



## U.S. COMMODITY FUTURES TRADING COMMISSION

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

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<sup>1</sup> (together, the Divisions) issued CFTC Letter 19-17, “Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” Letter 19-17 provided “guidance regarding CFTC Regulation 1.56(b)<sup>2</sup> and time-limited no-action relief regarding Regulation 39.13(g)(8)(iii)<sup>3</sup> as these rules relate to the treatment of separate accounts of the same customer, a beneficial owner.” Letter 19-17 stated that the no-action relief 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.”

On September 15, 2020, the Divisions issued CFTC Letter 20-28, “Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants.” Letter 20-28 provided further time-limited no-action relief, further interpretation of Regulation 1.56, and, as relevant here, extended the expiration of the conditional and time-limited no-action relief regarding Regulation 39.13(g)(8)(iii) until December 31, 2021.

In Letter 20-28, the Divisions noted that “[i]f the process described above – *i.e.*, for Staff to recommend, and the Commission to determine, whether to conduct, and if so, to in fact conduct, a rulemaking to implement appropriate relief on a permanent basis – is not completed by that date, the Divisions will consider further extension of this timeframe.”<sup>4</sup>

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<sup>1</sup> The Division of Swap Dealer and Intermediary Oversight has since been re-designated as the Market Participants Division (MPD).

<sup>2</sup> 17 C.F.R. 1.56(b).

<sup>3</sup> 17 C.F.R. 39.13(g)(8)(iii).

<sup>4</sup> CFTC Letter 20-28 at page 4.

Because it appeared that this process would not be completed by December 31, 2021, on December 15, 2021, the Futures Industry Association (FIA) requested that the Divisions extend the timeframe for at least nine months, on the grounds that the futures commission merchants (FCMs) have widely implemented the practices described in the relief, and both FCMs and customers continue to rely on the relief. The Divisions agreed that the rationale for granting the relief remained relevant, and that it was appropriate to extend the deadline in order to provide further time for the Commission to consider whether and, if so, how to codify the relief. Accordingly, on December 21, 2021, the Divisions issued CFTC Letter 21-29, which extended the conditional no-action relief with respect to Regulation 39.13(g)(8)(iii) until September 30, 2022.

On April 1, 2022, FIA requested that the Divisions recommend that the Commission propose for comment amendments to its rules to codify the time-limited and conditional no-action relief with regard to Regulation 39.13(g)(8)(iii). On August 25, 2022, FIA requested that the Divisions further extend the conditional no-action relief with respect to Regulation 39.13(g)(8)(iii) until the earlier of (a) September 30, 2023 or (b) the effective date of any Commission final action on any recommendation that the Divisions may make to codify such relief.<sup>5</sup>

The Divisions are considering FIA's April 1, 2022 request, and agree that it is appropriate to extend the deadline in order to provide further time for the Commission to consider whether and, if so, how, to codify the relief. Accordingly, the conditional no-action relief with respect to Regulation 39.13(g)(8)(iii) is now further extended until the earlier of (a) September 30, 2023 or (b) the effective date of any final Commission action relating to Regulation 39.13(g).<sup>6</sup> For the avoidance of doubt, this temporal extension of the no-action relief is the sole purpose of this letter.

This Letter, and the position taken herein, represent the views of DCR and MPD only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission.<sup>7</sup> The no-action relief set forth in Letter 19-17, as modified by Letter 20-28 and Letter 21-29, and as further extended by this Letter, does not excuse persons relying thereon from compliance with any other applicable requirements contained in the CEA or in Commission Regulations.

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<sup>5</sup> FIA in its April 1, 2022 request stated its "understand[ing] that the Divisions are currently developing such a recommendation to present to the Commission for its consideration," and the fact that "the Commission will not have an opportunity to consider and complete final action on this recommendation before the expiration of the no-action relief on September 30, 2022."

<sup>6</sup> Given that Regulation 39.13(g)(8)(iii) applies, in terms, directly to derivatives clearing organizations, 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. In that connection, this extension of relief is a response, pursuant to Commission Regulation 140.99, 17 C.F.R. 140.99, to FIA's request that the relief be extended. See Joint Audit Committee Regulatory Alert 20-02, <http://www.jacfutures.com/jac/jacupdates/2020/jac2002.pdf>.

<sup>7</sup> See 17 CFR 140.99(a)(2) ("A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.").

Questions regarding this advisory and no-action relief can be directed towards Robert B. Wasserman, Chief Counsel, Division of Clearing and Risk, [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), or (202) 418-5092.

/s/ \_\_\_\_\_

**M. Clark Hutchison**

**Director**

/s/ \_\_\_\_\_

**Amanda L. Olear**

**Director**