By Electronic Mail and CFTC Comment Portal

April 22, 2024

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street NW
Washington D.C. 20581

Re: RIN 3038–AF21 – Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants – 89 Fed. Reg. 15312 (March 1, 2024)

Dear Mr. Kirkpatrick:

The Futures Industry Association[1] ("**FIA**") welcomes the opportunity to comment on the Commodity Futures Trading Commission's ("**CFTC**" or "**Commission**") determination to withdraw its proposed rulemaking amending the derivatives clearing organization ("**DCO**") risk management regulations[2] in favor of a notice of proposed rulemaking entitled "Regulations To Address Margin Adequacy and To Account for the Treatment of Separate Accounts by Futures Commission Merchants" (the "**Second Proposal**").[3]

FIA strongly supports the Commission's decision to codify the right of futures commission merchants ("**FCMs**"), as set forth in CFTC Letter No. 19-17 ("**Letter No. 19-17**"),[4] to treat separate accounts of the same beneficial owner as accounts of separate entities for purposes of a

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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, D.C. 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 about 50 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.

2 See Derivatives Clearing Organization Risk Management Regulations to Account for the Treatment of Separate Accounts by Futures Commission Merchants, 88 Fed. Reg. 22934 (Apr. 14, 2023) ("**First Proposal**").

3 89 Fed. Reg. 15312 (Mar. 1, 2024).

4 See CFTC Letter No. 19-17 (July 10, 2019) (as extended and amplified in CFTC Letter No. 20-28 (Sept. 15, 2020), and then extended again in CFTC Letter No. 21-29 (Dec. 21, 2021) and CFTC Letter No. 22-11 (Sept. 15, 2022)).

new “Margin Adequacy Requirement”[5] in Part 1 of the Commission’s Regulations rather than Part 39.

Although Letter No. 19-17 was not FIA’s preferred solution at the time of its issuance, FIA members have been operating under it successfully since that time. Customers, asset managers, and FCMs have built a well-functioning compliance system to its specifications. As the Commission acknowledges, these market participants have also made substantial investments of operational, technological, and human resources in that effort.[6] Accordingly, codification of Letter No. 19-17 is the only practical path forward. We therefore support the CFTC’s effort to codify Letter No. 19-17’s terms and conditions in the Second Proposal.

We appreciate that the Commission and CFTC staff have invested significant resources considering this issue through the years. Mindful of where we are in the process, we have focused our comments primarily on the Second Proposal’s deviations from Letter No. 19-17’s terms and conditions. Taken together, we believe those deviations will result in FCM compliance obligations that are impracticable, costly, and without clear regulatory benefit. Of greater concern, by opting for rigid prescription over the FCM’s sound risk management discretion exercised within the framework of a risk management program implemented under CFTC Regulation 1.11, the proposed deviations threaten to create compliance pitfalls that will inadvertently increase rather than mitigate systemic risk.[7]

Our comments target the following proposed departures from Letter No. 19-17:

- the proposed revisions to CFTC Regulation 1.17’s provision for the computation of undermargined capital charges for separate accounts;
- the proposed “one business day margin call” framework (and in particular the interaction between the re-formulated exception for administrative error or operational constraints with the proposed holiday settlement rules);
- the proposed 30-day toll on reinstatement of separate account treatment; and

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[5] The Margin Adequacy Requirement is currently set forth in CFTC Regulation 39.13(g)(8)(iii), which provides that “a DCO shall require an FCM clearing member to ensure that a customer does not withdraw funds from its account with such clearing member 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.” Second Proposal, 89 Fed. Reg. at 15313. The Commission refers to this requirement, as proposed to be codified in new Commission Regulation 1.44(b)(1), as the “**Margin Adequacy Requirement**”.

[6] Second Proposal, 89 Fed. Reg. at 15315.

[7] This letter also flags for the Commission’s consideration certain technical issues that we believe should be addressed in the final rule.

- the additional disclosure proposed to be included in the disclosure document required under CFTC Regulation 1.55(i).

Respectfully, we strongly believe that the Commission has not demonstrated that the proposed changes to the established separate account margining framework under CFTC Letter No. 19-17 will provide any tangible regulatory benefit for customers, asset managers, or FCMs. The industry has effectively managed the risks associated with separate accounts for decades without incident, both prior to and under the terms of Letter No. 19-17. The proposed deviations from Letter No. 19-17 – particularly the costly and potentially punitive revisions to the computation of undermargined capital charges under CFTC Regulation 1.17; the overly prescriptive and inflexible standards for meeting margin calls; the burdensome documentation requirements for margin fails arising from administrative error or operational constraint and the proposed 30-day toll on reinstatatement of a suspended separate account – will impose significant operational challenges and financial burdens on FCMs and their clients without identifiable enhancements to risk management.

In light of these concerns, and mindful of the advanced stage of this rulemaking process, we have proposed targeted, practical alternative approaches that would accomplish the Commission's objectives of establishing a sound risk management baseline while avoiding the unintended consequences and excessive burdens of the current proposal. We fear that absent these critical changes, some firms may be effectively precluded from relying on the separate account margining framework, further concentrating the exposure of a small number of institutional customers to an even smaller number of large FCMs. We urge the Commission to carefully consider the recommendations put forth in this letter to ensure the final rule is appropriately calibrated to the realities of the market and does not jeopardize the viability of separate account margining for the numerous market participants who rely on it.

Separate Accounts Are a Staple of Institutional Investing and Have Been Effectively Risk Managed for Years

Before we turn to the specifics of the Second Proposal, we believe it bears recapping, briefly, how we arrived at the framework established by Letter No. 19-17 and why that framework should be codified without any material amendments.

As we have emphasized in previous letters, petitions, and comments, FCMs have been managing risks associated with an FCM's maintenance of separately margined accounts for the same beneficial owner conscientiously and cost-effectively, without incident, for decades, including before the Joint Audit Committee ("**JAC**") issued Regulatory Alert #14-03.[8] Institutional money

[8] Regulatory Alert #14-03 is the origin point of the industry controversy that resulted in due course in the CFTC Staff's issuance of Letter No. 19-17. See JAC Regulatory Alert #14-03 at 1-2 (May 21, 2014) (available here) (stating in part that "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. FCMs should be reminded that when determining an account's margin funds available for disbursement, all

managers trade futures on behalf of institutional asset owners, and those owners have long insisted on separate account margining in situations where the same FCM clears for accounts under common ownership by such asset owners. As noted in the Second Proposal, there are a variety of sound, time-tested reasons why a customer may require separate account margining arrangements with its FCMs.[9]

