



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

Dorothy DeWitt
Director

Re: Extension of No-Action Relief for Swap Execution Facilities from Certain “Block Trade” Requirements in Commission Regulation 43.2

This letter responds to a request from the Wholesale Markets Brokers' Association, Americas (“WMBAA”) to the Commodity Futures Trading Commission’s (the “Commission” or “CFTC”) Division of Market Oversight (the “Division” or “DMO”).¹ In particular, WMBAA requested that the Division extend the relief provided in CFTC Staff Letter No. 17-60.² CFTC Staff Letter No. 17-60 provides that the Division will not recommend enforcement action against a swap execution facility (“SEF”) that has rules and/or procedures that provide for the use of the SEF’s non-order book trading systems or platforms to facilitate the execution of block trades for swaps that are intended-to-be-cleared (“ITBC”),³ and thus are not compliant with Commission regulation 43.2, provided that certain conditions set forth in the letter are met. The relief was provided in part to allow the Division to assess swap block trades, including the potential of a permanent solution for SEFs from the requirement in Commission regulation 43.2 that a swap block trade must “[o]ccur[] away from the registered [SEF’s]... trading system or platform.”⁴

On September 17, 2020, the Commission adopted a final rule (the “Part 43 Real-time Public Reporting Rules”) amending certain real-time public swap reporting and dissemination requirements.⁵ In particular, the Part 43 Real-time Public Reporting Rules amended the

¹ WMBAA, Request for Extension of No-Action Relief Letter 17-60 from Commission Regulations 37.9(a)(2) and 43.2, (Nov. 6, 2020) (“WMBAA Letter”).

² CFTC Staff Letter No. 17-60 extended the no-action relief previously provided in CFTC Staff Letter No. 16-74, which had extended the relief provided under CFTC Staff Letter Nos. 14-118, and 15-60. Absent further action from the Division, CFTC Staff Letter No. 17-60 will expire November 15, 2020. CFTC staff letters are available on the Commission’s website at: <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

³ Swaps that are intended to be cleared are swaps (i) of a type accepted for clearing by a derivatives clearing organization (“DCO”), and (ii) intended to be submitted for clearing contemporaneously with execution.

⁴ CFTC Letter No. 17-60 at 1.

⁵ See Final Rule, Real-Time Public Reporting Requirements, available on the Commission’s website: <https://www.cftc.gov/media/4776/federalregister091720a/download>.

definition of “block trade” to allow block trades for ITBC swap blocks to be executed on a SEF’s non-order book trading systems or platforms codifying the relief provided in CFTC Staff Letter No. 17-60.⁶ Upon the Implementation Date⁷ of the amended definition of “block trade,” the relief provided CFTC Letter No. 17-60 will no longer be necessary.⁸ However, until such time, WMBAA represents that “to avoid any market disruptions pending the Implementation Date [of the Part 43 Real-time Public Reporting Rules], market participants will continue to require a solution to transact block trades on a SEF.”⁹ As such, WMBAA believes CFTC Letter No. 17-60 should be extended to allow SEFs and market participants to continue operating under the status quo until the Implementation Date of the amended definition of “block trade” in the Part 43 Real-time Public Reporting Rules.¹⁰

Therefore, WMBAA requests that the Division extend CFTC Letter No. 17-60 until the earlier of December 30, 2022 or the Implementation Date of the of Part 43 Real-time Public Reporting Rules.¹¹

I. No-Action Relief and Compliance with Commission Regulation 37.702(b)

Based on the representations in the WMBAA’s letter, the Division has determined to extend the no-action relief granted by CFTC Letter No. 17-60. During the extended period of relief, the Division will not recommend that the Commission take enforcement action against any SEF which has rules and/or procedures that provide for the use of a SEF trading system or platform to facilitate the execution of block trades that are intended to be cleared, provided that the following conditions are met:

- The block trade is not executed on the SEF’s order book functionality, as defined in Commission regulation 37.3(a)(3);¹² the SEF adopts rules pertaining to cleared block

⁶ In addition, the Part 43 Real-time Public Reporting Rules would allow non-ITBC to be executed on a SEF’s non-order book trading systems or platforms.

