



By Electronic Mail

April 13, 2020
Joshua B. Sterling, Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Request for No-Action Position – Commodity Exchange Act Section 4f(b)

Dear Mr. Sterling:

The Futures Industry Association (“**FIA**”),¹ on behalf of its member firms that are registered as futures commission merchants (“**FCMs**”) and similarly situated FCMs, and the National Introducing Brokers Association (“**NIBA**”),² on behalf of its member firms that are registered as Introducing Brokers (“**IBs**”) and similarly situated IBs (the IBs and FCMs collectively, “**registered entities**”), respectfully request the Division of Swap Dealer and Intermediary Oversight (“**Division**”) to confirm that it will not recommend that the Commodity Futures Trading Commission (“**Commission**” or “**CFTC**”) initiate an enforcement action against the registered entities for violation of Section 4f(b) of the Commodity Exchange Act (“**CEA**”) for failure to maintain minimum capital levels in violation of Section 1.17(a)(1) of the CFTC’s regulations if the registered entities receive a covered loan under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”), seek loan forgiveness pursuant to the provisions of the CARES

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 Commodity Futures Trading Commission as futures commission merchants.

² NIBA is the united voice for derivatives professionals. Established in 1991, NIBA helps its members find greater success in the futures and options business through education and networking while providing the membership with a voice in regulatory and industry matters. NIBA members include Introducing Brokers (IBs), Commodity Trading Advisors (CTAs) and Commodity Pool Operators (CPOs). The Association enjoys the support of CME Group, InterContinental Exchange, Eurexchange, American Financial Exchange, the Small Exchange and all domestic Futures Commission Merchants (FCMs) which handle retail transactions in both domestic and non-domestic markets.

Act, and reflect such activity in its minimum net capital computation, subject to the terms and conditions set forth herein.

Regulation 1.17 requires the registered entities to compute their adjusted net capital by determining their assets and liabilities under GAAP and then making certain adjustments, including adjustments to the assets for market risk or credit risk. Persons required to be registered as FCMs must maintain minimum net capital levels as required in Regulation 1.17(a)(1)(i). Persons required to be registered as IBs not guaranteed³ by an FCM are required to maintain minimum net capital levels as required in Regulation 1.17(a)(1)(iii). Both FCMs and IBs must compute their respective minimum net capital pursuant to computational and definition sections within Regulation 1.17. Those sections address how to compute assets and liabilities, but do not provide allowances to deduct from liabilities loan amounts that become forgivable in assets.

On March 27, 2020, the CARES Act was signed into law. The CARES Act includes the Payroll Protection Program (“PPP”), which allows qualifying businesses to obtain loans of up to \$10 million and is designed to provide a direct incentive for small businesses to keep their employees on the payroll. Section 1106(b) of the CARES Act provides that a recipient of a covered loan (as defined in Section 1106(a)(1)) is eligible for forgiveness of indebtedness on the covered loan in an amount (the “**Forgivable Expense Amount**”) equal to the sum of the following costs incurred and payments made during the eight-week period beginning on the date of the origination of the covered loan:

1. Payroll costs (as defined in Section 1106(a)(8));
2. Any payment of interest on any covered mortgage obligation (as defined in Section 1106(a)(2)), which shall not include any prepayment of or payment of principal on a covered mortgage obligation;
3. Any payment on any covered rent obligation (as defined in Section 1106(a)(4)); and
4. Any covered utility payment (as defined in Section 1106(a)(5)).

In light of the above and in order to assure that all FCMs and IBs that seek PPP loans can reflect the benefits of the program in their net capital computations, we respectfully request the Division to confirm that it will not recommend that the Commission initiate an action against such FCMs and IBs for apparent violation of CEA Section 4f(b) if such FCMs and IBs in computing net capital under CFTC Regulation 1.17 add back to capital the eligible Forgivable Expense

³ Introducing Brokers that operate pursuant to guarantee agreements with FCMs are not subject to the net capital requirements in Section 1.17.

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Amount. We suggest that the Commission provide this relief subject to certain conditions, including a requirement that the FCM and the IB maintain all records related to the PPP loan and the Forgivable Expense Amount and that the Forgivable Expense Amount be reported on CFTC Form 1-FR and Securities Exchange Commission (“SEC”) Form FOCUS.

In an FAQ released April 2, 2020, the Financial Industry Regulation Authority (“FINRA”) provided similar relief to its Broker-Dealer registrants in computing regulatory capital.⁴ Furthermore, FINRA also provided relief to small firms (as defined by FINRA) with additional time to pay FINRA’s annual assessment fees and provided that those firms may add back to the net capital the amount of any accrued and unpaid annual assessment fees due FINRA. Accordingly, we seek relief allowing any FCM or IB that is also a registered broker-dealer with the SEC to add back to net capital for purpose of calculating net capital under CFTC Regulation 1.17 the amount of accrued and unpaid annual assessment fee revenue, provided the firm is eligible to take advantage of FINRA’s guidance.

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Thank you for your consideration of this request. If you have any questions or require any additional information, please contact me at 202.772.3057 or alurton@fia.org or Melinda Schramm at 312.498.3518 or Melinda@futuresrep.com.

I hereby certify that the material facts set forth in this letter are true and complete to the best of my knowledge.

Sincerely,



Allison P. Lurton
General Counsel and Chief Legal Officer, FIA

/s/ Melinda Schramm

Melinda Schramm
Chairman, NIBA

⁴ FINRA, Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic, available at <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#cares> (Q&A titled “Net Capital Treatment of Covered Loans Under the CARES Act,” added Apr. 2, 2020).