.13(g), in order to provide further time for staff to consider FIA's April 1, 2022 request and for the Commission to consider codification of the no-action position.

On April 14, 2023, the Commission published the initial notice of proposed rulemaking (First Proposal) proposing to codify in Part 39 of the Commission's regulations, with minor modifications, the no-action position taken in CFTC Letter No. 19-17.<sup>5</sup> The comment period was extended once and closed on June 30, 2023.<sup>6</sup> The First Proposal resulted in six comments that supported its withdrawal and replacement with a proposal to codify the no-action position instead in Part 1 of the Commission's regulations. These commenters contended, among other things, that the risk-mitigating conditions should be applied directly to FCMs and that separate account treatment should be available for non-clearing FCMs.<sup>7</sup>

On August 9, 2023, FIA submitted to staff of the Divisions a letter requesting further extension of the no-action position in CFTC Letter No. 19-17 until the earlier of June 30, 2024 or Commission final action on any recommendation that the Divisions may make to codify the no-action position. FIA had noted that, they had understood that more time would be needed to

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<sup>5</sup> Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934 (Apr. 14, 2023).

<sup>6</sup> Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 39205 (June 15, 2023).

<sup>7</sup> CME Group, FIA, Intercontinental Exchange, Inc., the Joint Audit Committee, the National Futures Association, and the Asset Management Group of the Securities Industry and Financial Markets Association supported codification in Part 1. These commenters represented half of all comments received, and other commenters did not opine on the location of the proposed codification.

codify the no-action position in CFTC Letter No. 19-17 and that the rulemaking process would extend beyond September 30, 2023. FIA further noted that extending the current no-action position would maintain the status quo until the Commission had an opportunity to consider and act on the Divisions' recommendation.

On September 11, 2023, the Commission issued CFTC Letter No. 23-13, "Extension of Time-Limited No-Action Position with Respect to the Treatment of Separate Accounts by Futures Commission Merchants." CFTC Letter No. 23-13 further extended the conditional and time-limited no-action position in CFTC Letter No. 19-17 regarding Regulation 39.13(g)(8)(iii) until June 30, 2024.<sup>8</sup>

On March 1, 2024, the Commission withdrew the First Proposal and proposed to codify the no-action position in CFTC Letter No. 19-17 in Part 1 of the Commission's regulations (Second Proposal).<sup>9</sup> The Second Proposal would codify the existing no-action position in Part 1 and also address how the proposed regulation interacts with the existing requirements (known as the margin adequacy requirement) under Regulation 39.13(g)(8)(iii). The comment period for the Second Proposal ended on April 22, 2024.

The Commission received a number of substantive comments in response to the Second Proposal, which staff will need to consider in developing a final rule to recommend to the Commission. Accordingly, the proposed rule will not be finalized by June 30, 2024. On May 10, 2024, FIA requested that the Divisions extend the no-action position for at least six months on the grounds that additional time would allow the Commission to review the public comments filed in response to the Second Proposal and adopt a final rule codifying the no-action position. FIA further asserted that market participants that currently rely on the no-action position—including futures commission merchants, asset managers and their customers—will be able to continue to do so until such time as the Commission can take final action on the Second Proposal. The Divisions agree that it is appropriate to extend the no-action position in order to provide time for staff to further develop and consider the public comments on the Second Proposal in developing a final rule to recommend to the Commission, and for the Commission to consider the final rule.

Accordingly, the conditional no-action position with respect to Regulation 39.13(g)(8)(iii) contained in CFTC Letter No. 19-17 is now further extended until the earlier of (a) June 30, 2025 or (b) the effective date of any final Commission action relating to the Second Proposal.<sup>10</sup> For

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<sup>8</sup> CFTC Letter No. 23-13 at page 3.

<sup>9</sup> Regulations to Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 89 FR 15312 (March 1, 2024).

<sup>10</sup> Given that Regulation 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 the no-action position in CFTC Letter No. 19-17 is a response, pursuant to

the avoidance of doubt, this temporal extension of the no-action position 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.<sup>11</sup> The no-action position set forth in CFTC Letter No. 19-17, as modified by CFTC Letter No. 20-28, CFTC Letter No. 21-29, CFTC Letter No. 22-11, and CFTC Letter No. 23-13, 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 the no-action position 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, or Daniel O’Connell, Special Counsel, Division of Clearing and Risk, [doconnell@cftc.gov](mailto:doconnell@cftc.gov), or (202) 418-5583.

/s/ \_\_\_\_\_

**M. Clark Hutchison**

**Director**

/s/ \_\_\_\_\_

**Amanda L. Olear**

**Director**

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Commission Regulation 140.99, 17 C.F.R. 140.99, to FIA’s request that the no-action position be extended. *See* Joint Audit Committee Regulatory Alert 20-02, <http://www.jacfutures.com/jac/jacupdates/2020/jac2002.pdf>.

<sup>11</sup> *See* 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).