U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

Dorothy DeWitt
Director

Re: Extension of No-Action Relief from Sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act and from Commission Regulations 37.3(a)(2) and 37.9 for Swaps Executed as Part of Certain Package Transactions

The Division of Market Oversight ("Division" or "DMO") of the Commodity Futures Trading Commission ("CFTC" or "Commission") is extending the existing no-action relief,[1] as set forth in CFTC Letter No. 17-55, from requirements in sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act ("CEA" or "Act") and from requirements in Commission regulations 37.3(a)(2) and 37.9 for swaps executed as part of certain package transactions.[2]

As set forth in CFTC Letter No. 17-55 and in Appendix A to this letter, the categories of package transactions for which the Division is extending no-action relief are those where at least one individual swap component is made available to trade ("MAT") and therefore subject to the CEA section 2(h)(8) trade execution requirement, and where one of the following applies: (1) at least one individual component is a bond issued and sold in the primary market ("MAT/New Issuance Bond Package Transactions");[3] (2) all other components are contracts for the purchase

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1 This letter responds to a request received from ICAP Global Derivatives Limited ("IGDL") and tpSEF, Inc. ("tpSEF") (collectively the "TP ICAP SEFs") that the Division extend the relief provided under CFTC Letter No. 17-55.

2 The Division previously provided no-action relief for certain package transactions in CFTC Letter Nos. 14-12, 14-62, 14-137, 15-55, 16-76, and 17-55. For purposes of the relief granted in this letter, a "package transaction" is a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a swap that is made available to trade and therefore is subject to the CEA section 2(h)(8) trade execution requirement; and (4) where the execution of each component is contingent upon the execution of all other components.

3 This category does not include package transactions where at least one individual swap component is subject to the trade execution requirement and at least one individual component is a bond transaction that occurs in the secondary market, such transactions would qualify as MAT/Non-Swap Instruments Package Transactions as defined herein. The Division understands that a bond issued and sold in the primary market that may constitute part of a package transaction is a "security," as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934. To the extent that SEFs and DCMs may be facilitating package transactions on their respective trading systems, facilities, or platforms that involve a security, or any

or sale of a commodity for future delivery, i.e., futures contracts ("MAT/Futures Package Transactions"); (3) at least one individual swap component is subject to the Commission's exclusive jurisdiction, but not subject to the clearing requirement under CEA section 2(h)(1)(A) and Commission regulation 50.4 ("MAT/Non-MAT Uncleared Package Transactions"); (4) at least one individual component is not a swap ("MAT/Non-Swap Instruments Package Transactions")—this category specifically excludes U.S. Dollar Swap Spreads; MAT/Futures Package Transactions, MAT/Agency MBS Package Transactions; and MAT/New Issuance Bond Package Transactions; [4] or (5) at least one individual swap component is a swap over which the Commission does not have exclusive jurisdiction ("MAT/Non-CFTC Swap Package Transactions").[5]

I. Extension of No-Action Relief

Since the issuance of CFTC Letter No. 17-55, the Division has continued to assess how to enable SEFs and DCMs to facilitate trading of certain package transactions in a manner that balances the utility of package transactions against the policy goals of the trade execution requirement. As part of this work, in February 2020, the Commission adopted a proposal which, among other things, proposes to codify the relief in CFTC Letter No. 17-55 provided for MAT/New Issuance Bond Package Transactions, MAT/Non-MAT Uncleared Package Transactions, MAT/Non-Swap Instruments Package Transactions, and MAT/Non-CFTC Swap Package Transactions.[6] However, until such rule is adopted, the request for extension of relief from TP ICAP SEFs, represents that trading certain categories of package transactions on a SEF or DCM, in a manner that is fully compliant with the CEA and the Commission's regulations, remains unfeasible. Therefore, the Division is extending the relief provided in CFTC Letter No. 17-55, to enable market participants to continue to execute certain package transactions.[7] The extension of time-limited relief will enable the Division and the Commission to consider permanent solutions for these categories of package transactions including, if appropriate, amendments to Commission regulations. This no-action relief shall commence on the date of issuance of this letter and expires the earlier of: (i) on 11:59 pm (Eastern Time) November 15,

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component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Division does not opine on whether such activity complies with other applicable law and regulations. The no-action positions taken herein represent only the positions of the Division and do not bind the Commission, other Commission staff, or any other Federal agency.

