U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of Swap Dealer and
Intermediary Oversight

Joshua B. Sterling
Director

Re: No-Action Position for Foreign Brokers Exempt Pursuant to Commission Regulation 30.5 to Handle U.S. Futures Market Orders 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 the Futures Industry Association ("**FIA**"). The FIA request was submitted on behalf of certain entities that are exempt from registration with the Commission as introducing brokers ("**IBs**") pursuant to Commission regulation 30.5[1] ("**30.5 Foreign Brokers**"), and which are affiliates of futures commission merchants ("**FCMs**") registered with the Commission. Specifically, FIA seeks a time-limited no-action position that would permit certain 30.5 Foreign Brokers to accept orders from persons located in the United States ("**U.S. persons**")[2] for execution on U.S. contract markets in the event an FCM's registered associated persons ("**APs**") are unable to handle the order flow of U.S. customers due to their absence from normal business sites in response to the COVID-19 pandemic.

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-

[1] 17 CFR 30.5. For purposes of this letter, a person is exempt from registration as an IB pursuant to Commission regulation 30.5 if it has received confirmation of such exemption from the National Futures Association ("**NFA**") in accordance with the application procedure set forth in the regulation.

[2] For purposes of this letter, U.S. persons are those persons located in the United States, its territories, or possessions.

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.

I. Regulatory Background

Pursuant to section 4d(g) of the CEA, it is unlawful for any person to be an IB, unless such person is currently registered as an IB with the Commission. The CEA and Commission regulation 1.3 defines an IB to include, generally, any person who, for compensation or profit, is engaged in soliciting or accepting orders for the purchase or sale of, among other financial products, any commodity for future delivery.[3]

Commission regulation 3.10(c)(4) provides an exemption from registration as an IB to persons located outside of the U.S. that are exempt from registration as an FCM in accordance with Commission regulation 30.10 if such person:

(1) Is affiliated with a registered FCM;

(2) Introduces only institutional customers on a fully-disclosed basis to a registered FCM for the purpose of trading on a designated contract market ("**DCM**");

(3) Has an affiliated FCM that files with NFA an acknowledgement that the affiliated FCM will be jointly and severally liable for any violations of the CEA or the Commission's regulations committed by such person in connection with those introducing activities; and

(4) Does not solicit, or handle customer funds of, any person located in the U.S. for trading on a DCM.[4]

Commission regulation 30.10, upon petition, permits the Commission to exempt any person from any requirement of the Part 30 regulations, provided such exemption would not be contrary to the public interest or to the purposes of the provision from which the exemption is sought.[5] This regulation allows persons located and doing business outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from the application of certain of the Part 30 regulations. The Commission has granted many such exemptions, permitting persons outside the U.S. to solicit or accept orders directly from U.S.

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[3] S*ee* Section 1a(31) of the CEA, 7 U.S.C. 1a(31), and 17 CFR 1.3.

[4] Commission regulation 3.10(c)(4), 17 CFR 3.10(c)(4).

[5] 17 CFR 30.10(a).

customers for foreign futures or options transactions and accept customer money or other property to secure such transactions without registering as an FCM.[6]

Commission regulation 30.5 also permits the Commission to exempt from registration any person not located in the United States that is required to register under Part 30 of the Commission regulations, except those required to register as FCMs, subject to certain conditions.[7] Pursuant to Commission regulation 30.5, the Commission has exempted many foreign brokers acting in the capacity of an IB on behalf of U.S. persons for trading on foreign futures and options markets.

"Associated person" is defined in Commission regulation 1.3 to mean, in relevant part, any natural person who is associated with an FCM or IB as an employee that solicits or accepts customer orders. "Order" is defined in Commission regulation 1.3 to mean, in relevant part, an instruction or authorization provided by a customer to an FCM or IB regarding trading in a commodity interest on behalf of the customer. Commission regulation 3.12(a) makes it unlawful (unless exempt) for any person to be associated with an FCM or IB as an AP unless that person shall have registered under the CEA as an AP of that sponsoring FCM or IB. Thus, a natural person accepting orders from customers on behalf of an FCM or IB must be registered with the Commission as an AP of the FCM or IB. To be registered as an AP, a person must, among other things, file a registration form with NFA, meet certain proficiency standards (i.e., pass the National Commodity Futures Examination), and submit fingerprints for a background check in order to ensure that such person is not be subject to a statutory disqualification.

II. Summary of Request for Relief

Based on the request for relief and other communications with FIA and its counsel, we understand the relevant facts to be as follows. Certain FCMs are part of international financial services groups with operations in the United States and in other major financial centers around the globe. Personnel of FCMs that solicit and accept orders for futures transactions from U.S. customers to be executed on U.S. DCMs are all registered with the Commission as APs.