Thus, early on in the evolution of the futures industry, FCMs adapted their operational, financial, and risk management procedures to meet the account structures required by institutional money managers and asset owners. FCMs calculated margin requirements for such separate accounts as if they were owned by different customers; they accounted for such separate accounts independently on their books and records (including for purposes of determining current assets and liabilities under CFTC Regulation 1.17); they computed debit balances for separately managed and separately margined accounts on daily segregation statements (and daily calculations of residual interest amounts) as if they were the accounts of different customers. Most importantly, in the rare circumstances where the common owner of such separately managed and margined accounts defaulted or experienced financial distress, FCMs would assess and manage risk exposure to any such owner on a consolidated account basis.[10]

The deep roots of these practices and the durability of effective risk management in this space demonstrates that separately margined accounts do not expose an FCM to greater regulatory or financial risk.[11] For this reason, we have supported a clearly articulated, principles-based regulatory framework for separate account margining, as exists under Letter No. 19-17. We appreciate that the CFTC considered a variety of perspectives in fashioning the letter's terms and conditions, and with the benefit of time operating under the relief, we believe those terms and conditions are sufficiently flexible to allow FCMs to continue to effectively manage separate accounts (including by the exercise of risk management discretion within the framework of a risk management program implemented under CFTC Regulation 1.11). Letter No. 19-17 is also now hardwired into the industry's architecture for clients that opt for separate accounts. We strongly

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accounts of the same beneficial owner, even if under different control, within the same regulatory account classification must be combined").

[9] See 89 Fed. Reg. at 15314 (citing as examples (i) an investment or pension fund allocating assets to investment managers "under investment management agreements that require each investment manager to invest a specified portion of the customer's assets under management in accordance with an agreed trading strategy, independent of the trading that may be undertaken for the customer by the same or other investment managers acting on behalf of other accounts of the customer" and (ii) a commercial enterprise which "may establish separate agreements to leverage specific broker expertise on products or to diversify risk management strategies").

[10] In sum, in managing the risks of separately margined accounts prior to the industry controversy around the practice, FCMs were already adhering to the requirements set forth in the First Proposal as proposed CFTC Regulation 39.13(j)(5)-(10) (and in the Second Proposal as proposed CFTC Regulations 1.44(g)(2)-(6)), as well as the suspension of "ordinary course of business" requirement set forth in proposed CFTC Regulation 39.13(j)(1)(ii) (and in the Second Proposal as proposed CFTC Regulation 1.44(e)(2)).

[11] See FIA First Comment at 2.

caution the CFTC against deviating from Letter No. 19-17's compliance requirements in the absence of a clear regulatory benefit.

Specific Provisions of the Second Proposal

As noted, our comments focus on (i) select aspects of the Second Proposal that materially diverge from the elements of Letter No. 19-17's separate account compliance framework, as implemented by our members in coordination with their DSROs[12]; and (ii) recommendations of technical fixes to the Second Proposal. We conclude with a request for clarification of the Commission's view of grace or cure periods.

The Proposed Revisions to CFTC Regulation 1.17's Provisions Concerning Current Assets and the Undermargined Account Capital Charge Would Be Unnecessarily Costly and Punitive to FCMs

We welcome the proposed amendment to CFTC Regulation 1.17 that would require FCMs that carry separate accounts to calculate the risk margin component of the FCM's regulatory capital requirement "as if the separate accounts are owned by separate entities."[13] This is consistent with how FCM clearing members have implemented Letter No. 19-17. We are concerned, however, with the proposed additional modifications to Regulation 1.17 that are inconsistent with both the principle of separate account margining and how FCM clearing members have understood the compliance mandate of Letter No. 19-17.

Specifically, for purposes of calculating both current assets under CFTC Regulation 1.17(c)(2)(i) and charges against net capital for undermargined accounts under CFTC Regulation 1.17(c)(5)(viii), the Commission proposes revisions that would require FCMs, in essence, to suspend ordinary course of business for purposes of both calculations in the event that any separately margined account fails to satisfy its previous day's deficit/debit ledger balance in its entirety within one business day (for purposes of the calculation of current assets), or within the

[12] We consider the discussion below concerning proposed amendments to Regulations 1.17 and 1.55(i) and newly proposed Regulations 1.44(d), 1.44(f), and 1.44(h) to be responsive to Questions 1, 2, 3, 4, 6, and 7 in the Second Proposal.

[13] See proposed CFTC Regulation 1.17(b)(8)(v) ("If a futures commission merchant carries separate accounts for separate account customers pursuant to §1.44 of this part, the futures commission merchant shall calculate the risk margin pursuant to this section as if the separate accounts are owned by separate entities."); see also proposed CFTC Regulation 1.44(g)(3) ("A futures commission merchant shall, in computing its adjusted net capital for purposes of § 1.17 of this part, record each separate account of a separate account customer in the books and records of the futures commission merchant as a distinct account of a customer. This includes recording each separate account with a net debit balance or a deficit as a receivable from the separate account customer, with no offsets between the other separate accounts of the same separate account customer.").

close of business at the end of the second business day following the call (for purposes of the undermargined capital charge).[14]

These proposals, if enacted, would mark a significant change from how FCM clearing members have implemented Letter No. 19-17. Letter No. 19-17 includes two conditions relating to regulatory capital books and records. FCMs that have elected to maintain separate accounts must (i) "record each separate account independently in the FCM's books and records," that is, must "record each separate account as a receivable (debit/deficit) or payable with no offsets between the other separate accounts of the same customer"; and (ii) reflect the receivable from a separate account as "secured (as a current/allowable asset) based on the assets of that separate account, not on the assets held in another separate account of the same customer." On the basis of that guidance, FCMs calculate current assets and undermargined capital charges for each separately margined account as if it were in fact owned by separate entities, and they do not look across to other separate accounts of the customer for purposes of either calculation (unless, of course, they are suspending ordinary course of business for any such separate account).[15]

In addition, on their face the proposed changes appear inconsistent with guidance issued by the Joint Audit Committee in 2014 relating to "pending" non-USD margin deposits. JAC Regulatory Alerts #14-03 and #14-06 permit FCMs to apply "margin equity credit" to an account (including a separate account) for pending non-USD transfers, subject to specified conditions.[16] Accordingly,

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[14] See proposed CFTC Regulation 1.17(c)(2)(i) (providing that if "a separate account does not meet a previous day's margin call for a deficit or debit balance, the futures commission merchant shall exclude all separate accounts of that separate account customer carried by the futures commission merchant that have a deficit or debit ledger balance from current assets under this paragraph") and proposed CFTC Regulation 1.17(c)(5)(viii) (providing that if "a call for margin or other required deposits for any separate account of a particular separate account customer is outstanding for more than one business day, then all outstanding margin calls for all separate accounts of that separate account customer shall be treated as if the margin calls are outstanding for more than one business day, and shall be deducted from net capital until all such calls have been met in full").

