February 13, 2023

Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street NW
Washington, D.C. 20581

Re: Reporting and Information Requirements for Derivatives Clearing Organizations, 17 CFR Parts 39 and 140 (RIN 3038-AF12)

Dear Mr. Kirkpatrick:

The Futures Industry Association[1] ("FIA" or "we") appreciates the opportunity to respond to the Commodity Futures Trading Commission's ("CFTC") Reporting and Information Requirements for Derivatives Clearing Organizations Notice of Proposed Rulemaking ("NPR").[2] We write to support the NPR's proposed amendments to Section 39.19(c)(1)(i)(B) and (C) to remove the requirement that a derivatives clearing organization ("DCO") must report daily variation margin and cash flows by individual customer account. The requirement to report daily variation margin and cash flows at the individual customer account level would require derivatives clearing organization ("DCOs"), and by extension, their futures commission merchant ("FCM") clearing members, to develop and implement new reporting processes at significant cost without commensurate benefit to the CFTC, DCOs, FCM clearing members or other market participants. We ask the CFTC to adopt the proposed amendments to Section 39.19(c)(1)(i)(B) and (C) as set forth in the NPR.

Section 39.19(c)(1)(i)(B) and (C) and Related No-Action Relief

In December 2020, in response to a request from FIA and several DCOs,[3] the Division of Clearing and Risk issued time-limited no-action relief from the requirement in Section 39.19(c)(1)(i)(B) and (C) that DCOs report daily variation margin and cash flows by individual customer account.[4] The obligation for DCOs to report such information at the individual customer account level was added to the rule in a 2020 rulemaking addressing a range of issues relating to DCO operations and governance.[5] Prior to the amendments, Regulation 39.19(c)(1)(i)(B) and (C) had required a DCO to report to the CFTC on a daily basis variation margin and other cash flow information for each of its clearing members, by house origin

[1] The Futures Industry Association is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries, as well as technology vendors, lawyers and other professionals serving the industry. 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. As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.
[2] Reporting and Information Requirements for Derivatives Clearing Organizations, 87 Fed. Reg. 76,698 (Dec. 15, 2020).
[3] Letter from FIA *et al.* to Clark Hutchison, Director, CFTC Division of Clearing and Risk (Nov. 6, 2020).
[4] CFTC Letter No. 21–01 (Dec. 31, 2020). The relief was extended in 2021 and again in 2022. *See* CFTC Letter No. 21–31 (Dec. 22, 2021); CFTC Letter No. 22–20 (Dec. 19, 2022).
[5] *See* Derivatives Clearing Organization General Provisions and Core Principles, 85 Fed. Reg. 4800 (Jan. 27, 2020).

and by each customer origin. As amended, the regulation required each DCO to report the variation margin and other cash flow information by individual customer account. The relief issued by CFTC staff in 2020, and as subsequently extended, has allowed DCOs to comply with the version of Section 39.19(c)(1)(i)(B) and (C) as it existed before the 2020 rule amendments. In practice, this has meant that DCOs have not had to implement new reporting practices or adopt new rules requiring their respective FCM clearing members to provide additional information pursuant to amended Section 39.19(c)(1)(i)(B) and (C).

The CFTC Should Codify the Relief as Proposed in the NRP

It is important the CFTC adopt the NPR to codify the relief on which DCOs and FCM clearing members are relying. As FIA communicated to CFTC staff when requesting the relief, to the best of our knowledge, DCOs do not currently report daily variation margin or other cash flows at the individual customer account level to the CFTC as set forth in Regulation 39.19(c)(1)(i)(B)-(C), nor could they implement the new systems, processes and controls designed to accurately report such information without incurring significant costs that would increase the cost of clearing for market participants and distract DCOs from other system safeguards.

The same is true for FCM clearing members. FCM clearing members do not currently furnish DCOs daily variation margin and cash flow information by individual customer account, nor do they expect they could implement the processes to do this without incurring substantial upfront and ongoing costs, potentially diverting resources from core risk management functions.