Due to the disruptions caused by the COVID-19 pandemic and the social distancing required in response, many FCMs have implemented their business continuity plans ("**BCPs**"). These BCPs require certain APs to work away from the FCM's normal

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[6] *See* Foreign Part 30 Exemptions listed on the Commission's website at: https://sirt.cftc.gov/sirt/sirt.aspx?Topic=ForeignPart30Exemptions.

[7] These conditions include appointment of a U.S. agent for service of process, compliance with certain disclosure (Commission regulation 30.6), and business conduct regulations (Commission regulations 1.37 and 1.57), and providing access to the Commission and the U.S. Department of Justice to certain books and records. *See* 17 CFR 30.5(a), (c), and (d).

business sites, either at alternative work sites or from home. The FCMs recognize the possibility that these alternative work arrangements may impede the ability of their APs to handle all U.S. customer business in a timely manner.

Certain FCMs believe that, in these circumstances, it may be more effective and more efficient to service their U.S. customers from affiliates located in jurisdictions outside of the U.S. Such affiliates will be properly registered in the jurisdictions in which they are located. Moreover, such jurisdictions already have received a Commission order under Commission regulation 30.10, pursuant to which qualified firms may be exempt from registration as an FCM. However, FIA anticipates that not all such affiliates will have qualified for an exemption from registration as an FCM under Commission regulation 30.10 because they may not be qualified to handle customer money in their home jurisdiction and therefore do not qualify for 30.10 relief.. Rather, certain affiliates, i.e., the 30.5 Foreign Brokers, instead, have qualified for an exemption from registration as an introducing broker in accordance with Commission regulation 30.5. As such, absent the relief requested, these 30.5 Foreign Brokers would be unable to take advantage of the exemption from registration provided by Commission regulation 3.10(c)(4).

In light of the above and in order to assure that all U.S. FCMs are able to provide effective and efficient services to their clients during the COVID-19 pandemic, FIA requests that DSIO not recommend that the Commission initiate an enforcement action against the 30.5 Foreign Brokers for violation of CEA Section 4d(g) if, subject to appropriate conditions, such 30.5 Foreign Brokers accept orders from U.S. persons for execution on U.S. DCMs notwithstanding that such 30.5 Foreign Brokers have not qualified for an exemption from registration as an introducing broker in accordance with the provisions of Commission regulation 3.10(c)(4).

FIA notes that the registration of personnel of the 30.5 Foreign Brokers (the "**Covered Personnel**") as APs of their affiliated FCMs is not practicable in light of the near-term need and the relatively brief period of assistance that is expected to be needed. FIA does not believe registration could be achieved quickly enough to provide the needed assistance and believes that such registration would be unreasonably burdensome given that Covered Personnel would only provide the assistance for a brief period during the dislocation caused by the COVID-19 pandemic. The relief from IB registration sought by FIA would permit the Covered Personnel to assist with servicing U.S. customers without registering as APs of the FCMs.

In support of this request, FIA, on behalf of its member FCMs, represent that each of the FCMs' affiliated 30.5 Foreign Brokers:

(1) Is duly licensed by or registered with the regulatory authority in its home jurisdiction;

(2) Is, although not registered with the Commission, permitted to solicit and accept orders from U.S. persons for trading in foreign futures and options pursuant to an exemption under Commission regulation 30.5; and

(3) Is located in a jurisdiction for which the Commission has provided an exemption pursuant to Commission regulation 30.10, which generally requires that the Commission find the customer protection aspects of the laws and regulations of such jurisdictions to be comparable to the customer protection aspects of the CEA and Commission regulations.

I. DSIO No-Action Positions

DSIO recognizes that each of the 30.5 Foreign Brokers is operating in a jurisdiction that the Commission has found to have comparable customer protections. For this reason, and in order to support an orderly response to the COVID-19 pandemic, DSIO believes that a time-limited no-action position is warranted. Accordingly, until September 30, 2020, DSIO will not recommend that the Commission take an enforcement action against a 30.5 Foreign Broker for failure to register with the Commission as an IB, subject to the following conditions:

(1) The 30.5 Foreign Broker is an affiliate[8] of an FCM registered with the Commission;

(2) The 30.5 Foreign Broker is appropriately licensed or registered in a jurisdiction for which the Commission has issued an exemptive order under Commission regulation 30.10;

(3) The 30.5 Foreign Broker introduces on a fully-disclosed basis to FCMs registered with the Commission only institutional customers, as defined by Commission regulation 1.3, for the purpose of trading on a DCM;

(4) The 30.5 Foreign Broker accepts, but does not solicit,[9] orders from, and does not handle the customer funds of, any person located in the U.S. for trading on a DCM;

(5) Subject to the relief provided by DSIO under CFTC Staff Letter 20-03,[10] the 30.5 Foreign Broker creates and maintains the records required by Commission

[8] For purposes of this letter, "affiliate" means, with respect to any person, a person controlling, controlled by, or under common control with, such person.