[15] This separate account treatment for capital purposes is aligned with Letter No. 19-17's requirements for the preparation of segregation, secured and cleared swaps customer statements and the computation of residual interest amounts. See Letter No. 19-17, compliance requirements 8, 9 and 10 (stating that receivables from a separate account shall be "grossed up" on the applicable segregation, secured or cleared swaps customer statement; that the residual interest target for customer receivables shall be computed on a separate account basis; and that the FCM shall 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).

[16] "Specifically, at the FCM's discretion, it may consider a non-U.S. Dollar deposit as "pending" in a customer or noncustomer's account and include in the account's margin equity if (i) the FCM assesses that it is prudent to do so based on the account's past history of satisfying margin calls and the operational and credit risk profile of the account owner, (ii) the account is on a 1-day wire transfer basis (i.e., the wire is initiated on day 1 of the margin call), (iii) the FCM has a sufficient basis that the wire was actually initiated, (iv) the FCM continues to age the pending non-U.S. Dollar receipts and retains the ability to recognize a failed deposit immediately upon occurrence, and (v) the FCM treats unsettled non-U.S. Dollar disbursements from the account in the same manner." JAC Regulation Alert #14-03 at 1. See also JAC Regulatory Alert #14-06 at 3 ("Specifically, at the FCM's discretion,[an FCM] may consider a non-U.S. Dollar deposit as "pending" in a customer's account and included in the account's margin equity if (i) the FCM assesses that it is prudent to do so based on the account's past history of satisfying margin calls and the operational and credit risk profile of the account owner, (ii) the account is on a 1-day wire transfer basis (i.e., the wire

in computing undermargined capital charges, FCMs do not consider an account (including, it bears repeating, a separate account) undermargined when a non-USD transfer that complies with those conditions is pending.[17] This practice, licensed by the JAC for more than a decade, appears to be in tension with the Commission's proposed amendments to Regulation 1.17.[18]

It should be noted that JAC Regulatory Alert #14-03 also permits FCMs to release funds from a customer account when an incoming non-USD transfer is pending (again, to the extent that the transfer complies with the specified conditions) because the account may be credited for margin equity to the extent of the pending transfer. Institutional account managers that settle in multiple currencies widely rely on these arrangements. We urge the Commission to clarify that the Second Proposal was not adopted with the intention of prohibiting the current treatment of pending transfers.[19]

The proposed revisions to CFTC Regulation 1.17 will likely be costly and punitive to FCMs. They will be costly because they will require FCMs to re-build operational and reporting systems (and to re-write programming code that supports those systems) to perform the necessary look across all of the separately margined accounts of the same affected customer whenever a customer maintaining such accounts fails to timely satisfy the previous day's deficit/debit ledger balance in its entirety (for the current assets calculation), or fails to settle a margin call by the end of the day following the call (for the undermargined capital charge calculation).[20] Furthermore, the revisions

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is initiated on Day 2), (iii) the FCM has a sufficient basis that the wire was actually initiated, (iv) the FCM continues to age the pending non-U.S. Dollar receipts and retains the ability to recognize a failed deposit immediately upon occurrence, and (v) the FCM treats unsettled non-U.S. Dollar disbursements from the account in the same manner.").

[17] See JAC Regulatory Alert #14-06 at 5 ("When calculating the undermargined capital charge and consistent with the treatment for residual interest, the FCM may consider 'pending' non-US Dollar deposits, ACH payments and checks as received if the respective conditions are met.").

[18] Proposed CFTC Regulation 1.17(c)(5)(viii)(A) provides that if "a call for margin or other required deposits for an undermargined customer account is outstanding ***for more than one business day***, then no such call for that undermargined customer account shall be applied until all such calls for margin have been met in full." Likewise, Proposed Regulation 1.17(c)(5)(viii)(B) provides that if "a call for margin or other required deposits for any separate account of a particular separate account customer is outstanding ***for more than one business day***, then all outstanding margin calls for all separate accounts of that separate account customer shall be treated as if the margin calls are outstanding ***for more than one business day***, and shall be deducted from net capital until all such calls have been met in full." In all three instances, the reference to "one business day" is unqualified by reference to the exception for pending settlements under JAC Regulatory Alert #14-03.

[19] Appendix A to this comment letter sets forth an example based on the hypothetical the Commission describes in the Second Proposal, 89 Fed. Reg. at 15321.

[20] To be clear, the margin call fail standard for the current assets calculation is failure to meet "a previous day's margin call" (meaning, if the customer account incurs a margin obligation on Monday and fails to meet the call by close of business Tuesday); the standard for the undermargined capital charge is a call's being "outstanding for more than one business day" (meaning, if the customer account incurs a margin obligation on Monday, the charge applies if that call is not met by close of business Wednesday).

would be punitive because they would impose capital costs on FCMs without regard to any related financial or operational risk.

Indeed, the increase in capital requirements would likely be most pronounced in periods of market turmoil, as evidenced by recent bouts of market volatility. This would likely exacerbate procyclical stresses in the clearing system. During such times, sharp increases in capital requirements coincide with increased margin and residual interest deposit. This could in turn intensify market volatility and contribute to market dislocations.

To illustrate the impact of the proposed changes to CFTC Regulation 1.17, consider the following real-world example:

Principal/Customer Name	**Separate Account Investment Manager**	**Margin Call/Excess**
Large Retirement Trust XYZ	Investment Manager A	$160,600.00
	Investment Manager B	($95.00)
	Investment Manager C	($65,054,241.00)
	Investment Manager D	$9,324.85
	Investment Manager E	($966,421.54)
	Investment Manager F	($1,024,542.63)

Suppose Large Retirement Trust XYZ has separate investment mandates with Investment Managers A through F, each maintaining a separate account with the same FCM. If Investment Manager B fails to meet a margin call of $95.00 within the required timeframe, proposed Regulation 1.17(c)(5)(viii)(B) would require the FCM to look across all separate accounts of Large Retirement Trust XYZ and treat any margin deficits in those accounts as if they were outstanding for more than one business day, regardless of the actual margin status of those other accounts.

In this scenario, the FCM would be forced to take a total capital charge of $67,045,300.17, which includes the margin deficits of $95 (Investment Manager B), $65,054,241.00 (Investment Manager C), $966,421.54 (Investment Manager E), and $1,024,542.63 (Investment Manager F). Such a charge would be disproportionate and without rational relationship to the actual risk posed by Investment Manager B's $95.00 call remaining outstanding for more than one business day, particularly in circumstances presented here, where the calls to Investment Managers C, E and F have not yet aged to a point that the FCM would need to take a capital charge under current Regulation 1.17.[21]

[21] In the event that a separate account of the a customer carries equity in excess of the margin required for that account, then applying the requirement to look across all accounts may actually reduce or eliminate the non-allowable capital deduction or undermargined capital charges, resulting in discrepancies between net capital and balance sheet reporting, on the one hand, and segregation and residual interest reporting, on the other (which are currently reported consistently on a separate account basis).

