

Joint Audit Committee

REGULATORY ALERT

TO: Chief Executive Officers #19-04
Chief Financial Officers
Chief Compliance Officers

CC: Division of Clearing and Risk, CFTC
Division of Swap Dealer and Intermediary Oversight, CFTC

DATE: July 12, 2019

SUBJECT: CFTC Letter No. 19-17 – Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants

The Commodity Futures Trading Commission (“CFTC”) issued CFTC Letter No. 19-17, dated July 10, 2019, containing, in part, Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants (“FCMs”) (the “CFTC Letter”). The CFTC Letter provides no-action relief extending until June 30, 2021 with respect to CFTC Regulation 39.13(g)(8)(iii) as specified below.

CFTC Regulation 39.13(g)(8)(iii) requires a Derivatives Clearing Organization (“DCO”) to 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 the customer’s account after the withdrawal would be sufficient to meet the customer initial margin requirements with respect to the products or portfolios in the customer’s account which are cleared by the DCO. In proposing the requirement,¹ the CFTC stated that the requirement was consistent with the definition of “Margin Funds Available for Disbursement” in the JAC Margins Handbook.² In accordance with the JAC Margins Handbook, when determining an account’s margin funds available for disbursement, all identically owned accounts (all accounts of the same beneficial owner), even if under different control, within the same regulatory account classification must be combined.

In accordance with the CFTC Letter, the CFTC’s Division of Clearing and Risk (“DCR”) provided that a DCO may permit its FCM clearing members to treat separate accounts of a customer as accounts of separate entities for purposes of Regulation 39.13(g)(8)(iii) where the FCM clearing member’s written

¹ Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69,334, 69,379 (Nov. 8, 2011).

² Margin funds available for disbursement is defined by the JAC Margins Handbook (found at <http://www.jacfutures.com>) as an account’s net liquidating value + margin deposits – initial margin requirements (risk margin only) ≥ zero. Alternatively, FCMs may compare the total equity plus margin deposits in an account to the initial margin requirement adjusted for the account’s option value, commonly referred to as the Total Equity Method.

internal controls and procedures require it to, and the FCM in fact does, comply with the conditions for the relief as set forth in the CFTC Letter. The CFTC Letter, including the detailed conditions, may be found on the CFTC's website at <https://www.cftc.gov/csl/19-17/download>.

As a result, until the earlier of June 30, 2021 or such time as the CFTC amends Regulation 39.13(g)(8)(iii), through this JAC Regulatory Alert, JAC Regulatory Alert #19-02 (attached) is considered to be amended to include the application of the CFTC Letter for FCM clearing members for the positions cleared by DCOs if and as such conditions are adopted by the individual DCOs. For clarity, except as provided for by the CFTC Letter and permitted by DCO rules, all other requirements of JAC Regulatory Alert #19-02 remain in effect.

Strong controls and procedures pertaining to the disbursement of funds is essential to ensure margin is properly maintained. For any disbursement of excess margin funds, whether in accordance with JAC Regulatory Alert #19-02 or in accordance with the CFTC Letter and as permitted by DCO rules, the FCM's records should clearly demonstrate the review and determination of funds available for disbursement prior to the release of funds.

If you have any questions, please contact your DSRO.

Joint Audit Committee

REGULATORY ALERT

TO: Chief Executive Officers #19-02
Chief Financial Officers
Chief Compliance Officers

CC: Division of Swap Dealer and Intermediary Oversight, CFTC

DATE: May 14, 2019

SUBJECT: Combining Accounts for Margin Purposes

This JAC Regulatory Alert serves as a reminder to FCMs of certain requirements established in exchange rules, the JAC Margins Handbook, and regulations of the Commodity Futures Trading Commission (“CFTC”) requiring the combining of accounts for margin purposes specifically with regards to the release of excess margin funds.¹

All accounts of the same beneficial owner within the same regulatory account classification (i.e. customer segregated, customer secured, cleared swaps customer, or noncustomer) should be combined for margin purposes. Further, when determining an account’s margin funds available for disbursement², all accounts of the same beneficial owner, even if under different control, within the same regulatory account classification must be combined. However, FCMs may choose to call for margin on an individual underlying account basis, provided the gross margin calls made are conservative in relation to the aggregate margin call calculated for the combined account.

Further an account’s available funds from one regulatory account classification cannot be used for disbursement from another regulatory account classification.

An FCM’s policies and procedures should be designed to ensure that any disbursement made to a beneficial owner is made in compliance with industry rules and regulations. That is, a firm’s margin policies and procedures must combine all accounts of the same beneficial owner within the same

¹ This JAC Regulatory Alert reconfirms and reiterates the margin policies related to combining accounts as stated in JAC Regulatory Alert #14-03 dated May 21, 2014 (found at <http://www.jacfutures.com>).

² Margin funds available for disbursement is defined by the JAC Margins Handbook (found at <http://www.jacfutures.com>) as an account’s net liquidating value + margin deposits – initial margin requirements (risk margin only) ≥ zero. Alternatively, FCMs may compare the total equity plus margin deposits in an account to the initial margin requirement adjusted for the account’s option value, commonly referred to as the Total Equity Method.

regulatory account classification to determine funds available for disbursement. Further, for any disbursement of excess margin funds to a beneficial owner, the FCM's records should clearly demonstrate the review and determination of funds available for disbursement prior to the release of funds.

Strong controls and procedures pertaining to the disbursement of funds is essential to ensure margin is properly maintained by beneficial owner.

If you have any questions, please contact your DSRO.