



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

Re: No-Action Positions for Floor Brokers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic

Ladies and Gentlemen:

This letter is in response to a request received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) from multiple market participants regarding regulatory obligations of persons that are registered with the Commission as floor brokers (“**FBS**”). Each FB is referred to herein as a “registrant.”

The World Health Organization declared the coronavirus disease 2019 (“**COVID-19**”) outbreak a global pandemic on March 11, 2020. DSIO understands from registrants and their representatives that the COVID-19 pandemic may present challenges in timely meeting certain of their obligations under the Commodity Exchange Act (“**CEA**”) and Commission regulations. These 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. In light of these developments, DSIO is issuing this letter to assist affected registrants with satisfying their obligations under the CEA and Commission regulations.

In connection with an industry-wide response to the COVID-19 pandemic, no-action relief has been requested for failure to comply with certain Commission regulations 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.

I. DSIO No-Action Positions

In order to support an orderly response to the COVID-19 pandemic, DSIO believes that the no-action positions set forth herein are warranted. Registrants relying on the relief

provided 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.¹ DSIO further expects that as COVID-19-related risks decrease, registrants will return to compliance with all regulatory obligations from which relief has been provided.

Until June 30, 2020, DSIO will not recommend that the Commission take an enforcement action against any FB for the failure to comply with the following Commission regulations, subject to the applicable conditions stated below:

The relief provided for FBs below is expressly conditioned on a FB's compliance with all applicable rules of any designated contract market on which such FB has trading privileges.

- (1) ***Recording of Oral Communications.*** Any requirement to make and keep records of oral communications pursuant to Commission regulation 1.35 if the personnel required to use recorded lines are required by the written business continuity plan of any designated contract market to be absent from their normal business site, *provided* that: (A) a written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication, is created and maintained as a written communication in accordance with Commission regulation 1.35; and (B) the registrant takes affirmative steps to collect any written materials pertaining to the content of the oral communication, including, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries, and maintains them in its required books and records pursuant to Commission regulation 1.31.
- (2) ***Time-Stamps.*** Any requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 1.35 if the personnel responsible for making such record are required by the written business continuity plan of any designated contract market to be absent from their normal business site, *provided* that a record of the date and time, to the nearest minute, is otherwise created and maintained in accordance with Commission regulation 1.35.
- (3) ***Location.*** Any requirement to be physically located in any pit, ring, post, or other place provided by a contract market pursuant to the definition of "floor

¹ 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>.

broker” in Commission regulation 1.3 if the FB is required by the written business continuity plan of any designated contract market to be absent from such place.

- (4) ***Introducing Broker Registration.*** Any requirement to be registered as an IB solely due to a failure of the FB to be physically located in any pit, ring, post, or other place provided by a contract market pursuant to the definition of “floor broker” in Commission regulation 1.3 if the FB is required by the written business continuity plan of any designated contract market to be absent from such place.

II. Conclusion

DSIO recognizes that registrants 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 staff. DSIO 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 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. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

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

If you have any questions concerning this correspondence, please contact Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or ffisanich@cftc.gov.

Very truly yours,

Joshua B. Sterling
Director
Division of Swap Dealer and Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago



Kathleen Cronin
Senior Managing Director, General Counsel
and Corporate Secretary
Legal Department

March 16, 2020

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

Re: Request for No-Action Relief Relating to Temporary Closure of the Trading Floor

Dear Directors DeWitt and Sterling:

CME Group Inc. ("CME Group"), on behalf of its four designated contract markets the Chicago Mercantile Exchange, Inc., Chicago Board of Trade, Inc., New York Mercantile Exchange Inc. and the Commodity Exchange Inc. and their respective members and market participants, respectfully requests that the Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight (collectively, the "Divisions") of the Commodity Futures Trading Commission ("CFTC" or "Commission") grant the CME Group's request for no-action relief described herein. The request relates to the CME Group's recent decision to close the trading floors of the Chicago Mercantile Exchange, Inc. and Chicago Board of Trade, Inc. temporarily and to take other measures in response to the coronavirus pandemic, and the Exchanges' provision of temporary regulatory relief to affected members and market participants from having to comply with certain audit trail and other requirements applicable to floor trading imposed under the rules of the Exchanges. In addition, as firms introduce social distancing practices in connection with their business continuity programs, the Exchanges are providing regulatory relief from certain requirements of the rules of the Exchanges which require customer orders to be placed from certain designated premises.

By Special Executive Report [S-8559], the Exchanges issued regulatory relief concerning the pandemic to be put into effect for trade date Monday, March 16, 2020. To accommodate this relief with respect to the ability to conduct certain activities in alternate locations, the Exchanges have modified certain audit trail requirements to reflect those circumstances. In the event alternate locations are used, the Exchanges will not require written orders, including block trade and EFRP orders, to have electronic timestamps; however, there will be very specific requirements applicable to the order as to the creation of a written order, time recordation and retention that will continue to maintain the

integrity of the audit trail. Moreover, Exchange rules require members, member firms and employees of the foregoing to comply with the applicable recordkeeping requirements as set forth in Commission Regulation 1.35, including oral recordkeeping requirements. To the extent that the Commission modifies acceptable practices, the Exchanges has provided comparable relief. In this letter, the Exchanges are seeking relief from DCM Core Principle 4 paragraph (B) (and the regulations set forth herein) that a board of trade must have the capacity and responsibility for “comprehensive and accurate trade reconstructions”. This relief is sought to the extent that the revised audit trail standards contained in our regulatory relief modify the existing standards as set forth in the Core Principle and regulations.