A recent survey of FIA members illustrates the potential real-world implications of the proposed change to the undermargined capital charge regulation. Although the percentage of required margin for separate accounts to the total customer margin requirement varies widely (from less than 1% to over 20%), members uniformly reported material potential capital implications (measured by amount of margin required for a single beneficial owner across its separate accounts).[22]

These examples demonstrate the need for retaining the more balanced approach currently in force, which allows FCMs to manage capital and margin risk on an account-by-account basis. The proposed look across requirement, if implemented, would routinely generate similar outcomes, upending long-standing practice based on the principles set forth in CFTC Letter No. 19-17.[23]

To avoid those outcomes, the Second Proposal amendments to Regulation 1.17 should be revised to require the look across to the affected customer's other separately managed accounts only where ordinary course of business has been suspended for that customer. In addition, the look across should be made subject to the conditions set forth in the proposed "one business day margin call" exceptions – thereby allowing FCMs to continue taking the benefit of current assets and avoiding charges against capital while client settlement in non-USD for separate accounts is pending under the terms of those exceptions. We recommend that the text of proposed CFTC Regulation 1.17(c)(5)(viii)(B) be amended as follows[24]:

> "(B) If a futures commission merchant carries separate accounts for one or more separate account customers pursuant to § 1.44 of this part, the futures commission merchant shall compute the amount of funds required under paragraph (c)(5)(viii)(A) of this section to meet maintenance margin requirements for each separate account as if the account is owned by a separate entity, after application of calls for margin or other required deposits which are outstanding no more than one business day. If, however, a call for margin or other required deposits for any

[22] Two FCM members reported a differential of close to $500 million between the capital charge applicable under the current rule and the capital charge that would apply under the proposed revision.

[23] Further, current CFTC regulations already impose a financial burden on FCMs to address customer protection goals in the form of residual interest required to be held in the amount of the gross sum of uncollected margin deficits, including those of separate accounts, which sufficiently mitigate the risk targeted by the proposed amendments to CFTC Regulation 1.17. See CFTC Regulations 1.22(c), 22.2(f)(6) and 30.7(f)(ii).

[24] Similarly, proposed CFTC Regulation 1.17(c)(2)(i) should be amended by revising the last sentence as follows:

"If a separate account does not meet a previous day's margin call for a deficit or debit balance, the futures commission merchant shall, at any time upon the occurrence of an event inconsistent with ordinary course of business pursuant to § 1.44(e), exclude all separate accounts of that separate account customer carried by the futures commission merchant that have a deficit or debit ledger balance from current assets under this paragraph~~.~~; provided that determining whether a previous day's margin call has been met for purposes of this paragraph (c)(2)(i), the futures commission merchant may consider pending deposits of currencies other than U.S. Dollars, ACH payments, and checks as received if the relevant conditions set forth under applicable guidance of Commission staff and of the Joint Audit Committee promulgated under § 1.52(d) of this part are met.."

> separate account of a particular separate account customer is outstanding ~~for more than one~~at any time upon the occurrence of an event inconsistent with ordinary course of business ~~day~~pursuant to § 1.44(e), then all outstanding margin calls for all separate accounts of that separate account customer shall be treated as if the margin calls are outstanding for more than one business day, and shall be deducted from net capital until all such calls have been met in full. When calculating the undermargined capital charge under this paragraph (c)(5)(viii), the futures commission merchant may consider pending deposits of currencies other than U.S. Dollars, ACH payments, and checks as received if the relevant conditions set forth under applicable guidance of Commission staff and of the Joint Audit Committee promulgated under § 1.52(d) of this part are met."[25]

Proposed Regulation 1.44(f) May Increase Margin Settlement Risk

We appreciate the earnest attempt of the Commission to formulate a standard for "one business day margin call" settlement for separate accounts that is responsive to the concerns raised in comments on the First Proposal. We support the Commission's clarification of how the one business day margin settlement cycle should apply to settlement in the full range of non-USD currencies that customers use to margin futures contracts today. But we continue to believe that the rule as re-proposed is unnecessarily complex and disruptive of existing market practice, as well as a departure from the Letter No. 19-17 standard that, in our view, is neither appropriate nor justified. In addition, contrary to the Commission's objective, we believe that the overly prescriptive and inflexible framework it has proposed will actually increase systemic risk in margin settlement rather than mitigate it. Specifically, we maintain that the Commission's rulemaking is a mandate that FCMs create a tripwire in their margin settlement procedures for separate accounts that would, effectively, require suspension of ordinary course of business for events that are not extraordinary or unusual at all, but are, in fact, intrinsic to the complexity and multiplicity of the moving parts of the global payment settlement system that FCMs and their customers depend on.

Among the nine events inconsistent with "ordinary course of business," the Commission lists first failure of a separate account customer to settle margin obligations on a "one business day margin call" basis (as defined in proposed Regulation 1.44(f)). In Letter No. 19-17, Commission staff qualified this "one business day margin call" requirement as follows:

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[25] The reference is to the conditions set forth in proposed CFTC Regulation 1.44(f) (with respect to settlement in non-USD); CFTC Letter No. 14-129, Staff Interpretation Regarding Regulatory Accounting for Customer Margin Payments Using Automated Clearing House Payment Processing Systems (Division of Swap Dealer and Intermediary Oversight, October 23, 2014) (available here) (with respect to ACH settlement), and Financial and Segregation Interpretation No. 13: "Accounting for Checks Received From a Parent or an Affiliated Entity for Regulatory Compliance Purposes" (1991) (available here) and the Instructions Manual to the Form 1-FR-FCM at page 10-10 (available here) (with respect to handling of checks); and JAC Regulatory Alert #14-06 (November 4, 2014) ("When calculating the undermargined capital charge [under CFTC Regulation 1.17(c)(5)(viii)] . . . the FCM may consider "pending" non-US Dollar deposits, ACH payments and checks as received if the respective conditions are met") (referring to the conditions set forth in JAC Regulatory Alert #14-03).

> "Situations of administrative error or operational constraints which prevent the call from being met within a one-day period will not be considered a violation of this condition. In no case can customers and FCMs contractually arrange for longer than a one business day period for a margin call to be met."

We strongly believe that the Letter No. 19-17 standard strikes the right balance between prescription and deference to the risk management discretion of FCMs (exercised within the framework of a risk management program implemented under CFTC Regulation 1.11 [26]). The Second Proposal reformulates this standard, first, by requiring situations of "administrative error or operational constraints" to be "unusual," and, second, by requiring FCMs, in effect, to document each determination of failure to settle based on administrative error or operational constraints in light of whether "the separate account customer or investment manager acting diligently and in good faith" could have "reasonably foreseen" the error or constraints giving rise to the settlement failure.[27]

This reformulated standard is unworkable. When a separate account fails to settle within the applicable timeframe, FCMs will have to make (and document) a complicated and potentially highly speculative assessment of the facts under a legal standard that is at best subjective and, we consider in practice, vague enough to mean different things to different people. The DSRO in turn will be expected to audit these determinations, subjecting FCMs to the risk of being second-guessed by DSRO examiners.[28]

As the Commission recognizes, FCMs have already invested significantly in renovating operational and compliance systems in order to implement the conditions set forth in Letter No. 19-17.[29] The subjectivity and complexity that the Commission proposes to introduce into routine determinations of administrative error or operational constraint will require material levels of new investment in compliance, risk management, and operations time and resources, for no discernible risk management benefit.

