



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

April 5, 2019

Re: Extension to UK Entities of Regulatory Relief Previously Granted to European Union Entities in CFTC No-Action Letters: 12-70, 13-45, 17-64, 17-66, and 17-67

I. Introduction

This letter extends to United Kingdom (“UK”) entities existing regulatory relief involving European Union (“EU”) entities issued by staff of the Commodity Futures Trading Commission (“CFTC” or “Commission”). Such extension of relief will become effective if and when the UK withdraws from the EU, commonly referred to as “Brexit.” As of the date of this letter, it is anticipated that such withdrawal may occur on April 12, 2019.

The Division of Market Oversight (“DMO”), the Division of Clearing and Risk (“DCR”), and the Division of Swap Dealer and Intermediary Oversight (“DSIO”) (together, the “Divisions”) are issuing this letter jointly to permit UK entities to rely on the longstanding relief involving EU entities set forth in the following letters (collectively, the “Existing Relief”), subject to the conditions and circumstances described therein:

1. Letter 12-70: Relief for Certain Swap Dealers, De Minimis Dealers, Agent Affiliates, and Associated Persons from Registration as an Introducing Broker under Section 4d or a Commodity Trading Advisor under Section 4m of the Commodity Exchange Act, and Interpretation that Certain Employees of De Minimis Dealers are not an Introducing Broker as defined in Section 1a(31) of the Commodity Exchange Act;¹
2. Letter 13-45: No-Action Relief for Registered Swap Dealers and Major Swap Participants from Certain Requirements under Subpart I of Part 23 of Commission Regulations in Connection with Uncleared Swaps Subject to Risk Mitigation Techniques under EMIR;²

¹ See CFTC No-Action Letter No. 12-70 (December 31, 2012), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/12-70.pdf>.

² See CFTC No-Action Letter No. 13-45 (July 11, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/13-45.pdf>.

3. Letter 17-64: Extension of Time-Limited No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan or Switzerland;³
4. Letter 17-66: No-Action Relief from Certain Provisions of the Outward-Facing Swaps Condition in the Inter-Affiliate Exemption from the Clearing Requirement;⁴ and
5. Letter 17-67: Extension of No-Action Relief from Commodity Exchange Act Section 2(h)(8) for Swaps Executed Between Certain Affiliated Entities that Are Not Exempt from Clearing Under Commission Regulation 50.52.⁵

II. Background

In June 2016, the people of the UK voted by referendum to leave the EU. On March 29, 2017, the UK submitted notification of its intention to withdraw from the EU at the conclusion of a two year period pursuant to Article 50 of the Treaty on European Union.⁶

The Divisions understand that, unless a withdrawal agreement between the UK and the EU is ratified, all relevant EU law will cease to apply in the UK upon the UK's withdrawal from the EU. This scenario is commonly referred to as a "No Deal Brexit."

The Divisions further understand that, in the event that a withdrawal agreement is ratified, the UK will cease to be a member of the EU, although for some transition period EU law and EU regulatory, budgetary, supervisory, judiciary, and enforcement instruments and structures will continue to apply in the UK as if it were a member of the EU. This scenario is commonly referred to as a "Soft Brexit."

To prepare for the possibility of a No Deal Brexit, the Divisions note that the UK government has taken actions to provide regulatory certainty, including passing the European Union (Withdrawal) Act 2018 ("EU(W)A"), which in the event of a No Deal Brexit will transpose relevant EU law and regulations into UK law and regulations, and grant existing authority vested in certain EU institutions to the Financial Conduct Authority, the Bank of England including the Prudential Regulation Authority, and Her Majesty's Treasury. Commission staff has been engaged with staff of the relevant UK authorities to learn about the regulatory and supervisory framework that will apply in the UK upon its withdrawal from the EU in a No Deal Brexit.

³ See CFTC No-Action Letter No. 17-64 (November 30, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-64.pdf>.

⁴ See CFTC No-Action Letter No. 17-66 (December 14, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-66.pdf>.

⁵ See CFTC No-Action Letter No. 17-67 (December 14, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-67.pdf>.

⁶ See Article 50 of the Treaty on European Union, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M050&from=EN>.

Whether as a result of a withdrawal agreement in a Soft Brexit or as a result of the foregoing actions by the UK government pursuant to the EU(W)A in a No Deal Brexit, the Divisions recognize that the UK authorities, and in a Soft Brexit also the EU authorities, intend that the regulatory environment affecting UK entities relevant to the Existing Relief will not change in any material respect. Accordingly, the Divisions have determined to provide regulatory certainty to UK entities that are relying, or may hereafter seek to rely, on the Existing Relief.

III. Staff Position

Based upon the Divisions' understandings described above, upon the occurrence of either a Soft Brexit or No Deal Brexit the Divisions will, subject to all of the conditions contained therein and to the respective expiration dates thereof, consider the Existing Relief to apply to or reference:

- (A) The UK in the same manner that it applies to or references the EU;
- (B) UK entities in the same manner that it applies to or references EU entities;
- (C) UK financial regulatory bodies in the same manner that it applies to or references EU financial regulatory bodies; and
- (D) UK laws and regulations transposed pursuant to the EU(W)A in the same manner that it applies to or references the corresponding EU laws and regulations, as applicable.

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. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to the Divisions. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Staff of the Divisions will monitor regulatory developments in the UK to determine whether the Existing Relief may require reconsideration with respect to UK entities. Further, a withdrawal of any relief under CFTC Staff Letters 12-70, 13-45, 17-64, 17-66, or 17-67, will necessarily result in a withdrawal of the corresponding relief provided herein.

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

April 5, 2019

Page 4

If you have any questions concerning this correspondence, please contact, Roger Smith, Special Counsel, DMO, at (202) 418-5344 or rsmith@cftc.gov; Sarah E. Josephson, Deputy Director, DCR, at (202) 418-5684 or sjosephson@cftc.gov; or Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or ffisanich@cftc.gov.

Very truly yours,

Brian Bussey
Director
Division of Clearing and Risk

Matthew B. Kulkin
Director
Division of Swap Dealer and Intermediary Oversight

Amir Zaidi
Director
Division of Market Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

Jamila A. Piracci, OTC Derivatives
National Futures Association, New York