



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Division of
Market Oversight

Dorothy DeWitt
Director

Re: No-Action Positions for Swap Execution Facilities to Facilitate Physical Separation of Voice Trading Personnel in Response to the COVID-19 Pandemic

Ladies and Gentlemen:

This letter is in response to requests received by the Division of Market Oversight (“**DMO**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) from several swap execution facilities (“**SEFs**”).¹

The World Health Organization declared the coronavirus disease 2019 (“**COVID-19**”) outbreak a global pandemic on March 11, 2020. DMO understands from SEFs that the COVID-19 pandemic may present challenges in meeting certain of their obligations under the Commodity Exchange Act (“**CEA**”) and Commission regulations. These SEFs 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 SEFs to meet their regulatory obligations. In light of these developments, DMO is issuing this letter to assist SEFs with responding to the COVID-19 pandemic by providing temporary relief from certain obligations under the CEA and Commission regulations.

Specifically, SEFs have requested no-action relief for failure to comply with certain Commission regulations where compliance is anticipated to be particularly challenging or impossible because of displacement of the SEF’s voice trading personnel from their normal business sites² due to implementing recommended practices, such as social distancing and closures, to curtail the spread of the COVID-19 pandemic.

The displacement of SEFs’ voice trading personnel from their normal business sites means that “voice communications related to indications of interest, requests for quotes, orders, and trades

¹ This letter responds to requests received from the Wholesale Markets Brokers Association (“**WMBA**”) and DW SEF LLC.

² For purposes of this letter, the term ‘normal business sites’ includes alternative or disaster recovery sites that are utilized by SEFs as a component of their business continuity and disaster recovery plans .

may not be captured and recorded on the SEF's systems."³ Therefore, SEFs have indicated that they may be unable to comply with certain audit trail requirements, recordkeeping requirements related to maintaining a complete audit trail, and monitoring requirements related to audit trail reconstruction.

I. DMO No-Action Positions

In order to support an orderly response to the COVID-19 pandemic, DMO believes that the no-action relief set forth herein is warranted. SEFs 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 the remote locations, such as their homes, during the COVID-19 pandemic.⁴ DMO further expects that as COVID-19-related risks decrease, SEFs will return to compliance with all regulatory obligations from which relief has been provided.

Until June 30, 2020, DMO will not recommend that the Commission take an enforcement action against any SEF for the failure to comply with the following Commission regulations: 37.205(a)-(b), 37.400(b), 37.406, 37.1000(a)(1), and 37.1001 to the extent that non-compliance arises from the inability of SEFs to record voice communications as a result of the displacement of voice trading personnel from their normal business sites in connection with the COVID-19 pandemic response. This relief is subject to the following applicable conditions:

1. The SEF continues to record voice communications at its normal business sites;
2. The SEF makes reasonable efforts to demonstrate compliance by having its voice trading personnel not located at the SEF's normal business sites create written or electronic records⁵ of unrecorded oral communications, including date, time, identifying information of the persons participating, and subject matter of any unrecorded conversation as soon as practicable after the conversation;
3. The terms of all transactions executed on the SEFs continue to be captured and recorded on the SEF systems regardless of the location of the voice trading personnel;
4. Orders entered into the SEF's trading facility or platform by voice trading personnel, regardless of location, will be retained in the SEF system's normal electronic audit trail and subject to existing credit and risk filters;
5. Relief from Commission regulation 37.400(b) is limited to instances where the SEF cannot conduct in-person real-time monitoring of voice trading personnel and is unable to comprehensively and accurately reconstruct all trading because the SEF lacks the voice

³ See the WMBA no-action request letter at 1.

⁴ For avoidance of doubt, this letter only applies when a SEF's voice trading personnel are unable to effectively utilize SEF operating and trading systems at the SEF's normal business sites due to the SEF's implementation of recommended practices to curtail the spread of the COVID-19 pandemic that requires that voice trading personnel not work at the SEF's normal business sites.

⁵ Such as instant messaging or chat functionalities that are captured by the SEF's systems.

recordings of voice trading personnel. Otherwise, Commission regulation 37.400(b) continues to apply;⁶

6. All requirements under Commission regulations 37.1000(a)(1) and 37.1001, including requirements related to swap data reporting, will continue to apply except for the requirements related to maintaining a complete audit trail; and
7. Record retention requirements under Commission regulations 37.1000(a)(1) and 37.1001 will continue to apply to all trading activity records created during the duration of this no-action relief.

II. Conclusion

DMO recognizes that SEFs may require additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, any SEFs that require other relief are encouraged to contact DMO staff. DMO staff will address issues on a case-by-case basis in light of the requesting SEF's particular fact and circumstances.

This letter, and the positions taken herein, represent the views of DMO 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 DMO. 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 DMO 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 Roger Smith, Special Counsel, DMO, at (202) 418-5344 or rsmith@cftc.gov.

