

# DerivativesINSIGHT

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## Time-Limited No-Action Relief From Compliance With Certain Conditions Associated With the Receipt of Customer Funds by Futures Commission Merchants Under CFTC Regulations 1.20, 22.2 and 30.7

On January 10, 2014, the US Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight (the "Division") issued a time-limited no-action letter<sup>1</sup> in response to a letter sent on behalf of the Futures Industry Association's (the "FIA") member futures commission merchants ("FCMs") and other similarly situated FCMs requesting relief from certain requirements relating to the receipt and recording of customer funds pursuant to CFTC Regulations 1.20, 22.2 and 30.7.

New regulations finalized by the CFTC in November 2013 prohibit an FCM from commingling the funds deposited by customers as margin for futures transactions executed on designated contract markets ("Section 4d(a)(2) Futures Account Funds") with funds deposited by customers as margin for foreign futures and foreign options transactions executed on foreign boards of trade ("Part 30 Secured Funds") or with funds deposited by customers to margin cleared swap transactions ("Cleared Swaps Accounts"). Under the new regulations, customers may meet margin calls for Section 4d(a)(2) Futures Accounts, Part 30 Secured Accounts, or Cleared Swaps Accounts with a single payment, as long as (i) the FCM initially receives the customer's funds into the customer's Section 4d(a)(2) Futures Account, and (ii) once directed by the customer upon the receipt and recording of the funds into the customer's Section 4d(a)(2) Futures Account, the FCM simultaneously records the book entry credit to the customer's Part 30 Secured Account or Cleared Swaps Account, as the case may be.

The FIA requested limited no-action relief in order to establish and implement procedures necessary to ensure compliance with new operational and technology challenges that the new regulations present. Specifically, the FIA states that FCMs may not have the technology that allows for simultaneous book entry credit to a customer's Part 30 Secured Account or to a Cleared Swaps Account after receipt and recording of the funds into the customer's Section 4d(a)(2) Futures Account. Based on the foregoing, the Division has issued a no-action letter which allows FCMs 60 days to implement simultaneous recording of book entry credits upon the receipt of customer deposits to the Section 4d(a)(2) Futures Accounts. Additionally, the Division will not recommend that the CFTC take enforcement action against an FCM that accepts customer funds in a single payment for deposit into a customer fund account without initially receiving the funds into the customer's Section 4d(a)(2) Futures Account and simultaneously recording the book entry credit to the customer's Part 30 Secured Account or Cleared Swaps Account, as the case may be, as directed by the customer upon receipt and recording of the cash into the customer's Section 4d(a)(2) Futures Account.

This no-action relief expires on April 14, 2014.

<sup>1</sup> Available on the CFTC website at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-02.pdf>.



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