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[26] Connecting this standard to Regulation 1.11 ensures the flexibility in implementation reflecting each FCM's specific risk profile and tolerances based on their respective customer bases, the business they conduct, and the facts and circumstances of any specific instance of administrative error or operational constraint.

[27] To be clear, proposed CFTC Regulation 1.44(f)(5) does not expressly require such documentation. But the Second Proposal makes clear that separate account treatment must be "carried out in a documented and consistent manner." Second Proposal, 89 Fed. Reg. at 15342; see also id. at 15318 and 15345.

[28] In its comment on the First Proposal, FIA objected that this new standard for fails arising from administrative error and operational constraints subjects FCMs to the risk of "administrative sanctions for matters over which the FCM has no control." The Commission's response focuses on the case where the FCM determines to suspend ordinary course of business for a failure to settle that it has determined was not "unusual" or did not reflect sufficient "diligence and good faith" on the part of the customer. But, of course, that is not the case that will face the most scrutiny in an audit. Examiners will focus on determinations to maintain separate account treatment notwithstanding ongoing settlement issues. See FIA First Comment at page 12 and Second Proposal, 89 Fed. Reg. at 15332.

[29] Second Proposal, 89 Fed. Reg at 15346.

Based on these concerns, we recommend that the text of proposed CFTC Regulation 1.44(f)(5) be amended as follows (thus reverting to the Letter No. 19-17 formulation):

> "A failure with respect to a specific separate account to deposit, maintain, or pay margin or option premium that was called pursuant to paragraph (f)(1) of this section, due to ~~unusual~~ administrative error or operational constraints ~~that a separate account customer or investment manager acting diligently and in good faith could not have reasonably foreseen~~, does not constitute a failure to comply with the requirements of this paragraph (f). For these purposes, a futures commission merchant's determination that the failure to deposit, maintain, or pay margin or option premium is due to such administrative error or operational constraints must be based on the futures commission merchant's reasonable belief in light of information known to the futures commission merchant at the time the futures commission merchant learns of the relevant administrative error or operational constraint."

Suggested Revisions to the Proposed Rules on Margin Settlement Around Holidays

Proposed Definition of "business day" and "holiday". As noted in our comment on the First Proposal,[30] the proposed definitions of "business day" and "holiday" do not account for days on which banks are open (which, therefore, are "business days"), but futures and securities markets are closed.[31] On such days, transfers of non-cash collateral cannot settle, and as a result, separate account customers settling initial margin calls with such collateral[32] will, under the Commission's proposed margin settlement framework, be deemed to have failed to meet a call. To avoid this result, we recommend amending the definition of "holiday" in proposed Regulation 1.44(a) as follows:

"Holiday means Federal holidays as established by 5 U.S.C. 6103 as well as any business day that is not a securities settlement day in the United States."

A separate account customer should not be deemed to have failed to settle a margin call because securities markets are closed. This revision would make clear that the Commission does not intend to mandate such a result.

Eurozone Holidays. We appreciate the Commission's guidance regarding how the margin adequacy requirement applies to the various holiday scenarios that affect FCMs operating both in the U.S. and across global jurisdictions. We remain concerned, however, with the Commission's proposed Regulation 1.44(f)(4), which provides that for payments denominated in Euro,

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30 FIA First Comment at 13.

31 This occurs on every Good Friday, as well as in years when Juneteenth, Independence Day, or Christmas Day falls on a Saturday (meaning that the holiday is observed by futures and securities markets on the immediately preceding Friday, while banks remain open).

32 Institutional customers predominantly prefer to settle initial margin calls with U.S. Treasuries.

> "either the separate account customer or the investment manager managing the separate account may designate one country within the Eurozone with which they have the most significant contacts for purposes of meeting margin calls in that separate account, and whose banking holidays shall be referred to for purposes of [receiving the benefit of a one-business day extension of a Euro-denominated margin call in consideration of non-U.S. local banking holidays]."[33]

The Commission notes that this restrictive condition is "intended to prevent customers or investment managers from leveraging banking holidays in a multiplicity of jurisdictions, to circumvent requirements to pay margin timely."[34] Respectfully, we do not believe such motives to be practicable or fairly ascribed to the institutional asset-owner/money manager constituency that is the predominant part of the pool of clients to which separate account margining is indispensable. More to the point, the condition is unworkable. All investment managers and many separate account customers maintain custodial arrangements in multiple Eurozone jurisdictions and so will be affected by local public holidays (which still vary widely across the Eurozone). A variation on the Commission's example in Question 7 of the Second Proposal illustrates the point. Suppose that a European state pension fund contracts with two unaffiliated institutional money managers and custodies funds for one mandate with a bank in France and for the other mandate with a bank in Germany. Both mandates confer discretion on the manager to designate the "most significant contacts" jurisdiction for settlement purposes, and both managers designate France, since they are both based in Paris.[35]

Germany celebrates October 3, German Unity Day, as a national holiday. German Unity Day is not a holiday in France. This means that the manager whose custodian is in Germany will have no way of settling a Euro call received from the FCM on October 3. But under the proposed Rule 1.44(f)(4) standard, the FCM is prohibited from extending the benefit of a one-business day extension to that separate account (since the manager can only be credited for that extension for French holidays). Asset owners typically hardwire separate investment mandates to separate custodial arrangements, and do not expect to be involved in settling margin calls arising in connection with those separate mandates. The German custodian will not be in a position to pass the call to the French custodian, much less directly onto the pension fund.

We note as well the heightened operational risk that FCMs will incur having to track the Eurozone holiday preferences of hundreds, and in many cases, thousands of separate accounts. FCMs will find themselves having to deploy new margin day counting systems and protocols, including new coding where those systems are automated. Where those systems are automated, the new

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[33] 89 Fed. Reg. at 15332.

[34] Id. at FN 169 and 15335.

[35] It might be objected that the manager with the custodian in Germany should designate Germany as its preferred jurisdiction. But then the problem illustrated by this scenario will simply be replicated for the other separate account manager for holidays like Armistice Day (May 8), which is a holiday in France, but not Germany.

workflows imposed under the Commission's proposal will likely result in the need for more manual handling – exactly the opposite direction the new rulemaking should be prompting for FCMs. The number of different configurations – dozens of asset managers, each with hundreds of separate accounts, dozens of which will be domiciled in one or more of the 20 Eurozone jurisdictions – is truly bewildering, and a sure recipe for operational error.