The CME is submitting this request pursuant to CFTC Rule 140.99.

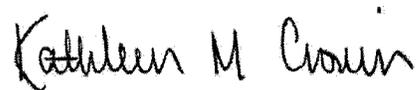
Specifically, the CME Group asks the Divisions to confirm that they will not recommend to the Commission that it take enforcement against:

1. Any of the Exchanges to the extent that its decision to provide certain members with the regulatory forbearance relief described herein could be inconsistent with the Exchange’s obligations under the core principles for designated contract markets (“DCM”) set out in Section 5(d)(4) of the Commodity Exchange Act (“CEA”) or Commission Regulations 38.250 through 38.256 and 38.553; or
2. Any affected members or market participants, to the extent that their permitted non-compliance with the Exchanges’ audit trail requirements could be inconsistent with their obligations under Commission Regulation 1.35. The Exchanges’ market participants to whom this relief would apply are Commission registrants who are subject to the order recordation requirements of Commission Regulation 1.35.

While the Exchanges may provide temporary regulatory relief in connection with the floor closure, affected persons would continue to be subject to all remaining rules of the Exchanges relating to their activity; the Exchanges have endeavored to provide and to subject anyone subject to their jurisdiction alternative means of compliance tailored, as appropriate, to the revised circumstances. In addition, the Exchanges will take additional surveillance steps to implement its regulatory relief. For instance, the Exchanges will engage in enhanced electronic trading ahead and front-running research reviews; these will be opened for trade dates beginning March 1, 2020 with expanded thresholds for duration (timing of event), quantity, profitability and the Exchanges will engage in targeted reviews for displaced Chicago floor brokers. As part of this, the Exchanges will divert headcount, currently anticipated to be 2 Trading Floor Investigators and 1 Senior Investigator, from open outcry reviews to handle the increase in electronic citations. As circumstances evolve, we will continue to develop additional controls as necessary. In any event, the Exchanges would continue to conduct customary trade practice and market surveillance activities, including existing electronic trading ahead and front-running program reviews.

CME Group appreciates your consideration of this request. Should you or any member of your staff, Commission staff, or the Commission itself have any questions or otherwise would like to discuss the matters set forth in this letter, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Kathleen M. Cronin". The signature is written in a cursive style with a distinct dot over the letter 'i' in "Cronin".

Kathleen Cronin
Senior Managing Director, General Counsel
and Corporate Secretary



Atlanta Calgary Chicago Houston London New York Singapore

VIA EMAIL

Ms. Rachel Berdansky
Deputy Director, Compliance
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
Washington, D.C. 20581

March 4, 2020

Re: Request for Temporary Relief for ICE Futures U.S., Inc. Floor Brokers

Dear Ms. Berdansky:

I am writing to request certain time-limited relief in connection with contingency plans being made by ICE Futures U.S., Inc. (the "Exchange") for the possible closure of Exchange premises due to the impact of the coronavirus. A request for similar relief was previously granted by the Division of Market Oversight ("DMO") to the Exchange on October 29, 2012 to address access restrictions resulting from Superstorm Sandy.

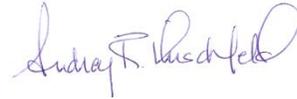
As you know, the Exchange maintains a small electronic trading floor within the New York Stock Exchange ("NYSE") premises in lower Manhattan, where certain floor brokers receive futures and options customer orders which they execute on the IFUS trading platform. If the NYSE facility is closed in order to mitigate the impact of the coronavirus, these floor brokers will be unable to handle customer orders as there will be no premises operated and supervised by the Exchange from which they can legally do so. For this reason, the Exchange is requesting that DMO grant temporary relief to ICE Futures U.S. members who are registered floor brokers and normally have access to the trading floor at NYSE, to allow them to conduct customer business on the ICE trading platform from their homes or other non-Exchange premises to which they have access. Such relief would be limited in duration to the period of time, if any, that access to the trading floor at NYSE is not available to the affected floor brokers.

Pursuant to the requested no action relief, customer business must be conducted by the floor brokers in accordance with the same Exchange rules that apply to trading conducted from the trading floor. This means, among other things, that floor brokers will be required to prepare written order tickets when and as required by Exchange rules and procedures, except that any required timestamps could be manually noted by them on such tickets. Once an order is entered into the trading platform the normal electronic audit trail will exist, and all such orders will be subject to existing credit and risk filters in the ICE system. All other Exchange rules, including those relating to the handling of customer orders and trade practices, will remain in effect and

the Exchange staff will monitor trading conducted pursuant to the relief granted by DMO in the same way as all other trading activity is reviewed.

Thank you for considering this request for temporary relief. If you have any questions please contact me at 212-748-4083 or at audrey.hirschfeld@theice.com.

Sincerely,

A handwritten signature in purple ink that reads "Audrey R. Hirschfeld". The signature is written in a cursive style with a large, looped initial "A".

Audrey R. Hirschfeld
SVP and General Counsel