Sincerely,

Dorothy D. DeWitt
Director
Division of Market Oversight

⁶ Where real-time monitoring is not practicable, SEFs would still be required to conduct monitoring and surveillance pursuant to regulation 37.400(b)—including through review of written records created pursuant to the above conditions for relief—albeit on a delayed rather than real-time basis.

March 15, 2020

VIA EMAIL (ddewitt@cftc.gov)

Dorothy D. DeWitt, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for No-Action Relief Related to Audit Trail and Recordkeeping Requirements

Dear Ms. DeWitt:

The undersigned hereby submit a request for time-limited no-action relief. Each of the undersigned is registered with the Commodity Futures Trading Commission (“Commission”) as a swap execution facility (“SEF”).

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) and regulations promulgated thereunder, SEFs are subject to various audit trail and recordkeeping requirements. The WMBAA member firms are requesting relief from certain aspects of those requirements, as set forth below.

I. Background

In response to the global pandemic caused by Covid-19, the undersigned firms have implemented their business continuity plans. These plans provide for, among other things, social distancing and decentralizing the workforce across primary office sites, disaster recovery work sites, and remotely working from home. As you are aware, this is a wholly unprecedented event, and may result in the need for staff across the financial services industry, including SEF voice brokerage staff (“Voice Brokers”), to work from home. To the extent SEF personnel engaged in the voice broking aspect of the business are required to work remotely from home, voice communications related to indications of interest, requests for quotes, orders and trades may not be captured and recorded on the SEF’s systems. Voice communications of Voice Brokers working from the primary and/or disaster recovery sites will continue to be recorded. Additionally, the material terms of all transactions executed on the SEFs will continue to be captured and recorded on the SEF systems regardless of the location of the Voice Broker.

In times of market volatility Voice Brokers play a key, and increased, role in the liquidity formation process. As such, it is critical that the requested relief be granted to ensure the liquidity formation process and the orderly functioning of the markets is not unnecessarily disrupted.

II. Relief Sought

The WMBAA member firms request that the Division of Market Oversight (“Division”) issue a time-limited no-action letter providing that the Division will not recommend an enforcement action against any SEF for failing to comply with requirements in the Commission’s rules regarding Core Principles and Other Requirements for Swap Execution Facilities with respect to certain audit trail and recordkeeping requirements, specifically regulations 37.205(a) (Audit trail required), 37.205(b)(1) (Elements of an acceptable audit trail program), 37.400(b) (Monitoring of Trading and Trade Processing), 37.406 (Trade reconstruction), 37.1000(a)(1) and 37.1001 (Recordkeeping).

III. Applicable Regulatory Requirements

Core Principle 2, Section 37.205(a) provides that a “swap execution facility to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility.”

Core Principle 2, Section 37.205(b)(1) provides that “A swap execution facility's audit trail shall include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), the time of order entry, and the time of trade execution. Swap execution facilities shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.”

Core Principle 2, Section 205(b)(1) provides that “A swap execution facility's audit trail shall include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), the time of order entry, and the time of trade execution. Swap execution facilities shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.”

Core Principle 4, Section 400(b) provides that a “swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.”

Core Principle 4, Section 37.406(b) provides, in relevant part, that a “swap execution facility shall have the ability to comprehensively reconstruct all trading on its facility”

Core Principle 10, Section 1000(a)(1) provides in relevant part that “a swap execution facility shall maintain records of all activities, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years.”

Lastly, Section 37.1001 provides, in relevant part, that a “swap execution facility shall maintain records of all activities relating to the business of the facility, in a form and manner acceptable to the Commission, for a period of at least five years. A swap execution facility shall maintain such records, including a complete audit trail for all swaps executed on or subject to the rules of the swap execution facility”

IV. Discussion

As stated above, the material terms of all transactions executed on the SEFs, regardless of the location of the Voice Broker, will continue to be captured and recorded on the SEF's systems, and SEF confirmations reflecting all such terms will continue to be disseminated.

As to voice communications of Voice Brokers working remotely from home, we will instruct staff on a new process and procedure pursuant to which the Voice Broker, contemporaneous with any voice communication related to a transaction, will memorialize the material terms of such communications in an electronic communication that is captured and recorded by the SEF's systems. All such documentation efforts shall be made on a best efforts basis. We would expect such electronic communications to take the form of a Bloomberg Chat, as this will likely be the most efficient mechanism for the Voice Broker to communicate with his fellow Voice Brokers who will be working from different locations. Regardless of the form of electronic communication, it will be an electronic communication captured and recorded by the SEF systems. We would suggest that such a process is reasonably designed to achieve compliance with the intent of the above-cited regulations, albeit in a less robust manner than actually capturing and recording the original source documents in the form of voice communications.

Conclusion

The undersigned request no-action relief from the provisions of the regulations cited above due to the unique situation created for Voice Brokers that may have to work remotely from home. We appreciate the Staff's attention to this issue and interest in ensuring the orderly functioning of the markets with as little disruption as possible. Absent the time-limited no-action relief sought in this letter, the markets could face a significant disruption to liquidity during an extremely volatile time.

