



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

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Division of
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CFTC Letter No. 14-33
No-Action
March 21, 2014
Division of Swap Dealer and Intermediary Oversight
Division of Market Oversight

Fran Kenck
Chief Regulatory Officer
162 5th Avenue, Suite 902
New York, New York 10010

Re: Time-Limited No-Action Relief for Certain Members of a Designated Contract Market from the Requirement to Record Oral Communications, Pursuant to Commission Regulation 1.35(a), in Connection with the Execution of Swap Transactions

Dear Ms. Kenck:

This letter is in response to a March 21, 2014 letter received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) and the Division of Market Oversight (“**DMO**”) (collectively the “**Divisions**”) of the Commodity Futures Trading Commission (“**Commission**”) from you on behalf of trueEX, LLC (“**trueEX**”), a designated contract market (“**DCM**”) and temporarily registered swap execution facility (“**SEF**”). In the letter, trueEX seeks relief from the recordkeeping requirements of Commission Regulation (“**Regulation**”) 1.35(a), with respect to oral communications, to the extent that such requirements apply to commodity trading advisors that are members of trueEX’s designated contract market (“**trueEX DCM**”) in connection with the execution of swaps on the trueEX DCM.

The Commission promulgated Part 1 of its regulations pursuant to the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* The Commission recently amended Regulation 1.35(a) in order to integrate the Regulation more fully with the new statutory framework for swaps created by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), and to conform the existing recordkeeping requirements of Regulation 1.35(a) to the recordkeeping requirements for swap dealers and major swap participants, as set forth in Regulation 23.202. Regulation 1.35(a), as amended, states, in relevant part, that each member of a DCM or SEF “shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity interests

and related cash or forward transactions.”¹ As part of the systematic recordkeeping system that is required under Regulation 1.35(a), the Regulation states that:

“[I]ncluded among the records required to be kept by this paragraph are all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media.”²

Regulation 1.35(a) further states that the requirement to record oral communications shall not apply to certain enumerated persons, including commodity pool operators and members of a DCM or SEF that are not registered or required to be registered with the Commission in any capacity.³ Commodity trading advisors are not among the exempted entities. Affected entities were required to be compliant with the requirement to record oral communications by December 21, 2013.

In your March 21, 2014 letter, you reference CFTC Letter No. 13-77, in which the Divisions provided time-limited no-action relief from the requirement to record oral communications pursuant to Regulation 1.35(a) for certain members of SEFs.⁴ Specifically, the Divisions provided relief to allow Asset Managers⁵ that are members of SEFs until May 1, 2014, to come into compliance with the Regulation. The Divisions believed that additional time was warranted given that SEFs had only recently begun publishing their rulebooks, and the requestors’ representations that Asset Managers needed more time to adjust their recordkeeping processes in order to be compliant with the recordkeeping requirements, as articulated in the SEF rulebooks and in Regulation 1.35(a).⁶

According to your letter, trueEX operates as both a DCM and a temporarily registered SEF. You further state that trueEX currently lists the most liquid, plain vanilla interest rate swaps for trading on its DCM order book. Pursuant to CFTC Letter 13-77, commodity trading

¹ 17 CFR 1.35(a)(1).

² *Id.*

³ 17 CFR 1.35(a)(1)(v), (viii).

⁴ *See* CFTC Letter No. 13-77, Time-Limited No-Action Relief for Certain Members of Swap Execution Facilities from the Requirement to Record Oral Communications Pursuant to Commission Regulation 1.35(a) (Dec. 20, 2013), available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-77.pdf>.

⁵ The Divisions noted that while “Asset Manager” is not a registration category or defined term under the Commodity Exchange Act or the regulations promulgated pursuant thereto, for purposes of the letter it included certain persons who are required to register with the Commission (commodity pool operators and commodity trading advisors) as well as certain persons who are not required to register with the Commission. *Id.* at 2 n.4.

⁶ *Id.* at 3.

advisors that are members of SEFs have until May 1, 2014 to come into compliance with the oral recordkeeping requirements of Regulation 1.35(a), but such relief does not extend to commodity trading advisors that are members of the trueEX DCM. You represent that providing relief only to commodity trading advisors trading on SEFs will deter commodity trading advisors from accessing the swaps listed for trading on the trueEX DCM in the near term. You therefore request that the Divisions extend the relief provided by CFTC Letter 13-77 to commodity trading advisors that are members of the trueEX DCM.

Based upon the representations made by you with respect to the compliance issues discussed above, the Divisions believe that time-limited no-action relief is warranted with respect to the requirement to record oral communications. Accordingly, the Divisions will not recommend that the Commission take enforcement action against a commodity trading advisor that is a member of trueEX for failure to comply, **prior to May 1, 2014**, with the requirement under Regulation 1.35(a) to record oral communications in connection with the execution of swap transactions on the trueEX DCM.

This letter, and the positions taken herein, represent the views of the Divisions only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. As with all no-action letters, the relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the information made available to the Divisions. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact the undersigned. In the alternative, for DSIO issues, please do not hesitate to contact Frank Fisanich, Chief Counsel, at (202) 418-5949, or Ward Griffin, Associate Chief Counsel, at (202) 418-5425, and for DMO issues, please do not hesitate to contact Jonathan Lave, Associate Director, at (202) 418-5983.

Very truly yours,

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trueEX, LLC

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cc: Regina Thoele, Compliance
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