[9] DSIO notes in connection with this condition that the 30.5 Foreign Brokers are being provided relief so that they may assist with U.S. customer order flows rather than to act in a sales and marketing capacity, an activity that, for customer protection reasons, DSIO believes should only be handled by registered APs.

[10] CFTC Staff Letter 20-03, available on CFTC.gov, provides relief to FCMs and IBs from certain recordkeeping requirements until June 30, 2020, in response to the COVID-19 pandemic.

regulation 1.35 with respect to its brokerage activities with U.S. persons, and complies with Commission regulation 1.31 with respect thereto, including providing prompt access thereto to representatives of the Commission and the U.S. Department of Justice upon request;

(6) Each FCM with which the 30.5 Foreign Broker is affiliated files with NFA an acknowledgement it will be jointly and severally liable for any violations of the CEA or the Commission's regulations by the 30.5 Foreign Broker in connection with its introducing activities in which it engages in reliance on this letter; and

(7) The 30.5 Foreign Broker provides written notice to DSIO[11] both when it begins reliance on the relief provided by this letter and, if it ceases to rely on this letter prior to September 30, 2020, when it ceases to rely on this letter.

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[11] Such notice may be provided to DSIO by email to DSIOLetters@cftc.gov. Each notice or acknowledgment requested in this letter is a collection of information under OMB 3038-0049. No person is required to respond to this request for information unless a valid OMB number is displayed.

II. Conclusion

DSIO recognizes that due to the COVID-19 pandemic registrants and other affected market participants may seek additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, any registrants that seek 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, 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, at 202-418-5949 or ffisanich@cftc.gov, or Andrew Chapin, Associate Chief Counsel, at 202-418-5465 or achapin@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

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By Electronic Mail

March 26, 2020

Joshua B. Sterling, Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: Request for No-Action Position – Commodity Exchange Act Section 4d(g)

Dear Mr. Sterling:

The Futures Industry Association ("**FIA**")[1] on behalf of its member firms that are registered as futures commission merchants ("**FCMs**"), similarly situated FCMs that are not FIA member firms, and their respective affiliates that are located outside of the US, respectfully request the Division of Swap Dealer and Intermediary Oversight ("**Division**") to confirm that it will not recommend that the Commodity Futures Trading Commission ("**Commission**") initiate an enforcement action against such FCMs and their affiliates for apparent violation of Section 4d(g) of the Commodity Exchange Act ("**CEA**") if, subject to the terms and conditions set forth herein, such affiliates accept orders from US persons for execution on US designated contract markets ("**DCMs**") notwithstanding that such affiliates have not qualified for an exception from registration as an introducing broker in accordance with the provisions of Commission Rule 3.10(c)(4).

CEA Section 4d(g) provides that it is unlawful for any person to act in the capacity of an introducing broker, unless such person is registered as such with the Commission. An introducing broker is defined, in relevant part, to mean any person that, for compensation or profit, is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and does not accept any money, securities, or property to margin, guarantee, or secure any trade or contracts that result or

[1] FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in London, Brussels, Singapore and Washington DC. FIA's mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA's core constituency consists of firms that operate as clearing members in global derivatives markets, including firms registered with the Commodity Futures Trading Commission as futures commission merchants.

may result therefrom.[2] Commission Rule 3.10(c)(4) provides an exemption from registration as an introducing broker for persons located outside of the US that satisfy the terms and conditions of the rule. Specifically, Commission Rule 3.10(c)(4) provides that a person located outside of the US may accept orders from persons located in the US for execution on US DCMs without being registered as an introducing broker, provided such person:

(i) is exempt from registration as an FCM under Commission Rule 30.10;

(ii) is affiliated with an FCM registered with the Commission in accordance with CEA Section 4d;

(iii) introduces only institutional customers on a fully-disclosed basis to a registered FCM for the purpose of trading on any DCM;[3] and

(iv) does not solicit any person located in the US for trading on a DCM, and does not handle the customer funds of any person located in the US for the purpose of trading on any DCM.

Further, such person's affiliated FCM must file with the National Futures Association ("**NFA**") an acknowledgement that the affiliated FCM will be jointly and severally liable for any violations of the CEA or the Commission's rules committed by such person in connection with those introducing activities.

As the Division has noted in adopting a number of recent no-action positions intended to facilitate physical separation of personnel employed by Commission registrants,[4] the COVID-19 pandemic has challenged FCMs and other registrants in timely meeting certain of their obligations under the CEA and Commission rules. In particular, disruptions in transportation and limited access to facilities and support staff may hamper efforts of registrants to meet their regulatory obligations. This is particularly the case in those States, including New York and Illinois, which have imposed "shelter-in-place" requirements. Although a limited number of associated persons ("**APs**") who accept orders from clients continue to work from their usual locations or from back-up facilities maintained by the FCM in accordance with their business continuity plans, a number of associated persons are increasingly being required to work from home.