⁷ As defined in the WMBAA letter and as used in this letter “Implementation Date” means the compliance date when revisions to Commission regulation 43.2 redefining “block trade” that were approved by the Commission on September 17, 2020 are implemented. WMBAA Letter at 1. Division staff notes that the term “Compliance Date” set forth in the Part 43 Real-time Public Reporting Rules means 18 months after the “Effective Date” for most of the Part 43 Real-Time Public Reporting Rules except in the case of new §§ 43.4(g) and 43.6 and the new block and cap sizes, which have a compliance date of 30 months after the effective date.

⁸ DMO staff notes that once a final rule becomes effective market participants may comply with those rules.

⁹ WMBAA Letter 2.

¹⁰ *Id.*

¹¹ *Id.* at 1.

¹² The Division notes that while block trades may not be facilitated through a SEF’s order book functionality, pursuant to this no-action relief, SEFs are permitted to use request-for-quote (“RFQ”) functionalities to facilitate the execution of a block trade. The Division notes also that a block trade executed through a SEF’s RFQ functionality pursuant to this no-action relief would not be subject to the minimum participant requirement set forth in Commission regulation 37.9(a)(3). Finally, the Division notes that trades above the minimum block size may occur

trades that indicate that the SEF relies on the relief provided in this no-action letter¹³ and requires each cleared block trade execution on a non-order book trading system or platform to comply with the requirements set forth in the block trade definition in Commission regulation 43.2. Specifically, the block trade must:

1. involve a swap that is listed on a registered SEF;
 2. be executed pursuant to the SEF's rules and procedures;
 3. meet the notional or principal amount at or above the appropriate minimum block size applicable to the swap; and
 4. be reported to a swap data repository pursuant to the SEF's rules and procedures and the Commission's rules and regulations.
- The futures commission merchant ("FCM") completes the pre-execution credit check pursuant to Commission regulation 1.73 at the time the order for a block trade enters the SEF's non-order book trading system or platform;¹⁴ and
 - The block trade is subject to void ab initio requirements where the swap is rejected on the basis of credit.¹⁵

This no-action relief shall commence on the date of issuance of this letter and shall expire on the Implementation Date of the Part 43 Real-time Public Reporting Rules.

Commission regulation 37.702(b) requires that SEFs coordinate with each DCO to which they submit transactions for clearing and also have rules and procedures to facilitate prompt and efficient processing by DCOs in accordance with Commission regulation 39.12(b)(7). Among other things, SEFs must facilitate pre-execution screening by each Clearing FCM on an order-by-order basis. Staff confirms that if a SEF permitted the execution of an intended to be cleared swap, whether on or subject to the rules of a SEF, without a pre-execution credit check, it would be in violation of Commission regulation 37.702(b). Specifically, in the case of block trades, where counterparties use the SEF's credit check functionality, as currently allowed, the execution of that transaction must happen after the credit check on SEF. If parties want to execute a block trade away from a SEF, the parties to the trade must obtain a credit check before this execution.¹⁶

on the SEF's order book; however, they will not receive treatment as block trades and will not be afforded a reporting time delay.

¹³ These rules should include a citation to this no-action letter.

¹⁴ Consistent with the staff guidance on straight through processing the execution must occur after the required credit check. *See* Staff Guidance on Swaps Straight Through Processing (Sept. 26, 2013) ("STP Guidance").

¹⁵ *See* STP Guidance at 5.

¹⁶ Staff notes that the Commission made clear in the Part 43 Real-time Public Reporting Rules, that "if the parties purport to execute a block trade away from the SEF without first obtaining a credit check, an FCM clearing member that clears such trade and does not have knowledge of such purported execution is not in violation of the pre-execution credit check requirement under § 1.73." Part 43 Real-time Public Reporting Rules at 15, n. 40.

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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