4 The Division understands that non-swap instruments that may constitute part of a package transaction include a "security." *See supra* note 3. *See* CFTC Letter No. 14-137 for the definitions of U.S. Dollar Spreads and MAT/Agency MBS Package Transactions.

5 A "mixed swap," as defined in CEA section 1a(47)(D), is an example of a swap over which the CFTC may share jurisdiction with the U.S. Securities and Exchange Commission. *See* Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,291-93 (Aug. 13, 2012). *See supra* note 3.

6 *See* Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 FR 9407 (Feb. 19, 2020) ("2020 SEF NPRM").

7 Appendix A is a summary of the no-action relief granted in this letter. The Division notes that where a package transaction may be eligible for relief under more than one of the categories established herein, entities or counterparties may avail themselves of the broadest relief among those categories.

2022 or (ii) the applicable effective date or compliance date of a Commission action, including without limitation a rulemaking or order, that provides a permanent solution for the execution of the package transactions provided relief by this letter.

The following time-limited no-action relief is provided:

1) Relief from CEA section 2(h)(8)

As described in CFTC Letter No. 17-55, for MAT/New Issuance Bond Package Transactions and MAT/Futures Package Transactions:

a) The Division is granting time-limited no-action relief to: (1) entities or counterparties executing the swap components of these categories of package transactions from the requirements of CEA section 2(h)(8).

b) The Division will not recommend that the Commission take enforcement action against any entity or counterparty that executes the swap components of a MAT/New Issuance Bond Package Transaction or MAT/Futures Package Transaction without complying with CEA section 2(h)(8), if such swaps are executed before or at the expiration of the no-action relief.

2) Relief from Commission Regulations 37.3(a)(2) and 37.9 and CEA Section 5(d)(9)

As described in CFTC Letter No. 17-55, for MAT/New Issuance Bond Package Transactions, MAT/Futures Package Transactions, MAT/Non-MAT Uncleared Package Transactions, MAT/Non-Swap Instruments Package Transactions, and MAT/Non-CFTC Swap Package Transactions:

a) The Division is granting time-limited no-action relief to SEFs and DCMs, with respect to the swap components of these categories of package transactions for which they facilitate trading, from the requirements of Commission regulations 37.3(a)(2)[8] and 37.9, and CEA section 5(d)(9). During this period of time, SEFs and DCMs may provide a trading system, facility, or platform that facilitates trading of swap components through methods of execution that do not comply with the required methods of execution in Commission regulation 37.9 or CEA section 5(d)(9), respectively,[9] and entities or counterparties may execute such swap components through any method of execution offered on a SEF or DCM pursuant to no-action relief provided herein.

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[8] The Division notes that to the extent that such swap components are not executed as part of a package transaction qualifying for relief herein, Commission regulation 37.3(a)(2) requires SEFs to offer Order Book functionality as a method of execution for such transactions.

[9] The Division expects that SEFs and DCMs will continue to implement and enforce rules that will allow them to verify that only eligible swap components are executed in reliance on the relief granted in this letter.

b) The Division will not recommend that the Commission take enforcement action against any SEF or DCM that facilitates trading in swap components of these categories of package transactions without complying with Commission regulations 37.3(a)(2) or 37.9, or CEA section 5(d)(9), respectively, if such swaps are executed before or at the expiration of no-action relief.

The Division notes that entities or counterparties must execute the swap components that are subject to the trade execution requirement, pursuant to CEA section 2(h)(8), on a SEF or DCM for the following categories: MAT/Non-MAT Uncleared Package Transactions, MAT/Non-Swap Instruments Package Transactions, and MAT/Non-CFTC Swap Package Transactions.

