



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-82
No-Action
November 30, 2016
Division of Swap Dealer and Intermediary Oversight

Ms. Allison Lurton
Senior Vice President and General Counsel
Futures Industry Association
2001 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20006

Re: No-Action Position Regarding the Consolidation of Separate Risk Disclosure Statements Contained in Regulation 1.55(b) and Appendix A to Regulation 1.55 into a Single Risk Disclosure Statement

Dear Ms. Lurton:

This is in response to your letter dated November 15, 2016 to the Division of Swap Dealer and Intermediary Oversight (“DSIO”) of the Commodity Futures Trading Commission (“Commission”). By your letter, you request, on behalf of the Futures Industry Association’s (“FIA”) member futures commission merchants (“FCMs”) and introducing brokers (“IBs”), and similarly situated FCMs and IBs, confirmation that DSIO would not recommend that the Commission initiate an enforcement action against an FCM or IB that relies upon an updated risk disclosure statement (the “FIA Combined Risk Disclosure Statement”) to comply with the disclosure statement requirements of Commission Regulations 1.55(b), 30.6(a), 33.7(a), and 190.10(c).¹ Specifically, you request relief from Regulations 1.55(a) & (b), 30.6(a), 33.7(a), and 190.10(c) such that an FCM or, in the case of an introduced account, an IB may provide its non-institutional customers with the FIA Combined Risk Disclosure Statement, which consolidates into a single document the separate risk disclosure statements contained in Regulation 1.55(b) and Appendix A of Regulation 1.55, in lieu of providing separate risk disclosure statements.²

¹ The Commodity Exchange Act (“Act”) may be found at 7 U.S.C. 1 *et. seq.*, and the Commission’s regulations may be found at 17 CFR 1 *et. seq.*

² A “non-institutional” customer is defined as a person that does not satisfy the standards of an “eligible contract participant” as set forth in section 1a(18) of the Act. *See*, Regulation 1.3(g).

I. Regulatory Background

Regulations 1.55(a), 30.6(a), 33.7(a), and 190.10(c) require an FCM or IB, as applicable, to provide each non-institutional customer with written risk disclosure statements prior to opening the customer's account.³ Regulations 1.55(a), 30.6(a), and 33.7(a) further require the FCM or IB to obtain the customer's signed acknowledgment stating that the customer received and understands the applicable risk disclosure statement.

Prior to November 2013, pursuant to Commission Regulation 1.55(c), an FCM or IB could provide customers with the Commission-approved risk disclosure statement set forth in Appendix A to Regulation 1.55 in lieu of the separate risk disclosure statement required by Regulation 1.55(a) or required by Regulations 30.6(a), 33.7(a), and 190.10(c). The Commission adopted Appendix A to Regulation 1.55 to "permit firms doing multinational business to use the same risk disclosure statement for foreign and U.S.-based business, thereby reducing duplicative disclosure requirements without sacrificing important customer protections or obscuring any special risks of trading outside the U.S."⁴ Appendix A was intended to provide FCMs and IBs with the ability to use a single risk disclosure statement to meet CFTC risk disclosure requirements and to meet the risk disclosure requirements of certain foreign jurisdictions that approved the risk disclosure document.⁵

In November 2013, the Commission revised the risk disclosures contained in Regulation 1.55(b) as part of a series of amendments enhancing customer protection.⁶ The Commission did not, however, amend Appendix A to Regulation 1.55. In adopting the amendments to Regulation 1.55(b), the Commission stated that FCMs could continue to use the Appendix A risk disclosure statement provided that the firms also provided non-institutional customers with the revised Regulation 1.55(b) risk disclosure statement.⁷

³ Regulation 30.6 governs the risk disclosures required to be provided to customers trading foreign futures and foreign options transactions. Regulation 33.7 governs the risk disclosures required to be provided to customers trading domestic, exchange-traded commodity options. Regulation 190.10 governs the risk disclosures required to be provided to customers regarding the treatment of non-cash margin in the event of an FCM's bankruptcy.

Regulation 1.55(b) contains the risk disclosures that an FCM must provide to customers trading domestic futures and options, and includes disclosures for foreign futures and foreign options transactions. An FCM that provides a Regulation 1.55(b) risk disclosure statement to a customer is not required to provide the customer with the separate risk disclosure statement required by Regulation 30.6. *See* Regulation 30.6(a).

⁴ *See* 59 FR 34376 (July 8, 1994).

⁵ The Appendix A risk disclosure statement has been approved for use by relevant regulatory authorities in Ireland and the United Kingdom in addition to the United States. *See*, 59 FR 38118.

⁶ *See* Enhancing Protections Afforded Customers and Customer Funds Held By Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

⁷ *See* 77 FR 68506, 68564. *See also* Regulation 1.55(c).

II. Summary of Request for No-Action Position

FIA believes that providing two separate risk disclosure statements to non-institutional customers that contain substantially similar risk disclosure information is unnecessary and potentially confusing to customers. To address this issue, and to reduce the paperwork burden on firms, FIA has drafted the FIA Combined Risk Disclosure Statement. The FIA Combined Risk Disclosure Statement consolidates the mandated risk disclosures set forth in revised Regulation 1.55(b) and the substantive additional disclosures contained in Appendix A to Regulation 1.55 into a single risk disclosure statement.

III. DSIO No-Action Position

Based on the foregoing, DSIO believes that a no-action position is warranted. Accordingly, DSIO will not recommend an enforcement action against an FCM or an IB, in the case of an introduced account, that provides a non-institutional customer with the FIA Combined Risk Disclosure Statement prior to such customer opening an account in lieu of the separate risk disclosure statements specified in Regulations 1.55(b) and (c), 30.6(a), 33.7(a), 190.10(c), and/or Appendix A to Regulation 1.55. This no-action position is subject to the conditions that the FIA Combined Risk Disclosure Statement is provided to non-institutional customers in the manner required by Regulation 1.55.

This letter, and the positions taken herein, represent the views of DSIO and do not necessarily represent the positions or views 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. This letter does not create or confer any rights or obligations on any person or persons subject to compliance with the Act that bind the Commission or any of its other offices or divisions. As with all no-action letters, DSIO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, at its discretion.

Should you have any questions, please contact me at (202) 418-5326, Peter Sanchez, Special Counsel, at (202) 418-5237, or Joshua Beale, Special Counsel, at (202) 418-5446.

Very truly yours,

Eileen T. Flaherty
Director