



**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 Swap Dealers 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 swap dealers (“**SDs**”). Each SD 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.<sup>1</sup> 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.

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

- (1) **Recording of Oral Communications.** Until June 30, 2020, any requirement to make and keep records of oral communications pursuant to Commission regulation 23.202 if the personnel required to use recorded lines are required by the registrant's written business continuity plan to be absent from their normal business site,<sup>2</sup> *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 23.202; and (B) the registrant takes affirmative steps to collect any written materials created by any affected personnel 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.<sup>3</sup>
- (2) **Time-Stamps.** Until June 30, 2020, any requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 23.202 if the personnel responsible for making such record are required by the registrant's written business continuity plan 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 23.202.

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<sup>1</sup> 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>.

<sup>2</sup> DSIO understands that registrants are continuing to exercise appropriate supervision of their APs under business continuity plans, adjusted as they deem prudent in light of social distancing arrangements or other measures in response to the COVID 19 epidemic.

<sup>3</sup> DSIO expects that registrants will require affected personnel to maintain and deliver any such materials to the registrant for retention.

(3) ***Furnishing of Chief Compliance Officer Annual Report to the Commission.*** Any requirement to furnish an annual report to the Commission pursuant to Commission regulation 3.3; provided that:

- (A) The annual report was required to be furnished to the Commission prior to September 1, 2020; and
- (B) The annual report is furnished to the Commission no more than thirty (30) calendar days following the date on which the annual report would otherwise have been required to be furnished to the Commission pursuant to Commission regulation 3.3.

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## 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](mailto:ffisanich@cftc.gov).

Very truly yours,

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

cc: Regina Thoele, Compliance  
National Futures Association, Chicago



17 March 2020

Mr. Joshua Sterling  
Director, Division of Swap Intermediary Oversight  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

RE: Chief Compliance Officer Annual Reports and COVID-19

Dear Director Sterling:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”), the Securities Industry and Financial Markets Association (“**SIFMA**”) and the Futures Industry Association (“**FIA**”) appreciate this opportunity to update you on current challenges regarding the filing of Chief Compliance Officer Annual Reports (“**CCO ARs**”) pursuant to 17 CFR § 3.3, and to request a 30-day deadline extension.

Given the continuing escalation of the COVID-19 pandemic, many Swap Dealers (“**SDs**”) and Futures Commission Merchants (“**FCMs**”) have had to modify business operations and turn their focus to addressing issues related to executing business continuity plans and ensuring the safety of their employees and business operations.

SDs and FCMs with fiscal years ending in December typically finalize their annual reports, including drafting and governance, in March. Currently they are facing significant challenges to do so given the rapidly escalating COVID-19 situation. In particular, SDs’ and FCMs’ senior management and governing bodies, such as CEOs and Boards of Directors, responsible for reviewing, approving and attesting to the report contents, as well as Compliance staff responsible for preparing the report, have been intensely focused on addressing issues related to testing and executing contingency and business continuity plans.

These next two weeks will be critical for firms as they execute these plans. Firms are increasingly moving to alternative, split site and teleworking arrangements, which has given rise to practical and technical disruptions – for example, obtaining signature pages, scanning documents and uploading them to the WinJammer system for submission to the NFA. A 30-day extension of the CCO AR deadline will allow firms to implement a plan for finalization of reports around the near-term emergencies related to this pandemic.

We thank the CFTC for considering our request for this extension. We look forward to working with the Commission as the industry reacts to this global health crisis. We also note that as this situation progresses, we may bring additional items to the Commission's attention as the challenges present themselves.

Sincerely,



Scott O'Malia  
CEO  
**ISDA**



Kenneth E. Bentsen, Jr.  
President & CEO  
**SIFMA**



Allison Lurton  
Chief Legal Officer &  
General Counsel  
**FIA**