U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

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 further 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, and extended by CFTC Staff Letter 20-19, issued on June 9, 2020 (the "**COVID-19 Letters**").[1] 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

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[1] CFTC Staff Letters related to COVID-19 are available on the Commission's website: http://www.cftc.gov/coronavirus.

"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 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.[2] 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 January 15, 2021, 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.[3]

A. <u>FCMs & IBs</u>

(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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[2] 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.

[3] 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 January 15, 2021, 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 or Roger Smith, Associate Chief Counsel, DMO, at (202) 418-5344 or rsmith@cftc.gov.

Very truly yours,

Joshua B. Sterling Director Division of Swap Dealer and Intermediary Oversight	Dorothy D. DeWitt Director Division of Market Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

Request for Relief Extending Covid-19 No-Action Relief:

August 28, 2020

Mr. Joshua Sterling
Director, Division of Swap Intermediary Oversight
Ms. Dorothy DeWitt
Director, Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Extension of Certain COVID-19 No-Action Regulatory Relief

Dear Mr. Sterling and Ms. DeWitt:
The Futures Industry Association ("FIA"), the International Swaps and Derivatives Association, Inc. ("ISDA"), and the Securities Industry and Financial Markets Association ("SIFMA") request, pursuant to Commission Rule 140.99 and on behalf of their respective members, that the Divisions extend through midnight on January 15, 2021 the previously-granted no-action regulatory relief in CFTC Letter No. 20-19, due to the ongoing COVID-19 pandemic.[1]

As the Divisions noted in the letter, the ongoing COVID-19 pandemic continues to make it difficult for all categories of CFTC registrants and other market participants to comply on a timely basis with certain of their obligations under the Commodity Exchange Act and the Commission's regulations. In granting the original no-action relief, which was extended in Letter No. 20-19, the Divisions acknowledged that "registrants may have significant operations in affected areas or areas that may become affected by the COVID-19 pandemic. Disruptions in transportation and limited access to facilities and support staff as a result of the COVID-19 pandemic could hamper efforts of registrants to meet their regulatory obligations."[2] Because of these material obstacles to compliance, the Divisions granted the no-action relief cited above "where compliance is anticipated to be particularly challenging or impossible because of displacement of registrant personnel from their normal business sites due to community non- pharmaceutical interventions such as social distancing and closures in response to the COVID-19 pandemic."[3]

[1] CFTC Letter No. 20-19 extended relief granted in Letter Nos. 20-02, 03, 04, 05, 06, 07 and 09, each of which references the applicable provisions of the Commodity Exchange Act and the CFTC's regulations for which noaction relief was granted.
[2] E.g., CFTC Letter No. 20-06 at 1
[3] Id.

The Commission continues to provide registrants and market users with regulatory relief during this challenging period. For example, in addition to, revising the compliance schedule for the posting and collection of initial margin under the CFTC Margin Rule to defer the Phase 5 compliance date to September 1, 2021 "to address the operational challenges faced by certain entities subject to the [rule] as a result of the coronavirus disease 2019 ("COVID-19") pandemic",[4] on June 25, 2020 the Commission also proposed to defer Phase 6 to September 1, 2022.[5]

Despite some modest easing of the COVID-19 pandemic, CFTC registrants and users of U.S. listed and over-the-counter derivatives markets still must focus substantial attention on executing business continuity plans, ensuring the safety of their employees, viability of their business operations, and keeping the derivatives markets "open for business." The Centers for Disease Control and Prevention's COVID-19 guidance for businesses and workplaces is complex, difficult, and expensive to implement and, in some respects, impractical.[6] In addition, many states and municipalities have issued COVID-19 executive orders that remain in effect for varying time periods.[7] Although firms have transitioned successfully to remote work and alternating site arrangements, as the Divisions are aware, these arrangements create many practical and technical challenges. The relief provided by the Divisions facilitated the transition to alternative work arrangements. At this point in time, the substantial majority of personnel are continuing to work remotely and may do so through the end of the year, as there still is no approved vaccine available to prevent the disease.

Because the reasons why registrants and market participants requested, and the Divisions granted, the no-action relief cited above are and will remain substantially the same for the foreseeable future, FIA, ISDA, and SIFMA request that the Divisions extend the cited no-action relief through midnight on January 15, 2021. Thank you for considering our request for this extension. Please contact the undersigned if you have any questions about our request.

The undersigned hereby certify that the material facts set forth above are true and complete to the best of their respective knowledge.

Sincerely,

Scott O'Malia
CEO
ISDA

Kenneth E. Bentsen, Jr.
President & CEO
SIFMA

Allison Lurton
Chief Legal Officer &
General Counsel
FIA

[4] See https://www.cftc.gov/sites/default/files/2020/07/2020-12033a.pdf at 41346.
[5] See https://www.cftc.gov/sites/default/files/2020/07/2020-14254a.pdf at 41463.
[6] Available at https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html
[7] See, e.g., https://web.csg.org/covid19/executive-orders/