Although not an immediate issue, certain FCMs believe that, in these circumstances, it may be more effective and more efficient at some point to service their clients from affiliates located in jurisdictions outside of the US. Such affiliates will be properly registered in the jurisdictions in which they are located. Moreover, such jurisdictions will have received a Commission order under Rule

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[2] CEA Section 1a(31); Commission Rule 1.3.

[3] Commission Rule 1.3 defines "institutional customer" to mean an "eligible contract participant" as defined in CEA Section 1a(18).

[4] See CFTC Letter No. 20-02, CFTC Letter No. 20-03, CFTC Letter No. 20-04, CFTC Letter No. 20-05, CFTC Letter No. 20-06. Each letter was issued on March 17, 2020.

30.10, pursuant to which qualified firms may be exempt from registration as an FCM. However, we anticipate that not all such affiliates will have qualified for an exemption from registration as an FCM. Rather, certain affiliates, instead, have qualified for an exemption from registration as an introducing broker in accordance with Commission Rule 30.5 (each, a "**30.5 Firm**").[5] As such, absent the relief requested here, these 30.5 Firms would be unable to take advantage of the exemption from registration provided by Commission Rule 3.10(c)(4).

In light of the above and in order to assure that all US FCMs are able to provide effective and efficient services to their clients during the COVID-19 pandemic, we respectfully request the Division to confirm that it will not recommend that the Commission initiate an action against certain 30.5 Firms for apparent violation of CEA Section 4d(g) if, subject to the terms and conditions set forth below, such 30.5 Firms accept orders from US persons for execution on US DCMs notwithstanding that such 30.5 Firms have not qualified for an exemption from registration as an introducing broker in accordance with the provisions of Commission Rule 3.10(c)(4).

We note that the registration of personnel of the 30.5 Firm (the "**Covered Personnel**") as APs of their affiliated FCMs is not practicable in light of the exigency of the near-term need and the relatively brief period of assistance that is expected to be needed. We do not believe registration could be achieved quickly enough to provide the needed assistance and believe that such registration would be unreasonably burdensome given that Covered Personnel would only provide the assistance for a brief period during the dislocation caused by the COVID-19 pandemic. The relief from introducing broker registration sought by FIA would permit the Covered Personnel to assist with servicing US customers without registering as APs of the FCMs.

Unless extended by the Division, the relief requested herein would be time-limited and will expire on September 30, 2020 and would be subject to the following terms and conditions:

(1) The 30.5 Firm is an affiliate of an FCM registered with the Commission;

(2) The 30.5 Firm is appropriately licensed or registered in a jurisdiction for which the Commission has issued an exemptive order under Commission Rule 30.10;

(3) The 30.5 Firm introduces on a fully-disclosed basis to FCMs registered with the Commission only institutional customers, as defined by Commission Rule 1.3, for the purpose of trading on a DCM;

[5] Commission Rule 30.5 provides that a person acting in the capacity of an introducing broker with respect to foreign futures and foreign options customers, *i.e.*, a person that solicits or accepts orders for or involving any foreign futures contract or foreign options transaction, and that in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, may be exempt from registration as a introducing broker, if such person files a Form 7-R with NFA and designates an agent for service of process in accordance with Rule 30.5(b).

(4) The 30.5 Firm accepts, but does not solicit, orders from, and does not handle the customer funds of, any US person for trading on a DCM;

(5) Subject to CFTC Letter No. 20-03, the 30.5 Firm creates and maintains the records required by Commission Rule 1.35 with respect to its brokerage activities with U.S. persons, and complies with Commission Rule 1.31 with respect thereto, including providing prompt access thereto to representatives of the Commission and the US Department of Justice upon request;

(6) Each FCM with which the 30.5 Firm is affiliated files with NFA an acknowledgment that it will be jointly and severally liable for any violations of the CEA or Commission rules by the 30.5 Firm in connection with its activities involving US persons in which it engages in in reliance on this letter; and

(7) The 30.5 Firm provides notice to the Division both before it begins to rely on the relief provided by this letter and, if it ceases to rely on this letter prior to September 30, 2020 (or any later date authorized by the Division), when it ceases to rely on this letter.

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Thank you for your consideration of this request. If you have any questions or require any additional information, please contact me at 202.772.3057 or alurton@fia.org.

I hereby certify that the material facts set forth in this letter are true and complete to the best of my knowledge.

Sincerely,

Allison P. Lurton
General Counsel and Chief Legal Officer

cc: Division of Swap Dealer and Intermediary Oversight
Frank N. Fisanich, Chief Counsel
Andrew V. Chapin, Associate Chief Counsel