> We believe this issue is best left to the FCM's risk management discretion. We suggest the following modification to the relevant text of proposed Regulation 1.44(f)(4):"For payments in Euro, the banking holidays of any jurisdiction within the Eurozone with which either the separate account customer or the investment manager managing the separate account ~~may designate one country within the Eurozone that they have the most~~ has significant contacts ~~with for purposes of meeting margin calls in that separate account, whose banking holidays~~ shall be referred to for this purpose."

One Additional Business Day for Non-U.S. Holidays. Proposed Regulation 1.44(f)(4) also provides that settlement in non-U.S. Dollar currencies may be extended by "up to one additional business day and still be considered in compliance" with the "one business day margin call" requirement set forth generally in proposed Regulation 1.44(f). We welcome the Commission's intent in "seeking to allow FCMs to exercise risk management judgment in balancing, within limits, the risk management challenges caused by extending the time before a margin call is met with the burdens involved in requiring the client or investment manager to prefund potential margin calls in advance of the holiday or to arrange to pay margin more promptly in USD or another currency not affected by the holiday."[36] As the Commission is aware, FCMs currently manage settlement risk around non-U.S. holidays by communicating with affected clients in advance, and encouraging clients to pre-fund where possible (and, importantly, consistent with the law applicable to fiduciaries managing such accounts). But what goes unnoted in the Second Proposal is the fact that a growing number of FCM institutional clients, managers and custodians are based in jurisdictions where there may be consecutive holidays.[37]

Limiting the extension available to such clients to a single business day forces the FCM to choose between suspending separate account treatment simply because a client is on vacation and cannot settle a margin call (thereby complying with the inflexible regulatory standard) and exercising its discretion not to suspend separate account treatment (in the absence of any other factor mandating

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[36] Second Proposal, 89 Fed. Reg. at 15332.

[37] Most notably, the Lunar New Year (observed in Hong Kong, usually for three consecutive business days), Golden Week (observed in Japan for a full business week), and Good Friday/Easter Monday (observed in England and in many Eurozone jurisdictions).

suspension, thereby risking disciplinary action by the Commission or its DSRO).[38] We urge the Commission to revise the relevant text of proposed Regulation 1.44(f)(4) as follows:

> "The relevant deadline for payment of margin in fiat currencies other than U.S. Dollars may be extended ~~by up to one additional~~to the next business day following any banking holiday in the jurisdiction of issue of the currency, and still be considered in compliance with the requirements of this paragraph (f) if payment is delayed due to ~~a~~such banking holiday~~ in the jurisdiction of issue of the currency~~."

The 30-day Toll on Reinstatement of Separate Account Treatment Should be Withdrawn

The Second Proposal adds a 30-day toll to the reinstatement of separate account treatment for separate customers whose separate account treatment has been suspended or revoked for any reason.[39] The Commission's rationale is that the toll will

> "ensure that FCMs will conduct a diligent and thorough review to confirm that the circumstances leading to cessation of separate account treatment have been cured, and to prevent the possibility that, as discussed below, an FCM could toggle its separate account treatment election for purposes other than serving customers' bona fide commercial purposes."[40]

We are not aware that any FCM has ever "toggled" separate account treatment for any customer. As we have emphasized in this letter, FCMs originally adopted separate account treatment in response to the ineluctable demands of an important constituency among institutional asset owners and money managers; there has never been, and likely never will be, any other reason for maintaining separate accounts than "serving customers' bona fide commercial purposes."[41]

The 30-day stay on reinstating separate accounts could also have negative unintended consequences for customers and overall market liquidity. Separate account margining is crucial for many institutional asset managers to efficiently deploy their investment strategies across multiple accounts. If an FCM is forced to suspend separate treatment due to an event outside of ordinary course, the 30-day minimum waiting period could significantly disrupt the trading and risk management of affected customers even after the underlying issue is resolved.

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[38] Alternatively, the Commission can achieve the same result by adopting our proposed amendment to proposed Regulation 1.44(f)(5), which would leave how to manage consecutive holidays in the FCM's risk management discretion.

[39] See proposed CFTC Regulation 1.44(h)(4)(i).

[40] See Second Proposal, 89 Fed. Reg. at 15339.

[41] The scenario in which an FCM "switches back and forth between separate and combined treatment in order to achieve more preferable margining outcomes" for the separate account customer is unrealistic and unprecedented in the experience of FIA members. Id. The premise of separate account treatment is that the customer's need to hold separate accounts supersedes such considerations.

For example, imagine an asset manager that uses separate accounts to execute hedging strategies for its clients. If the FCM has to suspend separate treatment due to a reason that could easily be resolved, and then wait 30 days to reinstate it, the manager may be unable to effectively hedge its clients' exposures in the interim. This could force the manager to unwind positions, disrupt its portfolio management, and potentially incur losses for clients. Multiply this impact across numerous managers and institutional clients, and the 30-day stay could have an unintended and chilling effect on market participation and liquidity. Institutional customers may be reluctant to trade or may reduce their trading volumes to mitigate the risk of getting trapped in a 30-day separate account suspension. This reduced participation could negatively impact market depth and price discovery.

The Commission should carefully consider these potential market-wide ramifications before imposing an inflexible 30-day stay. A more targeted, risk-based approach that defers to FCMs' judgment would better serve the interests of customers and the broader market.

It follows that the only reasons that an FCM is likely to find itself having to suspend separate account treatment are against the wishes of its customer in the risk scenarios enumerated in proposed CFTC Regulation 1.44(e). The timeframe within which separate account treatment should be restored in the wake of any such event should be left in the sound risk management discretion of the FCM.

Additional Firm-Specific Disclosure Is Unnecessary

In response to a comment from the Joint Audit Committee on the First Proposal that FCMs should be required to include in their firm-specific disclosures under CFTC Regulation 1.55(i) a "thorough discussion of additional risks to other customers," the Commission has proposed requiring that such firm-specific disclosure be required to include the following statement: "in the event that separate account treatment for some customers were to contribute to a loss that exceeds the FCM's ability to cover, that loss may affect the segregated funds of all of the FCM's customers in one or more account classes."[42]

We believe this additional language is both confusing and misleading, and strongly oppose mandating it for firm-specific disclosure. It is confusing because it fails to specify how separate account treatment "for some customers" might "contribute to a loss that exceeds the FCM's ability to cover." Any customer's activity in any account could "contribute" to such loss; this is "fellow-customer risk," and that risk is already amply addressed in existing firm-specific disclosure.[43] We do not understand – and neither the JAC nor the Commission specifies – how fellow-customer risk is exacerbated by separate account margining.

