



Commodity Futures Trading Commission

Office of Public Affairs

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Fact Sheet and Q&A – Final Rule Regarding Regulations to Address Margin Adequacy and to Account for the Treatment of Separate Accounts by Futures Commission Merchants

The Commodity Futures Trading Commission (“Commission” or “CFTC”) is adopting a final rule to require a futures commission merchant (“FCM”) to ensure that a customer does not withdraw funds from its account with the FCM if the balance in the account after the withdrawal would be insufficient to meet the customer’s initial margin requirements (the “Margin Adequacy Requirement”) and, relatedly, permit an FCM, in certain circumstances and subject to certain requirements, to treat a customer’s separate accounts as accounts of separate entities for purposes of the Margin Adequacy Requirement (*i.e.*, separate account treatment). The Margin Adequacy Requirement, and requirements for separate account treatment, will be codified in new Regulation 1.44. The Commission is also adopting amendments to Regulations 1.3, 1.17, 1.20, 1.32, 1.58, 1.73, 22.2, 30.2, 30.7, and 39.13 to facilitate implementation of Regulation 1.44 and to correct certain inconsistencies in existing Commission regulations.

Background

Regulation 39.13(g)(8)(iii) provides that a DCO shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members if the withdrawal would result in a customer initial margin shortfall. On July 10, 2019, staff in the Division of Clearing and Risk (“DCR”) and the Division of Swap Dealer and Intermediary Oversight (later renamed Market Participants Division (“MPD”)) issued CFTC Letter No. 19-17, which included a time-limited no-action position providing that the divisions would not recommend an enforcement action if a DCO permits an FCM clearing member to treat the separate accounts of a single customer as accounts of separate entities for purposes of Regulation 39.13(g)(8)(iii), provided the clearing member’s written internal controls and procedures require it to, and it in fact does, comply with certain risk-mitigating conditions.

Separate account treatment may be desirable for, among others, certain institutional customers who may allocate assets to investment managers, under investment management agreements that require each investment manager to invest a specified portion of the customer’s assets under management in accordance with an agreed trading strategy, independent of the trading that may be undertaken for the customer by the same or other investment managers acting on behalf of other accounts of the customer. In such situations, the investment manager may desire assurance that the portion of funds it has been allocated to manage is entirely available to the investment manager and will not be affected by the activities of other investment managers who manage other portions of the customer’s assets and maintain separate accounts at the same FCM.

In April 2023, the Commission published in the Federal Register a notice of proposed rulemaking to codify the no-action position in CFTC Letter No. 19-17 under the Commission’s Part 39 DCO regulations (First Proposal). Following review of comments, in March 2024, the Commission published in the Federal Register a notice of proposed rulemaking that withdrew the First Proposal, and adopted in its place a proposal to, consistent with feedback from commenters, codify the no-action position in Part 1 by (i) applying directly to FCMs a Margin Adequacy Requirement similar to that of Regulation 39.13(g)(8)(iii); (ii) setting forth requirements related to an FCM’s election for and application of separate account treatment; and (iii) in other provisions of Part 1, as well as in Parts 22, 30, and 39, making supporting amendments to facilitate implementation of these proposed requirements and correct inconsistencies in the regulatory text.

The final rule adopts the Second Proposal with modifications in light of comments received.

Summary of the Final Rule

The final rule will apply a Margin Adequacy Requirement and requirements related to an FCM's election for and application of separate account treatment directly to FCMs.

Regulation 1.44, which will contain the main body of the final rule, will be comprised of eight subsections. Regulation 1.44(a) will define key terms for purposes of Regulation 1.44. Regulation 1.44(b) will incorporate for all FCMs, and for all accounts, the Margin Adequacy Requirement that Regulation 39.13(g)(8)(iii) currently requires DCOs to apply to their clearing FCMs. Regulation 1.44(c) provides that an FCM can engage in separate account treatment only during the "ordinary course of business," as defined in Regulation 1.44(a). Regulation 1.44(d) will allow an FCM to elect separate account treatment for one or more customers. Regulation 1.44(e) will set forth events that are inconsistent with the ordinary course of business and will contain requirements for FCMs related to cessation of disbursements to separate account customers on a separate account basis upon the occurrence of such events, and resumption of such separate account disbursements upon the cure of such events. Regulations 1.44(f), (g), and (h) will establish requirements for FCMs that maintain separate accounts related, respectively, to meeting a "one business day margin call" standard; capital, risk management, and segregation calculation requirements with which FCMs will be required to comply with respect to accounts for which the FCM has elected separate treatment; and information and disclosures that FCMs applying separate account treatment must provide.

