



U.S. COMMODITY FUTURES TRADING COMMISSION

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Gary Barnett
Director

Division of Swap Dealer and Intermediary Oversight

CFTC Letter No. 14-02
No-Action
January 10, 2014
Division of Swap Dealer and Intermediary Oversight

Barbara Wierzynski
Futures Industry Association
2001 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20006-1823

**Re: Request for Time Limited No-Action Relief from Compliance with Certain
Conditions Associated with the Receipt of Customer Funds by Futures Commission
Merchants pursuant to Commission Regulations 1.20, 22.2, and 30.7**

Dear Ms. Wierzynski:

This letter is in response to your letter dated January 7, 2014, to the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By your letter, you request, on behalf of the Futures Industry Association’s (“FIA”) member futures commission merchants (“FCMs”) and similarly situated FCMs, time limited no-action relief with respect to compliance with certain conditions contained in a Commission interpretation of Commission Regulations 1.20, 22.2 and 30.7 as those conditions relate to the receipt and recording of customer funds.

Regulatory Background

On November 14, 2013, the Commission published in the Federal Register final regulations requiring enhanced customer protections for FCMs holding customer funds, including risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs (the “Customer Protection Final Rulemaking”).¹ The effective date for those amendments is January 13, 2014 (the “Effective Date”).

In the Customer Protection Final Rulemaking, the Commission revised Regulation 1.20(e)(3) to prohibit an FCM from commingling the funds deposited by customers as margin for futures transactions executed on designated contract markets (“DCMs”) (*i.e.*, “Section 4d(a)(2) Funds”) with funds deposited by customers as margin for foreign futures and foreign options

¹ See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Final Rule, 78 FR 68,506 (Nov. 14, 2013).

transactions executed on foreign boards of trade (*i.e.*, “Part 30 Secured Funds”) or with funds deposited by customers to margin cleared swap transactions (*i.e.*, “Cleared Swaps Funds”). The Commission also revised Regulation 30.7(e)(3) to prohibit an FCM from commingling Part 30 Secured Funds with Section 4d(a)(2) Funds or with Cleared Swaps Funds.² The Commission further stated that the prohibition on the commingling of customer funds contained in Regulations 1.20(e)(3), 22.2(c)(2)(ii) and 30.7(e)(3) does not prohibit a customer from meeting margin calls for Section 4d(a)(2) Futures Accounts,³ Part 30 Secured Accounts,⁴ or Cleared Swaps Accounts⁵ with a single payment provided that (i) the FCM initially receives the customer’s funds into the customer’s Section 4d(a)(2) Futures Account, and (ii) the FCM simultaneously records the book entry credit to the customer’s Part 30 Secured Account or Cleared Swaps Account (as applicable) as directed by the customer upon the receipt and recording of the cash into the customer’s Section 4d(a)(2) Futures Account.

Time-Limited No-Action Relief Requested

In your letter, you state that the conditions set forth by the Commission that permit a customer to submit a single wire transfer to fund multiple account origins present significant operational challenges for FCMs. Specifically, you state that FCMs may not have the technology that allows for the simultaneous book entry credit to a customer’s Part 30 Secured Account or to a Cleared Swaps Account upon receipt and recording of the funds into the customer’s Section 4d(a)(2) Futures Account. In light of the above technology and operational issues, you request a time-limited no action position to provide an additional 60 days to establish and implement the procedures necessary to assure compliance with the conditions in the interpretation accompanying the adoption of Regulations 1.20(e)(3) and 30.7(e)(3) as described above and set forth in the Customer Protection Final Rulemaking.

Time-Limited No-Action Relief Granted

Based upon the foregoing and the representations made in your letter requesting no-action relief, the Division believes that granting time-limited no action relief is warranted. Staff is committed to working with market participants and assessing the operational feasibility of the requirements regarding the receipt of customer funds under Regulations 1.20(e)(3), 22.2(c)(2)(ii), and 30.7(e)(3), including the requirement for the simultaneous recording of book entry credits upon the receipt and recording of customer deposits to the Section 4d(a)(2) Futures Accounts, and will recommend remedial action by the Commission if warranted. Accordingly,

² The amendments to Regulations 1.20(e)(3) and 30.7(e) are consistent with the existing Regulation 22.2(c)(2)(ii), which prohibits an FCM from commingling funds deposited by customers to margin cleared swap transactions with funds deposited by customers to margin futures transactions or foreign futures transactions.

³ A Section 4d(a)(2) Futures Account is an account that holds customer funds used to margin transactions in futures executed on DCMs.

⁴ A Part 30 Secured Account is an account that holds customer funds used to margin transactions in foreign futures and foreign options executed on foreign boards of trade.

⁵ A Cleared Swaps Account is an account that holds customer funds used to margin transactions in cleared swaps.

the Division will not recommend that the Commission take enforcement action against an FCM that accepts customer funds in a single payment for deposit to the customer's Section 4d(a)(2) Futures Account, Part 30 Secured Account, or Cleared Swaps Account without initially receiving the funds into the customer's Section 4d(a)(2) Futures Account and simultaneously recording the book entry credit to the customer's Part 30 Secured Account or Cleared Swaps Account (as applicable) as directed by the customer upon the receipt and recording of the cash into the customer's Section 4d(a)(2) Futures Account. This no-action position is conditioned upon the FCM maintaining compliance with its obligation to hold sufficient funds in Section 4d(a)(2) Futures Accounts, Part 30 Secured Accounts, and Cleared Swaps Accounts to meet the net liquidating equities of all of the FCM's customers in each respective account origin at all times. This no-action position expires on April 14, 2014.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or in the regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the facts represented to the Division. Any different, changed, or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact Jennifer Bauer, Special Counsel, at 202-418-5472; Joshua Beale, Attorney-Advisor, at 202-418-5446; or Francis Kuo, Attorney-Advisor, at 202-418-5695.

Sincerely,

Gary Barnett