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[42] See Second Proposal, 89 Fed. Reg. at 15339.

[43] See, e.g., the FIA's Protection of Customer Funds FAQ, version 2.0 (available here), which most FCMs use or incorporate by reference in preparing their firm-specific disclosures.

Separately margined accounts do not expose an FCM to greater regulatory or financial risk. If anything, separate account treatment generally mitigates credit risk to the underlying asset owner (ensuring, in most cases, that the FCM holds more collateral against the owner's consolidated portfolio of positions than it would if it was net margining that portfolio as a single account). Accordingly, we urge the Commission to re-think requiring the recommended additional language.

Additional Technical Fixes and Considerations

The Proposed Definition of "Undermargined Amount" Should be Revised to Align with Margins Handbook Guidance

Proposed Regulation 1.44(a) includes this definition of "undermargined amount":

> "Undermargined amount for an account means the amount, if any, by which the customer margin requirements with respect to all products held in that account exceeds the net liquidating value plus the margin deposits currently remaining in that account. For purposes of this definition, 'margin requirements' shall mean the level of maintenance margin or performance bond (including, as appropriate, the equity component or premium for long or short option positions) required for the positions in the account by the applicable exchanges or clearing organizations. With respect to positions for which maintenance margin is not specified, 'margin requirements' shall refer to the clearing organization margin requirements applicable to such positions."[44]

This definition appears to derive from the Margins Handbook definition of the same term.[45] We are concerned, however, that set forth in isolation from the context of that guidance, it may give the misleading impression that the Commission intends to codify a preference for the "Pure SPAN" method of determining the margin deficiency of an account over the "Total Equity" method.[46]

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[44] See proposed CFTC Regulation 1.44(a).

[45] See Second Proposal, 89 Fed. Reg. at FN 14. The Margins Handbook defines "Undermargined Amount" as the "amount by which margin equity is less than the maintenance margin requirement." "Margin equity" in turn is defined as an account's "net liquidating equity plus the collateral value of acceptable margin deposits." See Margins Handbook, chapter 1 (Definitions).

[46] Consistent with Margins Handbook guidance, FCMs may calculate margin deficiency using either the Pure SPAN or the Total Equity method. Generally, the calculation will be identical under either alternative, but for some portfolios that include long options, the Total Equity method can result in a larger margin deficiency than Pure SPAN. Under the Pure SPAN method, the SPAN margin requirement is compared to an account's net liquidating value (plus any margin collateral); the Total Equity method compares the total equity in an account (that is, the ledger balance, open trade equity and margin collateral) to the SPAN margin requirement adjusted for the option value of the account. As noted by in the Margins Handbook: "Net long option value reduces the SPAN margin requirement and net short option value increases it. By using simple math, firms are transferring the net option value from the equity component to the margin component when they deploy the Total Equity Method. The two methods will yield identical margin excess or deficiency amounts unless an account has net long option value that exceeds the unadjusted SPAN margin

We recommend the following amendment to the proposed language to make clear that this is not in fact the Commission's intention:

Undermargined amount for an account means ~~the amount, if any, by which the customer margin requirements with respect to all products held in that account exceeds the net liquidating value plus the margin deposits currently remaining in that account. For purposes of this definition, "margin requirements" shall mean the level of maintenance margin or performance bond (including, as appropriate, the equity component or premium for long or short option positions) required for the positions in the account by the applicable exchanges or clearing organizations. With respect to positions for which maintenance margin is not specified, "margin requirements" shall refer to the clearing organization margin requirements applicable to such positions.~~its margin deficiency, if any, computed in accordance with applicable guidance of the Joint Audit Committee promulgated under § 1.52(d) of this part.

Clearing Members That Have Already Given Notification to their DSRO and Disclosure to their Separate Account Customers Should be Deemed to Have Complied with the Proposed Regulation Requirements

Proposed CFTC Regulation 1.44(d)(2) provides that if an FCM gives notification to its DSRO in accordance with CFTC Regulation 1.12(n)(3) of "the first time that the [FCM] includes a customer on the list of separate account customers," then it remains in accordance with proposed CFTC Regulation 1.44(d)(1). We request that the Commission clarify that any clearing member FCM that has already provided such notice (pursuant to the requirements of Letter No. 19-17[47]) to their DSRO shall be deemed to have complied with this requirement with respect to separate accounts it holds as of the effective date of regulations adopted pursuant to the Second Proposal.

In addition, we ask that the Commission clarify that any FCM that has already provided the disclosure specified in proposed Regulation 1.44(h)(3) pursuant to the identical requirement of Letter No. 19-17 shall by virtue of such prior disclosure be deemed to have complied with Regulation 1.44(h)(3), if adopted as proposed (that is, with respect to any separate account customer of such FCM that has already received the Letter No. 19-17 disclosure).

The Industry Needs Clear Guidance on Grace and Cure Periods

In our comment letter addressing the First Proposal, we sought clarification from the Commission that the proposed requirements relating to separately margined accounts should not be construed to prohibit an FCM and a customer (not maintaining separate accounts with the FCM) from

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requirement. When this occurs, firms should set the margin requirement under the Total Equity Method to zero (margin requirement could never be less than zero). If the net long option value exceeds the unadjusted SPAN margin requirement, any deficit amount in Total Equity would trigger a margin call. However, a Total Equity deficit may not necessarily indicate a margin deficiency." Margins Handbook, chapter 4.

[47] See compliance requirement 15 in Letter No. 19-17.

agreeing to a reasonable grace or cure period for reasons other than for administrative error or operational constraint. In their comment letters, CME Group Inc. ("**CME**") and the JAC sought clarification to the contrary that customers not subject to separate account treatment may be made subject to even more stringent terms relating to margin calls and the FCM's right to liquidate customer accounts in its discretion for failure to satisfy a call. For its part, the JAC "recommended that the Commission make clear that if an FCM and customer contract for margin calls to be met on a longer than one business day basis, then the FCM is not making a bona fide attempt to collect margin within one business day after the event giving rise to the margin deficiency."[48]

In response, the Commission states:

> "The Commission notes that it is not proposing this regulation to conform to the rules of a particular DCO, to the extent the DCO may prohibit such grace or cure periods, and further notes that this proposed regulation does not prevent a DCO from maintaining and enforcing rules that apply more stringent risk management standards to their clearing members than are set forth therein."[49]

We highlight this exchange in order to clarify the underlying issues, which remained in its subtext. For the last three years, examiners of CME's Financial and Regulatory Surveillance Department have taken the position in financial and operational audits of FCM clearing members for which CME serves as DSRO that any contractual grace or cure period overlying a customer's failure to satisfy a margin call (which is not qualified by reference to administrative or operational reasons for the failure) is a violation of CME Rule 930.K.1, which requires clearing members to "maintain full discretion to determine when and under what circumstances positions in any account shall be liquidated."[50] In other words, CME and JAC have concluded (and communicated via audit staff and enforcement actions, but not by any written guidance) that a CME clearing member may never take the view, in its reasonable risk management judgment, that an account is eligible for a contractual or grace period upon a payment fail (particularly in cases where the FCM has otherwise provided for limits and appropriate margin levels for the account, and regardless of the customer's credit quality); any such view, apparently, constitutes a violative relinquishment of the "full discretion" required to be maintained under CME Rule 930.K.1.

