



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521
www.cftc.gov

Gary Barnett
Director

Division of Swap Dealer and Intermediary Oversight

CFTC Letter No. 14-131
No-Action
October 30, 2014
Division of Swap Dealer and Intermediary Oversight

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

Re: Extension of 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 October 17, 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, an extension of previously issued 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.¹ The no-action position expires October 31, 2014.

Regulatory Background

On November 14, 2013, the Commission published in the Federal Register final regulations requiring enhanced customer protections for FCMs holding customer funds,

¹ As noted in your letter, the Commission previously granted time limited no-action relief on January 10, 2014, April 7, 2014, and June 25, 2014. See Staff Letter Nos. 14-02, 14-45, and 14-88 respectively. Staff Letters are available on the Commission’s website, www.cftc.gov.

including risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs (the “Customer Protection Final Rulemaking”).²

In the Customer Protection Final Rulemaking, the Commission revised Regulation 1.20(e)(3) to explicitly prohibit an FCM from commingling the funds deposited by customers as margin for futures transactions executed on designated contract markets (*i.e.*, “Section 4d(a)(2) Funds”) with funds deposited by customers as margin for foreign futures and foreign options transactions executed on foreign boards of trade (*i.e.*, “Part 30 Secured Funds”) or with funds deposited by customers as margin for 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.³

The Commission also 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) Funds, Part 30 Secured Funds, and/or Cleared Swaps Funds with a single payment provided that (1) the FCM initially receives the customer’s margin deposit into the customer’s Section 4d(a)(2) Funds account and, (2) the FCM simultaneously records book entry credits to the customer’s Part 30 Secured Funds account and/or Cleared Swaps Funds account (as applicable) as directed by the customer upon the receipt and recording of the margin deposit into the customer’s Section 4d(a)(2) Funds account.

No-Action Relief Requested

In your letters requesting no-action relief, 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

² 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).

³ 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.

Part 30 Secured Funds account or to a Cleared Swaps Funds account upon receipt and recording of the margin funds into the customer's Section 4d(a)(2) Funds account.

You also state that currently customers meet margin calls by submitting a single wire transfer to the Section 4d(a)(2) Funds account, Part 30 Secured Funds account, or the Cleared Swaps Funds account. In this regard, you state that a number of customers that are (1) non-U.S. customers that deposit foreign currency as margin or (2) customers that trade primarily foreign futures and foreign options transactions currently make a single margin payment to their Part 30 Secured Funds account. You further state that if such deposits are not permissible, it will take time for FCMs to open Section 4d(a)(2) Funds account in foreign jurisdictions, including obtaining the necessary acknowledgment letters from foreign depositories, and to provide new wire transfer instructions to these customers directing them to submit wire transfers to a Section 4d(a)(2) Funds account.

In light of the above technology and operational issues, you request an extension of the no-action relief to establish and to implement procedures necessary to ensure 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. In further support of your position, you note that FIA staff and representatives of FIA member firms have had several meetings and conversations with Division staff to discuss the back office and other operational issues associated with the receipt and recording of customer funds by FCMs, as well as other issues associated with the receipt and movement of customer funds between different regulatory origins.

Staff Position

Based upon the foregoing and the representations made in your letters, the Division believes that extending the no action relief is warranted. As you note, Division staff has met, and has had teleconferences, with FIA staff and representatives of FIA member FCMs as part of its ongoing efforts to better understand and to address the technology and back office issues raised 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 margin deposits to the Section 4d(a)(2) Funds accounts.

Furthermore, based upon Division staff's discussions with industry participants, staff anticipates recommending a rule proposal to the Commission to address the receipt of customer funds by an FCM. Accordingly, the Division is extending the no-action relief pending the Commission's consideration of the issues during a rulemaking process. This no-action position is conditioned upon each FCM maintaining compliance with its obligation to hold sufficient funds in Section 4d(a)(2) Fund accounts, Part 30 Secured Fund accounts, and Cleared Swaps Funds accounts to meet the net liquidating equities of all of the FCM's customers in each respective account origin at all times. The no-action position is further conditioned upon an FCM receiving customer margin deposits only in Section 4d(a)(2) Funds, Part 30 Secured Funds, or Cleared Swaps Funds accounts.

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 me at 202-418-5977, or Thomas Smith, Deputy Director, at 202-418-5495.

Very truly yours,

Gary Barnett