

**MEMO# 35436**

September 15, 2023

## **CFTC Staff Extends No-Action Relief Regarding Treatment of Separate Accounts by FCMs**

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TO: Derivatives Markets Advisory Committee RE: CFTC Staff Extends No-Action Relief Regarding Treatment of Separate Accounts by FCMs

On September 11, the Division of Clearing and Risk (DCR) and the Market Participants Division (MPD) (together, "the Divisions") of the CFTC issued Letter No. 23-13,[\[1\]](#) which extends previously issued no-action relief regarding the treatment of separate accounts by futures commission merchants (FCMs) under Regulation 39.13(g)(8)(iii). Specifically, the letter extends the conditional no-action relief provided in CFTC Letter No. 19-17,[\[2\]](#) until the earlier of (a) June 30, 2024, or (b) the effective date of any final CFTC action relating to Regulation 39.13(g).

As we previously reported, the CFTC proposed in March to codify (in Part 39 of the CFTC's regulations) the no-action position, and stated conditions, in CFTC Letter No. 19-17, with certain modifications.[\[3\]](#) FIA requested an extension of the most recent no-action letter extending that relief—CFTC Letter No. 22-11—because it appeared that more time would be needed for the CFTC to complete this rulemaking, likely beyond the September 30, 2023 expiration date granted in Letter No. 22-11.[\[4\]](#) The Divisions acknowledged the appropriateness of an extension and noted, in providing it, that commenters on the rule proposal "supported re-proposing the proposed regulation in Part 1 [instead of Part 39] of the CFTC regulations, contending, among other things, that the risk-mitigating conditions should be applied directly to FCMs and that separate account treatment should be available for non-clearing FCMs."[\[5\]](#)

The Divisions explained that they "are preparing to recommend that the [CFTC] re-propose the proposed regulation in Part 1" and that extending the deadline for the no-action relief will "provide further time for staff to develop and for the [CFTC] to consider the re-proposal, and, if such a re-proposal is approved, to receive and consider the comments thereon and to consider and adopt a final rule."

**Notes**

[1] CFTC Letter No. 23-13 (Sept. 11, 2023) ("Letter No. 23-13"), available at <https://www.cftc.gov/csl/23-13/download>.

[2] See CFTC Letter No. 19-17 (July 10, 2019) ("Letter 19-17"), available at <https://www.cftc.gov/csl/19-17/download>. Regulation 39.13(g)(8)(iii) requires a 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. Letter No. 19-17 provided time-limited no-action relief that allowed a DCO to permit an FCM to treat the separate accounts of a customer as accounts of separate entities for purposes of Regulation 39.13(g)(8)(iii), subject to a number of conditions. Letter No. 19-17 was supplemented and extended by CFTC Staff Letter No. [20-28](#) (Sept. 15, 2020), and further extended by CFTC Staff Letters Nos. [21-29](#) (Dec. 21, 2021) and [22-11](#) (Sept. 15, 2022).

[3] Amendments to Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 Fed.Reg. 22934 (April 14, 2023) ("Proposal"), available at <https://www.govinfo.gov/content/pkg/FR-2023-04-14/pdf/2023-06248.pdf> (Proposed Regulation 39.13(j)). For a summary of the Proposal, please see ICI Memorandum No. 35231 (April 6, 2023), available at <https://www.ici.org/memo35231>.

[4] See Letter 22-11, *supra* note 2.

[5] Letter No. 23-13 at 3 (citing letters from the Futures Industry Association (FIA) and SIFMA AMG, among others).