Because Regulation 1.44 will contain a number of requirements (namely, computation requirements) that will affect how FCMs that apply separate account treatment comply with other Commission requirements, the Commission is, as part of the final rule, adopting supporting amendments to those other regulations to facilitate implementation of Regulation 1.44.

Final Rule Q&A

1. Who will be affected by the final rule?

Regulation 1.44's Margin Adequacy Requirement will apply to all FCMs. FCMs may elect, but are not required, to apply separate account treatment for one or more customers. Regulation 1.44's requirements for separate account treatment will apply only to those FCMs that have elected to provide such treatment.

2. What are the compliance dates for FCMs?

For FCMs that are clearing members of a DCO as of the date of publication of the final rule in the Federal Register, the compliance date will be 180 days after the date of publication. For all other FCMs, the compliance date will be 365 days after the date of publication.

3. What will be the requirements for separate account treatment?

Regulation 1.44 provides that an FCM may engage in separate account treatment during the ordinary course of business, meaning the standard day-to-day operation of the FCM's business relationship with its separate account customer, absent the occurrence of certain events, enumerated in the final rule, that are inconsistent with the ordinary course of business and that, generally, would indicate financial or operational distress at an FCM or at one or more of its separate account customers. The occurrence of such an event would require cessation of separate account disbursements, although an FCM could resume separate account disbursements if the circumstances triggering the event are cured.

An FCM that engages in separate account treatment will be required to observe a one business day margin call standard for separate accounts. Regulation 1.44 will generally require a margin call for a separate account to be made and met on a same-day basis. However, Regulation 1.44 contains additional provisions designed to address margin paid in foreign currencies that may be unable to be received on a same-day basis, as well as delays caused by foreign banking holidays, and an exception for failure to pay margin timely due to certain administrative errors or operational constraints.

Additional requirements concern calculations for capital, risk management, and segregation, as well as recordkeeping. These requirements relate to existing requirements for FCMs in parts 1, 22, and 30 related, respectively, to futures customer accounts, Cleared Swaps Customer Accounts, and accounts of foreign futures and foreign options customers. These requirements generally seek to ensure that FCMs consistently treat separate accounts on a separate and independent basis for purposes of certain Commission regulations.

Lastly, FCMs will be required to comply with requirements related to collecting information from customers and investment managers related to the value of assets dedicated to separate accounts and the identity of the customer's parent company, if any; collecting contact information for customer representatives; provision of disclosures under the Commission's Part 190 bankruptcy regulations, related to treatment of separate accounts in the event of an FCM bankruptcy; and notifications for customers regarding the potential for losses related to separate account customers to affect segregated funds of the FCM's customers generally, in the event that such losses exceed the FCM's ability to cover them.

4. What notifications will be required under the final rule?

Regulation 1.44 will require an FCM applying separate account treatment to make two notifications to its designated self-regulatory organization (DSRO) and the Commission in accordance with Regulation 1.12(n)(3):

- A one-time notification of the election to allow separate account treatment. An FCM will be required to make this notification the first time it begins applying separate account treatment for a customer. The FCM will not need to identify the specific customer for whom separate account treatment is provided or repeat the notification with respect to additional separate account customers.
- A notification regarding the occurrence of any of the enumerated events considered inconsistent with the ordinary course of business, and thus requiring cessation of separate account disbursements. The notification must identify the event and, if applicable, the customer. The notification must be provided promptly in writing and in any case no later than the next business day following the date on which the FCM identifies or has been informed that such event has occurred.

