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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[1] (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."[2] CFTC Letter No. 19-17 provided "guidance regarding CFTC Regulation 1.56(b)[3] and [a] time-limited no-action [position] regarding Regulation 39.13(g)(8)(iii)[4] 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."

The Divisions have issued letters extending the no-action position in CFTC Letter No. 19-17, in light of the COVID-19 pandemic, and to provide additional time for staff to recommend, and for the Commission to consider, a rulemaking to implement on a permanent basis requirements related to separate account treatment.[5]

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[1] The Division of Swap Dealer and Intermediary Oversight has since been re-designated as the Market Participants Division.

[2] CFTC Letter No. 19-17, July 10, 2019, available at https://www.cftc.gov/csl/19-17/download.

[3] 17 C.F.R. 1.56(b).

[4] 17 C.F.R. 39.13(g)(8)(iii).

[5] CFTC Letter No. 20-28, Sept. 15, 2020, available at https://www.cftc.gov/csl/20-28/download; CFTC Letter No. 21-29, Dec. 21, 2021, available at https://www.cftc.gov/csl/21-29/download; CFTC Letter No. 22-11, Sept. 15, 2022, available at https://www.cftc.gov/csl/22-11/download; CFTC Letter No. 23-13, Sept. 11, 2023, available at https://www.cftc.gov/csl/23-13/download; CFTC Letter No. 24-07, June 24, 2024, available at https://www.cftc.gov/csl/24-07/download.

On March 1, 2024, the Commission published in the Federal Register a notice of proposed rulemaking to implement requirements related to separate account treatment.[6] On December 20, 2024, the Commission approved a final rule adopting the proposal with modifications in light of comments received.[7] The final rule was published in the Federal Register on January 22, 2025.[8] The final rule will become effective on March 24, 2025, 60 days after the date of publication of the final rule in the Federal Register. However, the compliance date for futures commission merchants (FCMs) that are clearing members of a derivatives clearing organization (DCO) as of the date of publication of the final rule in the Federal Register will be July 21, 2025, 180 days after the date of publication of the final rule in the Federal Register.[9]

CFTC Letter No. 24-07, the most recent letter extending the no-action position in CFTC Letter No. 19-17, provides such an extension until the earlier of (a) June 30, 2025 or (b) the effective date of any final Commission action relating to the Commission's notice of proposed rulemaking, published in the Federal Register on March 1, 2024, to implement requirements related to separate account treatment.

On February 21, 2025, the Futures Industry Association requested that the Divisions extend the no-action position in CFTC Letter No. 19-17 to July 21, 2025, so that clearing member FCMs which have engaged in separate account treatment pursuant to the terms of the no-action position may continue to do so as they come into compliance with the final rule. Because the extension provided in CFTC Letter No. 24-07 will expire before the compliance date for FCMs that are clearing members of a DCO as of the date of publication of the final rule in the Federal Register, to help ensure a smooth transition into compliance with the final rule for such FCMs, including those that have relied on the no-action position of CFTC Letter No. 19-17, the conditional no-action position with respect to Regulation 39.13(g)(8)(iii) contained in CFTC Letter No. 19-17 is

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[6] Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 89 FR 15312 (Mar. 1, 2024). This proposal, which proposed to codify requirements related to separate account treatment in the Commission's part 1 futures commission merchant regulations, withdrew and replaced an earlier proposal to codify such requirements in the Commission's part 39 derivatives clearing organization regulations. *See* Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 FR 22934 (Apr. 14, 2023). As noted above, CFTC Letter No. 19-17 contemplated that staff and the Commission would consider a rulemaking to implement requirements related to separate account treatment on a permanent basis. Furthermore, on April 1, 2022, the Futures Industry Association requested that the Divisions recommend that the Commission propose for comment amendments to its regulations to codify the no-action position in CFTC Letter No. 19-17. Futures Industry Association letter dated Apr. 1, 2022 to Clark Hutchison and Amanda Olear.

[7] CFTC, CFTC Approves Final Rule on Margin Adequacy, Treatment of Separate Accounts of a Customer by Futures Commission Merchants (Dec. 20, 2024), available at https://www.cftc.gov/PressRoom/PressReleases/9027-24.

[8] Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants, 90 FR 7880 (Jan. 22, 2025).

[9] The compliance date for all other FCMs will be January 22, 2026, 365 days after the date of publication of the final rule in the Federal Register.

now further extended until July 21, 2025.[10] For 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 the Market Participants Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission.[11] 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, CFTC Letter No. 23-13, and CFTC Letter No. 24-07, and as further extended by this Letter, does not excuse persons relying thereon from compliance with any other applicable requirements contained in the Commodity Exchange Act 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, or (202) 418-5092, or Daniel O'Connell, Special Counsel, Division of Clearing and Risk, doconnell@cftc.gov, or (202) 418-5583.

/s/_____

Richard Haynes

Acting Director

/s/_____

Tom Smith

Acting Director

[10] Given that Regulation 39.13(g)(8)(iii) applies, in terms, directly to DCOs, 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, so that DCOs may continue to permit clearing member FCMs to engage in separate account treatment under the terms of CFTC Letter No. 19-17, until the compliance date of the final rule applicable to such FCMs. In that connection, this extension of the no-action position in CFTC Letter No. 19-17 is a response, pursuant to Commission Regulation 140.99, 17 C.F.R. 140.99, to the Futures Industry Association'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.

[11] *See* 17 CFR 140.99(a)(2) ("A no-action letter binds only the issuing Division… and not the Commission or other Commission staff.").