



June 27, 2023

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: RIN 3038-AF21: Request for Comment on Derivatives Clearing
Organization Risk Management Regulations to Account for the Treatment of
Separate Accounts by Futures Commission Merchants

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) proposed amendments to Commission Regulation 39.13 regarding derivatives clearing organization (DCO) risk management regulations. The proposed amendments would allow a DCO to permit clearing futures commission merchants (clearing-FCMs) to treat the separate accounts of a single customer as accounts of separate entities for purposes of Commission Regulation 39.13(g)(8)(iii), provided the clearing-FCM's written internal procedures permit it to do so and the DCO requires the clearing-FCM to comply with specified conditions set forth in the proposed regulations.

The proposal would codify the CFTC's existing 2019 no-action position¹ that imposed conditions on a clearing-FCM's ability to treat accounts owned by a single customer as separate accounts, which is currently scheduled to expire on September 30, 2023. Although NFA understands the CFTC must address DCO risk management obligations through amendments to *Part 39*, consistent with the comment offered by the Joint Audit Committee in its letter on the proposal, NFA believes the Commission should impose the appropriate conditions directly on an FCM through *Part 1—General Regulations under the Commodity Exchange Act*. Including these amendments in *Part 1* would provide a clear path for an FCM's designated self-regulatory organization (DSRO) to examine the FCM for compliance with the requirements.²

¹ See CFTC Letter No. 19-17, Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants (July 10, 2019).

² NFA recommends the Commission re-issue the proposed rulemaking to solicit comments on amending *Part 1* to impose these requirements directly on all FCMs.



As the DSRO for non-clearing FCMs, NFA would also like to specifically comment on the Commission's inquiry regarding whether additional action is necessary and appropriate to apply these requirements directly to non-clearing FCMs, and most specifically who should take this action and what this action should be. NFA does not believe that the current proposed rule provides non-clearing FCMs with regulatory clarity on whether they are permitted to treat separate accounts of a single customer as accounts of separate entities for initial margin withdrawal purposes.

If the Commission determines that non-clearing FCMs should be permitted to do so, given NFA's experience as the DSRO for non-clearing FCMs, NFA believes the most appropriate way to do so would be for the Commission to adopt a regulation in *Part 1* to specifically permit a non-clearing FCM to treat accounts owned by a single customer as separate accounts for purposes of initial margin withdrawal, provided the non-clearing FCM complies with conditions imposed by its DSRO. NFA, as the DSRO for non-clearing FCMs, could adopt a rule setting forth the appropriate conditions based on the final conditions adopted by the Commission and other appropriate conditions (e.g., imposing a higher capital requirement on an FCM that permits separate account treatment) and NFA could examine non-clearing FCMs for compliance with these requirements as part of our regular oversight of these Member FCMs.

NFA appreciates the opportunity to comment on the Commission's proposal, and we are available to assist the Commission if it determines to extend the proposed amendments to non-clearing FCMs. If you have any questions concerning this letter, please do not hesitate to contact Kathleen Clapper, Managing Director at kclapper@nfa.futures.org or Elizabeth Sheridan, Assistant General Counsel at esheridan@nfa.futures.org.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carol A. Wooding".

Carol A. Wooding
Senior Vice President
General Counsel and Secretary