5. What are the differences between the Second Proposal and the final rule?

As explained in greater detail in the preamble, the final rule makes a number of modifications to the Second Proposal in light of comments received, the most substantive of which are noted below. In addition to these changes (among others noted in the final rule), in response to comments, the Commission in the preamble confirms that, as a general matter, certain established margining practices (*e.g.*, related to treatment of pending non-U.S. dollar transfers for certain purposes related to margining and residual interest/legally segregated operationally commingled compliance calculations), would not be inconsistent with the final rule.

- The final rule eliminates a proposed requirement for FCMs to “look across” the separate accounts of a separate account customer for purposes of certain capital treatment requirements under Regulation 1.17.
- In the final rule, the definition of the term “undermargined amount” is revised to remove language that commenters found confusing, and to include the application of haircuts to the value of margin deposits held by an FCM.
- In the final rule, the definition of “ordinary course of business” is revised to reflect that the list of events in the final rule, the occurrence of which would require an FCM to cease separate account disbursements with respect to a specific separate account customer or all such customers, is the complete list of such events for purposes of the final rule.
- For purposes of meeting a one business day margin call standard, the Second Proposal proposed a one business day extension to meet a margin call for nonconsecutive non-U.S. banking holidays (in the jurisdiction of issue of the currency in which margin is to be paid). The final rule makes available this extension for consecutive non-U.S. banking holidays as well. In the same provision, the final rule also eliminates a proposed requirement, with respect to margin paid in Euros, for a separate account customer or asset manager to designate to the FCM a Eurozone jurisdiction of most significant contacts, the holiday schedule of which would be used for the purpose of obtaining an extension with respect to non-U.S. banking holidays.
- For purposes of meeting a one business day margin call standard, the Second Proposal proposed an exception for an untimely margin payment due to certain administrative errors or operational constraints. The final rule eliminates the proposed requirements that such an administrative error or operational constraint be one that is “unusual” and that “a separate account customer or investment manager acting diligently and in good faith could not have reasonably foreseen.”
- The final rule eliminates a proposed requirement to toll for 30 days an FCM's reinstatement of an election for separate account treatment.

6. What supporting amendments are included in the final rule?

The final rule will make certain changes to existing provisions in Parts 1, 22, 30, and 37 to facilitate implementation of Regulation 1.44. These changes generally do not add new requirements but rather modify existing requirements to accommodate Regulation 1.44's provisions for separate account treatment and to specify how FCMs are to comply with such requirements with respect to separate accounts. These changes include:

- Amendments to Regulation 1.17 to account for separate account treatment in calculation of risk margin, determining current assets and liabilities that the FCM may recognize and include in computing net capital, and determining funds required to meet maintenance margin requirements in computing adjusted net capital.
- Amendments to Regulations 1.32, 22.2, and 30.7 to account for separate account treatment in preparing daily segregation calculations and statements for futures customers, and provide that an FCM, in computing its segregation obligations, may offset a net deficit in a particular separate account customer's separate account against the current value of any readily marketable securities held by the FCM for the separate account customer, provided such securities are held as margin collateral for the specific separate account in deficit.
- Amendments to Regulation 1.58 to provide that, where an FCM has established an omnibus account that is carried by another FCM, and the depositing FCM has elected separate account treatment, then the depositing FCM must calculate initial and maintenance margin separately for each separate account for purposes of Regulation 1.58(a)'s margin deposit requirements.
- Amendments to Regulation 1.73, containing risk management requirements for clearing FCMs, to provide that a non-clearing FCM that engages in separate account treatment shall comply with Regulation 1.73 with respect to accounts and separate accounts of separate account customers receiving separate treatment, as if the FCM were a clearing member of a DCO.
- Amendments to Regulation 39.13 to clarify that separate accounts of a separate account customer shall be treated as an account of a separate individual customer with respect to gross margin collection requirements in Regulation 39.13(g)(8)(i) and make clear that Regulation 39.13(g)(8)(iii)'s margin adequacy requirement continues to apply, except to the extent provided for in Regulation 1.44.