We stated in our letter requesting relief that we did not believe amended Section 39.19(c)(1)(i)(B) and (C) was in fact intended to impose new reporting obligations on firms when it was adopted in 2020, and we are pleased to see the CFTC confirm our interpretation of the 2020 rulemaking in the NPR. The NPR states in relevant part:

> The Commission recently amended § 39.19(c)(1) to require a DCO to also report [variation margin and cash flow] information by individual customer account. In adopting this change [in the 2020 rulemaking], the Commission stated that the amendments to § 39.19(c)(1) were not intended to require DCOs to report any information that they do not currently have, or do not currently report, subject to any operational or technological limitations that have been discussed with Commission staff. The Commission further specified that the changes to § 39.19(c)(1) to require reporting of information 'by each individual customer account' were meant to reflect the information that DCOs currently report, to varying degrees, acknowledging that customer-level information may not be available to all DCOs.[6]

We are further pleased that the CFTC acknowledges in the NPR, as grounds for adopting the NPR as proposed, that imposing a new, individual customer account level reporting requirement for variation margin and cash flows would come at a significant cost to firms, without material benefit to the agency or marketplace. The NPR states:

> The Commission now understands that, although DCOs possess customer-level information regarding initial margin and positions, many DCOs do not possess customer-

[6] 87 Fed. Reg. at 76,701.

> level information regarding variation margin and cash flows. Also, certain DCOs do not currently have mechanisms in place to collect such information from their respective clearing members, nor do they expect that they could implement these mechanisms without imposing significant new reporting and/or account registration requirements on clearing members. Therefore, the Commission is proposing to amend § 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO report daily variation margin and cash flows by individual customer account.[7]

While we appreciate the CFTC staff's efforts in responding to the industry's request for relief, codification of the relief, as proposed in the NPR, will benefit the CFTC and all market participants. The relief, which is in its third iteration, is time-limited and set to expire on the earlier of December 19, 2023, or the date of a final rulemaking on this matter. Codifying the relief by removing the "individual customer account" language from Section 39.19(c)(1)(i)(B) and (C) will relieve CFTC staff from having to continue to consider requests from the industry to extend the relief. Just as important, it will clarify—permanently—firms' reporting obligations under Section 39.19(c)(1)(i)(B) and (C). Market participants benefit by having clear rules that can be readily ascertained in the relevant regulations, without need to consult other sources. This axiom holds true here. The NPR's proposed revisions to Section 39.19(c)(1)(i)(B) and (C) will ensure that firms understand their reporting obligations for variation margin and cash flows and can plan to meet those obligations in the long-term.[8]

Conclusion

For the foregoing reasons, FIA supports the NPR's proposed amendments to Section 39.19(c)(1)(i)(B) and (C) to remove the requirement that a DCO must report daily variation margin and cash flows by individual customer account. If the CFTC or any member of staff have any questions concerning the matters discussed herein or need any additional information, please contact Michael Sorrell, FIA's Deputy General Counsel at msorrell@fia.org or 202.772.3012.

Respectfully submitted,

Allison Lurton

General Counsel and Chief Legal Officer

cc: Rostin Behnam, Chairman
Kristin N. Johnson, Commissioner
Christy Goldsmith Romero, Commissioner
Summer K. Mersinger, Commissioner
Caroline D. Pham, Commissioner

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[7] *Id.*

[8] The NPR requests comment on whether there are certain products or market segments where it may be appropriate to retain customer-level reporting requirements in Section 39.19(c)(1)(i)(B) and (C). *Id.* at 76,702. We see no basis to differentiate between product categories weighing the cost to DCOs and FCMs of developing new reporting processes to report variation margin by individual customer account, the limited marginal benefit of reporting such information, and the clear intent of the Commission in the 2020 rulemaking with respect to Section 39.19(c)(1)(i)(B) and (C) not to impose new reporting obligations on firms.

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