For these reasons, the undersigned firms request that the Division issue the no-action relief described herein.

We would be happy to discuss this request with you in greater detail at your convenience¹.

Sincerely,

Swap execution facility	Signature	Title
tpSEF Inc.	/s/ Shawn Bernardo /s/	Chief Executive Officer
ICAP Global Derivatives Ltd.	/s/ Shawn Bernardo /s/	Chief Executive Officer
Tradition SEF Inc.	/s/ Scott Fitzpatrick /s/	Chief Executive Officer
BGC Derivative Markets LP	/s/ Michael Sulfaro /s/	Chief Compliance Officer
GFI Swaps Exchange LLC	/s/ Michael Sulfaro /s/	Chief Compliance Officer

cc: Nancy Markowitz, Division of Market Oversight
Roger Smith, Division of Market Oversight
Rachael Berdansky, Division of Market Oversight
Chairman Heath Tarbert
Commissioner Brian D. Quintenz
Commissioner Rostin Benham
Commissioner Dawn Stump
Commissioner Dan M. Berkovitz

¹ It is our understanding that certain affiliated Introducing Brokers intend to submit a request for no-action relief from regulation 1.35 and related applicable rules based on similar issues.

March 15, 2020

Via Electronic Mail

Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581
dmonoaction@cftc.gov

Re: Emergency Time-Limited No-Action Relief Pursuant to CFTC Regulations
37.205, 37.1001, 1.31 and 1.35

To Whom it May Concern:

Pursuant to CFTC Regulation 140.99, DW SEF LLC (“DW SEF”)¹ is requesting emergency time-limited no-action relief from certain aspects of CFTC Regulations 37.205(a) (Audit trail required), 37.205(b) (Elements of an acceptable audit trail program), 37.1001 (Recordkeeping), 1.31 (Regulatory records; retention and production) and 1.35(a)(i) and (iii) (Records of commodity interest and related cash or forward transactions) related to recordings of phone and employee conversations as discussed below. As a result of the recent outbreak of COVID-19, commonly known as the coronavirus, certain DW SEF employees may be required to work remotely, particularly given the fact the New Jersey and New York, states in which Tradeweb’s offices are located, have each declared a state of emergency and the President has declared a National Emergency.

While DW SEF has adopted business continuity plans, which include dividing the physical location of workers, as a result of this unforeseen development, DW SEF is requesting relief from CFTC Regulations 37.205(a) and (b), 37.1001, 1.31 and 1.35(a)(i) and (iii) related to recordings of phone and employee conversations, as discussed below. If DW SEF employees are mandated to work remotely, DW SEF will not be able to fully comply with the CFTC’s recordkeeping requirements and the requirements for the maintenance of a complete audit trail. While working remotely, DW SEF employees’ phone conversations will not be recorded in accordance with DW SEF’s policies and DW SEF Rules 215 and 309, and, as a result CFTC Regulations 37.205(a), 37.205(b), 37.1001, 1.31 and 1.35(a)(i) and (iii). Under normal working conditions, all DW SEF employee phone conversations with Participants (as such term is defined in the DW SEF Rules) and conversations between DW SEF employees (i.e., the Execution Specialists) are recorded and kept in accordance with the DW SEF’s policies, which demonstrate compliance with applicable CFTC Regulations, including the requirements for the maintenance of a complete audit trail under CFTC Regulation 37.1001, which includes recordings of phone conversations between DW SEF employees and Participants and conversations between Execution Specialists. In order to provide reasonable efforts to demonstrate compliance, DW SEF employees will record the trade related details of any unrecorded conversation in a separate electronic communication as soon as practicable after the conversation.

¹ DW SEF is located at Plaza 5, 185 Hudson St #2200, Jersey City, NJ 07311 and the main business telephone of DW SEF is 646-430-6000.

DW SEF believes that granting this emergency time-limited no-action relief is consistent with the CFTC's stated goal that that firms should make the best decision possible to continue their businesses as the pandemic evolves, document the decisions where firms diverge from the rules and let the CFTC know as soon as possible of the steps being taken. Granting such emergency relief would also support the CFTC's other goal of maintaining orderly and liquid markets during this turbulent time. Accordingly, DW SEF respectfully requests this emergency time-limited no-action relief from CFTC Regulations 37.205 (a), 37.205(b), 37.1001, 1.31 and 1.35(a)(i) and (iii) related to a complete audit trail, which includes recordings of phone conversations between DW SEF employees and Participants and conversations between Execution Specialists, until such time as the respective New York and New Jersey state of emergency and the National Emergency are all lifted.

I hereby certify that the material facts set forth in the attached letter dated March 15, 2020, are true and complete to the best of my knowledge as required by CFTC Regulation 140.99(b).

If you have any questions, please do not hesitate to contact the undersigned at 646-560-7223 or by email at Gregory.Compa@tradeweb.com.



Gregory Compa
Chief Compliance Officer

Cc: Dorothy DeWitt, Director, Division of Market Oversight