



U.S. COMMODITY FUTURES TRADING COMMISSION

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Gary Barnett
Director

Division of Swap Dealer and Intermediary Oversight

CFTC Letter No. 14-45
No-Action
April 7, 2014
Division of Swap Dealer and Intermediary Oversight

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

**Re: Extension of Time-Limited No-Action Relief with Regard to 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:

The purpose of this letter is to inform you that the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") is extending the expiration date of the no-action relief granted to you on January 10, 2014 with respect to the receipt of customer funds (the "No-Action Relief").¹

By letter dated January 7, 2014 (the "Letter"), you requested, on behalf of the Futures Industry Association's ("FIA") member futures commission merchants and similarly situated FCMs (collectively, "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 30.7,² as those conditions relate to the receipt and recording of customer funds.

At the time of the No-Action Relief, you represented that the conditions set forth by the Commission permitting a customer to submit a single wire transfer to fund multiple account origins present significant operational challenges for FCMs. Specifically, you informed the Division that FCMs may not have the technology that allowed for the simultaneous book entry credit to a customer's Part 30 Secured Account or to a Cleared Swaps Account upon receipt and

¹ See CFTC Ltr. No. 14-02, available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-02.pdf>.

² See 17 CFR 1.20, 22.2, and 30.7.

recording of the funds into the customer's Section 4d(a)(2) Futures Account.³ In light of the technology and operational issues, you requested time-limited no-action relief to provide additional time for FCMs to establish and implement the procedures necessary to assure compliance with the conditions referenced above.⁴

Based on your representations and the Division's understanding of the relevant facts, the Division granted the No-Action Relief. The No-Action Relief is set to expire on April 14, 2014.

Since the issuance of the No-Action Relief, Division staff has had several conversations with FIA and with individual FCMs to better understand the operational and technological issues associated with the receipt and recording of customer funds by FCMs. Staff will continue to hold these discussions to determine an appropriate course of action to recommend to the Commission.

Based on the foregoing, the Division is extending the expiration date of the No-Action Relief. Accordingly, 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 relief 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 relief expires on June 30, 2014.

The position taken herein concerns enforcement actions only and does not represent a legal conclusion with respect to the applicability of any provision of the Commodity Exchange Act or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations made by you to the Division, including the representations made in the Letter, it should be noted that any materially different, changed, or omitted facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

³ The terms "Section 4d(a)(2) Futures Account," "Part 30 Secured Account," and "Cleared Swaps Account" are defined in the No-Action Relief, *supra* n. 1.

⁴ The conditions are explained in the No-Action Relief and set forth in the Commission's November 14, 2013 rulemaking. See *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*; Final Rule, 78 FR 68506 (Nov. 14, 2013).

Ms. Barbara Wierzynski
April 7, 2014
Page 3

Should you have any questions, please do not hesitate to contact Francis Kuo, Attorney-Advisor, at (202) 418-5695, or Thomas Smith, Deputy Director, at (202) 418-5495.

Sincerely,

Gary Barnett
Director