



## U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter 15-68  
No-Action  
December 22, 2015  
Division of Market Oversight

### **Re: No-Action Relief for Swap Execution Facilities from Certain Audit Trail Requirements in Commission Regulation 37.205 Related to Post-trade Allocation Information**

Ladies and Gentlemen:

This letter responds to a request received from multiple parties<sup>1</sup> by the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) for no-action relief for swap execution facilities (“SEFs”) from certain of the requirements under Commission regulation 37.205 that require SEFs to capture post-trade allocation information in their audit trail data.

#### **Background**

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)<sup>2</sup> amended the Commodity Exchange Act (“CEA”)<sup>3</sup> to establish a comprehensive new regulatory framework for swaps. CEA Section 5h provides that to be registered and maintain registration, a SEF must comply with fifteen enumerated core principles and any requirements that the Commission may impose by rule or regulation.<sup>4</sup> Among the core principle requirements for SEFs, Core Principle 2<sup>5</sup> requires a SEF to have the capacity to detect, investigate and enforce its rules, and to capture information that may be used in establishing whether violations of those rules have occurred.

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<sup>1</sup> This letter responds to no-action relief requested in a jointly-submitted letter from Chicago Mercantile Exchange, Inc., Clear Markets, Inc., GTX SEF, LLC, ICE Swap Trade LLC, Javelin SEF, LLC, LatAm SEF, LLC, MarketAxess SEF Corporation, trueEX LLC, and 360 Trading Networks, Inc. These parties herein will be referred to as the “requesting parties.” Each of the requesters is currently operating as a temporarily-registered swap execution facility, pursuant to Commission regulation 37.3(c), and has currently pending before the Commission an application for full registration as a swap execution facility, pursuant to Commodity Exchange Act Section 5h and Commission regulation 37.3(b).

<sup>2</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 7 U.S.C. 1, et seq. (2012).

<sup>4</sup> CEA § 5h, as enacted by section 733 of the Dodd-Frank Act; 7 U.S.C. 7b-3 (2012).

<sup>5</sup> CEA § 5h(f)(2); 7.U.S.C. 7b-3(f)(2).

On June 4, 2013, the Commission published final regulations governing SEFs.<sup>6</sup> Among the regulations promulgated under Core Principle 2, Commission regulation 37.205(a) requires SEFs to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. The audit trail data must be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and provide evidence of any violations of the SEF's rules. In addition, the audit trail should enable the SEF to track an order from the time of receipt through fill, allocation, or other disposition. The requirement to capture allocation information in the audit trail data is also addressed in Commission regulation 37.205(b)(2), which requires a SEF's electronic transaction history database to include, among other things, "identification of each account to which fills are allocated."

### **Requested Relief**

The requesting parties provide a number of reasons why SEFs do not capture post-trade allocation information in their audit trail data, as required by Commission regulations 37.205(a) and (b)(2). The requesting parties explain that trade allocations are made post-trade away from the SEF and typically occur between the clearing firm or the customer and the derivatives clearing organization ("DCO"), or at the middleware provider. Thus, the requesting parties assert that SEFs typically do not have access to post-trade allocation information, and for the most part will be unable to obtain such data from third parties, such as DCOs and swap data repositories ("SDRs"), due to confidentiality concerns.

Even if SEFs could obtain the information from DCOs, SDRs or middleware providers, or alternatively, from the counterparties to the swap, the requesting parties note that the infrastructure necessary to securely transmit the post-trade allocation information, such as an application-programming interface ("API") or secure file transfer protocol ("SFTP") site, is currently not in place.

### **Discussion**

The Division acknowledges the practical challenges that SEFs face in obtaining post-trade allocation information, as these allocations occur away from the SEFs, after the trade has been executed. The Division is therefore granting time-limited no-action relief from the requirements for SEFs to capture post-trade allocation information in their audit trail data, as required under Commission regulations 37.205(a) and (b)(2). The Division will continue to work with SEFs and other parties involved in the allocation workflow to identify methods for obtaining post-trade allocation information.

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<sup>6</sup> Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) ("SEF Final Rules").

### **Time-Limited No-Action Relief for SEFs**

The Division will grant the above time-limited no-action relief from the requirements for SEFs to capture post-trade allocation information in their audit trail data and to conduct associated audit trail reviews of post trade allocations, and will not recommend that the Division take enforcement action against any SEF that does not capture post-trade allocations in its audit trail data or conduct associated audit trail reviews of post trade allocations, as required by Commission regulations 37.205(a) and (b)(2), subject to the following conditions:

1. The SEF must have a rule that requires that market participants provide post-trade allocation information to the SEF for particular trades, if the SEF, at the request of the Commission or otherwise, requests such information; and
2. In the course of a trade practice surveillance or market surveillance investigation into any trading activity involving post trade allocations, upon such request pursuant to condition 1 above, the SEF must ascertain whether a post-trade allocation was made, and if so, the SEF must request, obtain and review the post-trade allocation information as part of its investigation.

This no-action relief shall commence on the date of issuance of this letter and shall expire on 11:59 p.m. (EST) on November 15, 2017.

Finally, the no-action relief provided herein does not relieve SEFs of any other audit trail obligations under Commission regulation 37.205, including the audit trail obligations under Commission regulations 37.205(a) and (b)(2) that do not pertain to post-trade allocation information. Additionally, market participants should be aware that the no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder, in particular, the applicable recordkeeping requirements under Commission regulation 1.35.

This letter, and the no-action position taken herein, represents the view of the Division only, and does not necessarily represent the positions or views of the Commission or of any other division or office of the Commission's staff. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or [nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov), Rachel Berdansky, Deputy Director, Division of Market Oversight, at (202) 418-5429 or [rberdansky@CFTC.gov](mailto:rberdansky@CFTC.gov), or Swati Shah, Special Counsel, Division of Market Oversight, at (202) 418-5042 or [sshah@cftc.gov](mailto:sshah@cftc.gov).

Sincerely,

Vincent A. McGonagle  
Director  
Division of Market Oversight