



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Division of Swap Dealer and  
Intermediary Oversight

Joshua B. Sterling  
Director

Division of Market Oversight

Dorothy D. DeWitt  
Director

**Re: No-Action Positions to Facilitate Physical Separation of Registrant  
Personnel in Response to COVID-19 Pandemic**

Ladies and Gentlemen:

At the request of the Futures Industry Association, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association (together, the “**Associations**”), this letter extends the time period of certain no-action relief provided by the Divisions of Swap Dealer and Intermediary Oversight (“**DSIO**”) and Market Oversight (“**DMO**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) in CFTC Staff Letters Nos. 20-02, 20-03, 20-04, 20-05, 20-06, 20-07, and 20-09, each issued on March 17, 2020 (the “**COVID-19 Letters**”).<sup>1</sup> In connection with an industry-wide response to the coronavirus disease 2019 (“COVID-19”) pandemic, no-action relief was granted pursuant to the COVID-19 Letters for failure to comply with certain Commission regulations where compliance was anticipated to be particularly challenging or impossible because of displacement of the personnel from their normal business sites due to implementing recommended practices, such as social distancing and closures, to curtail the spread of the COVID-19 pandemic.

With respect to DSIO, this letter extends the time period of certain relief granted in the COVID-19 Letters with respect to certain regulatory obligations of persons that are registered with the Commission as futures commission merchants (“**FCMs**”), introducing brokers (“**IBs**”), swap dealers (“**SDs**”), retail foreign exchange dealers (“**RFEDs**”), and floor brokers (“**FBs**”). Each FCM, IB, SD, RFED, and FB is referred to herein as a “registrant.” This letter also extends the time period of certain relief granted in CFTC Staff Letter No. 20-02 with respect to certain regulatory obligations applicable

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<sup>1</sup> CFTC Staff Letters related to COVID-19 are available on the Commission’s website: <http://www.cftc.gov/coronavirus>.

to persons that are members of designated contract markets (“**DCMs**”) or swap execution facilities (“**SEFs**”) that are not registered with the Commission in any capacity (each, a “**Member**”).

With respect to DMO, this letter extends the time period of certain relief granted in the COVID-19 Letters with respect to certain regulatory obligations of DCMs and SEFs.

## **I. DSIO No-Action Positions**

Based on the representations of the Associations, DSIO understands that the displacement of personnel in response to the COVID-19 pandemic that prompted the issuance of the COVID-19 Letters continues to be widespread. In order to support this continuing response to the COVID-19 pandemic, DSIO believes that the no-action positions set forth in the COVID-19 Letters continue to be warranted.

DSIO reiterates that registrants relying on the relief extended by this letter are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic.<sup>2</sup> DSIO further expects that as COVID-19-related risks decrease, registrants and members will return to compliance with all regulatory obligations from which relief has been provided.

The no-action relief provided by DSIO pursuant to the COVID-19 Letters for the following regulatory requirements, originally scheduled to expire on June 30, 2020, is hereby extended until September 30, 2020, subject to the terms and conditions as stated in the applicable COVID-19 Letters. Any no-action relief provided by the COVID-19 Letters for a regulatory requirement not listed below will continue to be effective in accordance with the terms and conditions of the COVID-19 Letters.<sup>3</sup>

### **A. FCMs & IBs**

- (1) Recording of oral communications in accordance with Commission regulation 1.35.
- (2) Time-stamps in accordance with Commission regulations 1.35 or 155.3.

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<sup>2</sup> DSIO notes that the National Futures Association (“NFA”) has issued a notice to its members (“Members”) regarding the applicability of “branch office requirements” to Members responding to the COVID-19 pandemic. Pursuant to the notice, NFA has stated that it will not pursue a disciplinary action against a Member that permits associated persons (“APs”) to temporarily work from locations not listed as a branch office and without a branch manager provided that the Member implements and documents alternative supervisory methods to adequately supervise the APs' activities and meet its recordkeeping requirements. See NFA Notice I-20-12 Coronavirus Update—NFA Branch Office Requirements, available at: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5214>.

<sup>3</sup> This refers to the relief provided in CFTC Staff Letters 20-03 and 20-06 permitting additional time for FCMs and SDs to furnish an annual compliance report pursuant to Commission regulation 3.3.

**B. SDs**

- (1) Recording of oral communications in accordance with Commission regulation 23.202.
- (2) Time-stamps in accordance with Commission regulation 23.202.

**C. RFEDs**

- (1) Recording of oral communications in accordance with Commission regulation 1.35.
- (2) Time-stamps in accordance with Commission regulations 1.35 or 5.18.

**D. FBs**

- (1) Recording of oral communications in accordance with Commission regulation 1.35.
- (2) Time-stamps in accordance with Commission regulations 1.35.
- (3) Location requirement pursuant to the definition of “floor broker” in Commission regulation 1.3.
- (4) Introducing broker registration.

**E. Members**

- (1) Time-stamps in accordance with Commission regulation 1.35.

**II. DMO No-Action Positions**

As noted above, based on the representations of the Associations, DMO understands that the displacement of personnel in response to the COVID-19 pandemic that prompted the issuance of the COVID-19 Letters continues to be widespread. In order to support this continuing response to the COVID-19 pandemic, DMO believes that the no-action positions set forth in the COVID-19 Letters continue to be warranted.

DMO reiterates that it expects DCMs relying on the relief extended by this letter to remain particularly vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that the extended relief does not facilitate or allow floor brokers, other registrants, and unregistered members of DCMs (“**Affected Market Participants**”) to take advantage of market volatility to engage in improper trading. Further, DMO reiterates that it expects SEFs relying on the relief extended by this letter to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from the remote locations, such as their homes, during the COVID-19 pandemic. DMO further expects that as COVID-19-related risks decrease, DCMs and SEFs will return to compliance with all regulatory obligations from which relief has been provided.

The no-action relief provided by DMO pursuant to the COVID-19 Letters for the following regulatory requirements, originally scheduled to expire on June 30, 2020, is hereby extended until September 30, 2020, subject to the terms and conditions as stated in the applicable COVID-19 Letters. Any no-action relief provided by the COVID-19 Letters for a regulatory requirement not listed below will continue to be effective in accordance with the terms and conditions of the COVID-19 Letters.

**A. DCMs**

- (1) Audit trail and related requirements pursuant to CEA sections 5(d)(4) and (10) and Commission regulations thereunder.

**B. SEFs**

- (1) Recording of voice communications pursuant to Commission regulations 37.205(a)-(b), 37.400(b), 37.406, 37.1000(a)(1), and 37.1001.

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### III. Conclusion

DSIO and DMO recognize that registrants, DCMs, SEFs, and other Affected Market Participants may require additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, any registrants that require other relief are encouraged to contact DSIO and DMO staff. DSIO and DMO staff will address issues on a case-by-case basis in light of the requesting registrant's particular fact and circumstances.

This letter, and the positions taken herein, represent the views of DSIO and DMO only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to DSIO and DMO. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Finally, as with all staff letters, DSIO and DMO retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in their discretion.

If you have any questions concerning this correspondence, please contact Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or [ffisanich@cftc.gov](mailto:ffisanich@cftc.gov) or Roger Smith, Special Counsel, DMO, at (202) 418-5344 or [rsmith@cftc.gov](mailto:rsmith@cftc.gov).

Very truly yours,

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cc: Regina Thoele, Compliance  
National Futures Association, Chicago