



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

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Market Participants  
Division

Joshua B. Sterling  
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Division of  
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**Re: Partial Extension of No-Action Positions to Facilitate Physical Separation of Registrant Personnel in Response to COVID-19 Pandemic<sup>1</sup>**

Ladies and Gentlemen:

At the request of the Futures Industry Association (“FIA”), CME Group Inc. (“CME”), ICE Futures U.S. (“IFUS”), and the Minneapolis Grain Exchange, LLC (“MGEX”), this letter further extends the time period of certain no-action relief provided by the Market Participants Division (formerly, the Division of Swap Dealer and Intermediary Oversight) (“MPD”) and the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) in CFTC Staff Letters Nos. 20-02, 20-03, 20-04, and 20-09, each issued on March 17, 2020, and extended by CFTC Staff Letter 20-19, issued on June 9, 2020, and CFTC Staff Letter 20-26, issued on September 11, 2020 (the “COVID-19 Letters”).<sup>2</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

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<sup>1</sup> This letter contains one or more collections of information under Office of Management and Budget (“OMB”) number 3038-0049. No person is required to respond to a request for information unless a valid OMB number is displayed.

<sup>2</sup> CFTC Staff Letters related to COVID-19 are available on the Commission’s website: <http://www.cftc.gov/coronavirus>. CFTC Staff Letters 20-19 and 20-26 extended the relief provided in CFTC Staff Letter 20-07, which provided relief to swap execution facilities (“SEFs”) from 37.205(a)-(b), 37.400(b), 37.406, 37.1000(a)(1), and 37.1001 to the extent that non-compliance arose from the inability of SEFs to record voice communications as a result of the displacement of voice trading personnel from their normal business sites in connection with the COVID-19 pandemic response. See CFTC Staff Letter 20-07. The relief in CFTC Staff Letter 20-07 is not being extended in this letter and expired upon the expiration of CFTC Staff Letter 20-26 on January 15, 2021. Similarly, the relief provided to retail foreign exchange dealers and swap dealers in CFTC Staff Letters 20-05 and 20-06, respectively, is not being extended in this letter and expired upon the expiration of CFTC Staff Letter 20-26 on January 15, 2021.

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 MPD, this letter extends the time period of certain relief granted in the COVID-19 Letters with respect to regulatory obligations for time-stamping of orders by persons that are registered with the Commission as futures commission merchants (“**FCMs**”), introducing brokers (“**IBs**”), and floor brokers (“**FBs**”), as well as location and registration relief for FBs. Each FCM, IB, 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 regulatory obligations for time-stamping of orders by 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**”).

As emphasized by FIA in its request, this extension of relief does not apply to all time-stamping requirements. The relief would not apply to those futures and options on futures orders that may “immediately be entered into a trade matching engine . . . upon receipt thereof.” Although MPD understands that a substantial majority of customer orders received by registrants and other persons are immediately entered into a trade matching engine, a significant number of orders are not entered immediately. Such orders include, but are not limited to: (i) block trades; (ii) exchanges for related positions; (iii) multiple contract combination strategies; (iv) bunched orders; and (v) voice orders that are not executable immediately. Importantly, FIA represents that such orders are entered primarily by or on behalf of commercial participants and institutional investors that use the exchange-traded markets to hedge or otherwise manage the risks of their cash market transactions. FIA believes that, in the absence of the requested relief extension, persons subject to the time-stamping requirement would have no choice but to refuse to accept such orders, thereby denying such market participants access to an essential risk management tool and severely affecting market liquidity.

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.

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

MPD recognizes that registrants have made important strides in implementing business processes that have made compliance with most regulatory requirements possible since issuance of the initial COVID-19 Letters in March of 2020. However, based on the representations of FIA, IFUS, and CME, MPD understands that extraordinary circumstances have prevented many registrants from implementing solutions addressing the continued displacement of personnel in response to the COVID-19 pandemic that would permit full compliance with all regulatory requirements in a timely manner. In order to support this continuing response to the COVID-19 pandemic, MPD

believes that certain limited no-action positions set forth in the COVID-19 Letters continue to be warranted for an additional brief period of time.

MPD 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>3</sup> MPD 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 MPD pursuant to the COVID-19 Letters for the following regulatory requirements (listed in A-C below), and extended by CFTC Staff Letter 20-26, is hereby extended until **April 15, 2021**, subject to the terms and conditions as stated in the applicable COVID-19 Letters, and subject to the following additional conditions:

- (1) FIA will provide a report to the Commission within 4 weeks of the issuance of this extension detailing the scope of the industry's challenges with time-stamping in a work-from-home environment; and
- (2) Persons relying on the relief must make efforts to investigate time-stamping compliance solutions compatible with their back-office systems and policies and procedures, and keep written records of those efforts.<sup>4</sup>

**A. FCMs & IBs**

- (1) Time-stamps in accordance with Commission regulations 1.35 or 155.3, provided that such relief shall not be applicable to time-stamps for customer orders that are able to be entered into a trade-matching engine immediately upon receipt.

**B. FBs**

- (1) Time-stamps in accordance with Commission regulations 1.35, provided that such relief shall not be applicable to time-stamps for customer orders that are able to be entered into a trade-matching engine immediately upon receipt.

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<sup>3</sup> MPD 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>4</sup> MPD recognizes that the report and efforts to investigate solutions could serve as tools in the future to inform discussions on possible rule updates to accommodate permanent relief for persistent work-from-home needs.

- (2) Location requirement pursuant to the definition of “floor broker” in Commission regulation 1.3.
- (3) Introducing broker registration.

**C. Members**

- (1) Time-stamps in accordance with Commission regulation 1.35, provided that such relief shall not be applicable to time-stamps for customer orders that are able to be entered into a trade-matching engine immediately upon receipt.

**II. DMO No-Action Positions**

As noted above, based on the representations of FIA, CME, IFUS, and MGEX, 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. DMO further expects that as COVID-19-related risks decrease, DCMs will return to compliance with all regulatory obligations from which relief has been provided.

The no-action relief provided by DMO pursuant to CFTC Staff Letter 20-09 for the regulatory requirements provided below, extended by CFTC Staff Letter 20-26, is hereby extended until **April 15, 2021**, subject to the terms and conditions as stated in CFTC Staff Letter 20-09.

**A. DCMs**

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

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<sup>5</sup> Condition 1 of CFTC Letter 20-09 states that “[t]he DCMs will require Affected Market Participants to continue to conduct customer business in accordance with the same exchange rules applicable to the trading conducted on the trading floor, or otherwise in compliance with relief granted pursuant to [MPD’s] [CFTC Staff Letters] 20-02, 20-03, 20-04, 20-05 and 20-06...” For avoidance of doubt, upon the expiration of CFTC Staff Letter 20-26, DCMs may not rely on relief from audit trail and related requirements pursuant to CEA sections 5(d)(4) and (10) and Commission regulations thereunder where the relief granted pursuant to CFTC Staff Letters 20-02, 20-03, 20-04, 20-05, and 20-06 for Affected Market Participants is not extended by this letter.

### III. Conclusion

This letter, and the positions taken herein, represent the views of MPD 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 MPD 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, MPD 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, MPD, at (202) 418-5949 or [ffisanich@cftc.gov](mailto:ffisanich@cftc.gov) or Roger Smith, Associate Chief 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