



December 15, 2021

M. Clark Hutchison III
Director, Division of Clearing and Risk

Amanda Olear
Acting Director, Market Participants Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Hutchison and Ms. Olear,

On behalf of our member firms that are registered with the Commodity Futures Trading Commission (“Commission” or “CFTC”), we write concerning CFTC Letter No. 20-28, *Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants* (“FCMs”) (“Advisory 20-28”).

The Futures Industry Association (“FIA”)¹ welcomed the publication of Advisory 20-28, which, *inter alia*, provided further information on topics covered in prior CFTC Letter No. 19-17, *Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants* (“Advisory 19-17”, together with Advisory 20-28, the “Advisories”). In particular, the industry welcomed the clarity provided in Advisory 20-28 with respect to the appropriate terms and conditions of a customer agreement² required to assure compliance with: (i) the provisions of Commission Rule 1.56(b);³ and (ii) the terms and conditions of the no-action relief with respect to Commission Rule 39.13(g)(8)(iii)⁴ set out in Advisory 19-17, as those rules relate to

¹ FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in London, Brussels, Singapore and Washington, DC. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA’s core constituency consists of firms that operate as clearing members in global derivatives markets, including firms registered with the Commission as FCMs.

² The term “customer agreement” means the account agreement and any other agreements entered into between an FCM and its customer that govern the relationship between the FCM and customer with respect to such customer’s commodity interest transactions.

³ 17 CFR § 1.56(b). Commission Rule 1.56(b) prohibits an FCM from representing in any way that it will (i) guarantee a customer against loss; (ii) limit the loss of such customer; or (iii) not call for or attempt to collect initial and maintenance margin as established by the rules of the applicable board of trade.

⁴ 17 CFR § 39.13(g)(8)(iii). Commission Rule 39.13(g)(8)(iii) provides that a derivatives clearing organization (“DCO”) must require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer’s account after such withdrawal are sufficient to meet the customer initial margin requirements

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the treatment of separate accounts of the same customer, *i.e.*, beneficial owner. In addition, Advisory 20-28 extended the no-action relief provided in Advisory 19-17 with respect to Regulation 39.13(g)(8)(iii) until December 31, 2021.

It is our understanding that firms widely rely upon the relief provided in the Advisories. Specifically, many firms have implemented the conditions set forth in the Advisories that allow for separate margin treatment of accounts of the same beneficial owner. Both FCMs and their clients continue to rely upon the relief in their management of margin requirements and related customer requirements.

We understand that the CFTC originally provided and then extended the time of the no-action relief until December 31, 2021, in order to provide CFTC staff with time to recommend and the Commission to conduct a rulemaking, as it deemed appropriate, to codify the relief. Advisory 20-28 further indicated that staff would be willing to consider a further extension of time should the Commission not complete the required work before the expiration of the no-action relief. Given the widespread implementation of the conditions in the Advisories and the continued reliance upon the relief by FCMs and their customers, we respectfully request that staff extend the no-action relief for at least nine months until September 30, 2022.

Thank you for your consideration of this request. If you have any questions or if you need any additional information, please contact Allison P. Lurton, FIA's Chief Legal Officer and General Counsel, at alurton@fia.org or 202.466.5460.

Sincerely,



Allison Lurton
Chief Legal Officer & General Counsel

Cc: Robert Wasserman, CFTC, Chief Counsel, Division of Clearing and Risk
Thomas Smith, CFTC, Deputy Director, Capital, Margin & Segregation, Market Participants
Division

with respect to all products and swap portfolios held in such customer's account which are cleared by the DCO.