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[48] Second Proposal, 89 Fed. Reg. at 15333 and FNs 178 and 179 (citing the CME comment letter and the JAC comment letter in response to the First Proposal).

[49] Id.

[50] Indeed, the CME's Clearing House Risk Committee has recently announced settlements of alleged violations of Rule 930.K.1 by three clearing members, each relating to grace and cure periods set forth in customer agreements. See CME Clearing Notices here. CME Rule 930.K.1 states: "If an account holder fails to comply with a performance bond call within a reasonable time (the clearing member may deem one hour to be a reasonable time), the clearing member may close out the account holder's trades or sufficient contracts thereof to restore the account holder's account to required performance bond status. Clearing members shall maintain full discretion to determine when and under what circumstances positions in any account shall be liquidated."

We still believe that clear guidance to the industry is needed. The Commission should communicate to the CME and JAC (which, as noted, have spoken to this matter only privately in DSRO exams and publicly through disciplinary actions) that they should take such a position expressly, through a public market regulatory notice, so that all clearing member FCMs and buy-side managers and asset owners alike (who may be accustomed to receiving unconditioned grace and cure periods in other trading agreements) will hear the same message, at the same time.

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Thank you for your consideration of these comments. If the Commission or any member of the staff have any questions regarding the matters discussed herein or need any additional information, please contact me at alurton@fia.org or 202.772.3057.

Respectfully submitted,

Allison Lurton
General Counsel and Chief Legal Officer

cc: Honorable Rostin Behnam, Chairman
Kristin N. Johnson, Commissioner
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Appendix A: Example of the Capital Treatment of a Yen-Denominated Margin Call

This example is intended to illustrate how, under current regulation and guidance of the Joint Audit Committee, an FCM monitors margin call days and calculates the undermargined capital charge in a scenario where the customer settles in JPY.

Assume that Customer A is undermargined by ¥100 as a result of trading activity on Monday. The FCM calls for that margin top of the day on Tuesday. We assume that Customer A's FCM account satisfies the conditions for giving margin equity credit for pending settlement, as set forth in JAC Regulatory Alerts # 14-03 and #14-06, and that all days are business days.[51]

As set forth in the table below, the FCM does not need to deduct that $100 from its net capital in computing its adjusted net capital, so long as the margin call is met by the close of business on Thursday. Likewise, if Customer A, due to activity on Tuesday, is undermargined by an additional ¥150, and the FCM calls for that additional ¥150 top of the day on Wednesday, the FCM does not need to take a capital charge for the additional ¥150 until the end of the following Monday.

In the table below we assume that Customer A meets the Tuesday morning call for ¥100 by close of business on Thursday. If Customer A failed to meet that deadline for Tuesday's ¥100 call, then the FCM would have to take a ¥100 charge. Likewise, if Customer A fails to settle the ¥150 call from Wednesday morning by close of business on Monday, the FCM would have to take a ¥150 charge.

[51] See supra, FN 16.

Equity Numbers (JPY)	Monday	Tuesday	Wednesday	Thursday	Friday
Opening Balance	$ -	$ -	$ -	$ -	$ 100.00
Funds in / Out	$ -	$ -	$ -	$ 100.00	$ 150.00
Closing Balance	$ -	$ -	$ -	$ 100.00	$ 250.00
OTE	$ -	$ -	$ -	$ -	$ -
Total Equity	$ -	$ -	$ -	$ 100.00	$ 250.00
Pending Funds	$ -	$ 100.00	$ 250.00	$ 150.00	$ -
Forecasted Equity	$ -	$ 100.00	$ 250.00	$ 250.00	$ 250.00
Non Cash Collateral	$ -	$ -	$ -	$ -	$ -
Total Margin Funds	$ -	$ 100.00	$ 250.00	$ 250.00	$ 250.00
IM	$ 100.00	$ 250.00	$ 250.00	$ 250.00	$ 250.00
Excess / (Deficiency)	$ (100.00)	$ (150.00)	$ -	$ -	$ -
Call Calculation					
Prior call	$ -	$ 100.00	$ 150.00	$ -	$ -
Pending	$ -	$ 100.0	$ 250.0	$ 150.0	$ -
Deposits	$ -	$ -	$ -	$ 100.0	$ 150.0
Outstanding call	$ -	$ -	$ -	$ -	$ -
Forescasted Equity + NCC	$ -	$ 100.0	$ 250.0	$ 250.0	$ 250.0
Net O/S call +FE + NCC	$ -	$ 100.0	$ 250.0	$ 250.0	$ 250.0
IM	$ 100.0	$ 250.0	$ 250.0	$ 250.0	$ 250.0
plus / minus	$ (100.0)	$ (150.0)	$ -	$ -	$ -
New call	$ 100.0	$ 150.00	$ -	$ -	$ -
Total call (O/S + New)	$ 100.0	$ 150.0	$ -	$ -	$ -
Call Aging					
Outstanding call	$ -	$ 100.00	$ 150.00	$ -	$ -
Pending	$ -	$ 100.00	$ 250.00	$ 150.00	$ -
Deposits	$ -	$ -	$ -	$ 100.00	$ 150.00
Remaining call	$ -	$ -	$ -	$ -	$ -
Days aged	-	-			
New call	$ 100.00	$ 150.00	$ -	$ -	$ -
Pending	$ -	$ -	$ -	$ -	$ -
Deposits	$ -	$ -	$ -	$ -	$ -
Remaining call	$ 100.00	$ 150.00	$ -	$ -	$ -
Days aged	*1*	*1*	-	-	-
New call	$ -	$ -	$ -	$ -	$ -
Pending	$ -	$ -	$ -	$ -	$ -
Deposits	$ -	$ -	$ -	$ -	$ -
Remaining call	$ -	$ -	$ -	$ -	$ -
Days aged	-	-	-	-	-
Combined call	$ 100.00	$ 150.00	$ -	$ -	$ -
Charge Calculation					
IM	$ 100.00	$ 250.00	$ 250.00	$ 250.00	$ 250.00
(less) Credit FE + NCC	$ -	$ 100.00	$ 250.00	$ 250.00	$ 250.00
(less) Current calls	$ 100.00	$ 150.00	$ -	$ -	$ -
Charge	$ -	$ -	$ -	$ -	$ -
	no capital charge	no capital charge	no capital charge	no capital charge	no capital charge