

Joint Audit Committee

REGULATORY ALERT

TO: Chief Executive Officers #20-02
Chief Financial Officers
Chief Compliance Officers

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

DATE: September 23, 2020

SUBJECT: CFTC Letter No. 20-28 – Extension of 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 19-17”). CFTC Letter 19-17 provided no-action relief extending until June 30, 2021 with respect to CFTC Regulation 39.13(g)(8)(iii) under certain conditions as outlined in the letter. CFTC Letter 19-17, including the detailed conditions, may be found on the CFTC’s website at <https://www.cftc.gov/csl/19-17/download>.

In response, the Joint Audit Committee issued JAC Regulatory Alert #19-04 and JAC Regulatory Alert #19-06 (attached) to include the application of CFTC Letter 19-17 for FCM clearing members for the positions cleared by DCOs if and as such conditions are adopted by the individual DCOs as well as to secured 30.7 positions.

On September 15, 2020, the CFTC issued CFTC Letter No. 20-28 Supplemental Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by FCMs (the “CFTC Letter 20-28”), containing, in part, an extension of the Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by FCMs and providing a timeframe for compliance. CFTC Letter 20-28 may be found on the CFTC’s website at <https://www.cftc.gov/csl/20-28/download>.

This JAC Regulatory Alert updates JAC Regulatory Alert #19-04 and JAC Regulatory Alert #19-06 to incorporate CFTC Letter 20-28.

As a result, until the earlier of December 31, 2021 (or any CFTC extension thereof pursuant to CFTC Regulation 140.99) or such time as the CFTC amends Regulation 39.13(g)(8)(iii), through this JAC Regulatory Alert, JAC Regulatory Alert #19-04 and JAC Regulatory Alert #19-06 (attached) are considered to be amended, with respect to determining margin funds available for disbursement, to include the application of CFTC Letter 19-17, including any applicable time frames discussed in subsequent CFTC Letter 20-28, for FCM clearing members for the positions cleared by DCOs if and as such conditions are adopted by the individual DCOs as well as to secured 30.7 positions. All other requirements of JAC Regulatory Alerts #19-02, #19-04 and #19-06 remain in effect.

Strong controls and procedures pertaining to the disbursement of funds are essential to ensure margin is properly maintained. For any disbursement of excess margin funds, 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 #19-04
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.

Joint Audit Committee

REGULATORY ALERT

TO: Chief Executive Officers #19-06
Chief Financial Officers
Chief Compliance Officers

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

DATE: August 28, 2019

SUBJECT: Treatment of Separate Accounts by Futures Commission Merchants – Secured 30.7
(Foreign Futures and Options)

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 (e.g. customer segregated, customer secured 30.7, cleared swaps customer or noncustomer) must be combined.

In 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

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.

purposes of Regulation 39.13(g)(8)(iii) where the FCM clearing member's written 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>.

Application of Time-Limited No-Action Relief to Secured 30.7 Positions

Further, with respect to Regulation 39.13(g)(8)(iii), the CFTC Letter states, in part, "Staff believes that, in the context of separate accounts, the risk management goals that this regulation is designed to address may effectively be addressed if an FCM carrying a customer (i.e. the beneficial owner of an account) with separate accounts instead meets the conditions set forth below."

As such, it follows that the risk management goals related to "Margin Funds Available for Disbursement" in the JAC Margins Handbook and applicable to secured 30.7 positions may effectively be addressed if an FCM carrying separate accounts containing secured 30.7 positions meets the conditions as set forth in the CFTC Letter.³ Therefore, with respect to determining margin funds available for disbursement, FCMs are permitted to apply the no-action relief as provided for and in accordance with the CFTC Letter to separate accounts carrying secured 30.7 positions.

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 and JAC Regulatory Alert #19-04 (attached) are considered to be amended, with respect to determining margin funds available for disbursement, to include the application of the CFTC Letter to secured 30.7 positions. All other requirements of JAC Regulatory Alerts #19-02 and #19-04 remain in effect.

Strong controls and procedures pertaining to the disbursement of funds are essential to ensure margin is properly maintained. For any disbursement of excess margin funds, the FCM's records should clearly demonstrate the review and determination of funds available for disbursement prior to the release of funds.

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³ Moreover, Conditions II.B.8 and 10. in the CFTC Letter requires, respectively, that the receivable from a separate account shall be "grossed up" on the applicable segregation, secured or cleared swaps customer statement and that the FCM include the margin deficiency of each separate account, and cover with its own funds as applicable, for purposes of its Residual Interest and LSOC Compliance calculations under Regulations 1.22, 22.2 and 30.7. Thus, 30.7 positions were contemplated within the CFTC Letter.

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

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

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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.

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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

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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.

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