II. Conclusion

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, Associate Chief Counsel, DMO, at (202) 418-5344 or RSmith@CFTC.gov.

Sincerely,

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Dorothy D. DeWitt
Director
Division of Market Oversight

APPENDIX A: SUMMARY OF PACKAGE TRANSACTION RELIEF

This appendix reflects a summary of the relief that the Division of Market Oversight ("Division") of the Commodity Futures Trading Commission ("Commission") is granting herein; this summary is intended to be used for reference only and does not represent a grant of any no-action relief from the Commodity Exchange Act ("CEA") or the Commission's regulations.

Package Transaction Category	Relief Expiration
MAT/New Issuance Bond: At least one individual swap component is subject to the trade execution requirement and at least one individual component is a bond issued and sold in the primary market	Relief from CEA section 2(h)(8) for MAT/New Issuance Bond Package Transactions. Under this relief, the swap components subject to the trade execution requirement are not required to be executed on a SEF or DCM. Relief from Commission regulation 37.9 and CEA section 5(d)(9) for MAT/New Issuance Bond Package Transactions, which permits a SEF or DCM to offer any method of execution for the swap components. Relief from Commission regulation 37.3(a)(2) for Package MAT/New Issuance Bond Transactions, which permits a SEF to not offer an Order Book as a minimum trading functionality for the swap components.
MAT/Futures: At least one individual swap component is subject to the trade execution requirement and all other components are contracts for the purchase or sale of a commodity for future delivery, i.e., futures contracts. This category may include: • MAT swap v. Treasury futures • MAT swap v. Eurodollar futures	Relief from CEA section 2(h)(8) for MAT/Futures Package Transactions. Under this relief, the swap components subject to the trade execution requirement are not required to be executed on a SEF or DCM. Relief from Commission regulation 37.9 and CEA section 5(d)(9) for MAT/Futures Package Transactions, which permits a SEF or DCM to offer any method of execution for the swap components. Relief from Commission regulation 37.3(a)(2) for MAT/Futures Package Transactions, which permits a SEF to not offer an Order Book as a minimum trading functionality for the swap components.
MAT/Non-MAT (Uncleared): At least one of the swap components is subject to the trade execution requirement and at least one of the components is a CFTC	Relief from Commission regulation 37.9 and CEA section 5(d)(9) for MAT/Non-MAT (Uncleared) Package Transactions, which permits a SEF or DCM to offer any method of execution for the swap

swap that is not subject to the clearing requirement. This category may include: • MAT swap v. swaption • MAT swap v. uncleared credit default swap	components. Relief from Commission regulation 37.3(a)(2) for MAT/Non-MAT (Uncleared) Package Transactions, which permits a SEF to not offer an Order Book as a minimum trading functionality for the swap components.
MAT/Non-Swap Instruments: At least one of the swap components is subject to the trade execution requirement and at least one of the components is not a swap. This category excludes U.S. Dollar Swap Spreads, MAT/Futures, MAT/Agency MBS, and MAT/New Issuance Bond. This category may include: • MAT swap v. single-name credit default swap • MAT swap v. bond (secondary market transaction)	Relief from Commission regulation 37.9 and CEA section 5(d)(9) for MAT/Non-Swap Instruments Package Transactions, which permits a SEF or DCM to offer any method of execution for the swap components. Relief from Commission regulation 37.3(a)(2) for MAT/Non-Swap Instruments Package Transactions, which permits a SEF to not offer an Order Book as a minimum trading functionality for the swap components.
MAT/Non-CFTC Swap: At least one of the swap components is subject to the trade execution requirement and at least one of the components is a swap over which the CFTC does not have exclusive jurisdiction (e.g., a mixed swap)	Relief from Commission regulation 37.9 and CEA section 5(d)(9) for MAT/Non-CFTC Package Transactions, which permits a SEF or DCM to offer any method of execution for the swap components. Relief from Commission regulation 37.3(a)(2) for MAT/Non-CFTC Package Transactions, which permits a SEF to not offer an Order Book as a minimum trading functionality for the swap components.