



**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 Audit Trail Requirements in Commission Regulation 37.205 Related to Post-Execution Allocation Information**

Ladies and Gentlemen:

The Division of Market Oversight (“Division” or “DMO”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”), pursuant to Commission regulation 140.99, is extending the existing no-action relief,<sup>1</sup> as set forth in CFTC Letter No. 17-54. The letter provides that, subject to certain conditions, the Division will not recommend enforcement action against a swap execution facility (“SEF”) that does not capture post-execution allocation information in its audit trail or conduct audit trail reviews of post-execution allocations, as required by Commission regulations 37.205(a) and (b)(2).<sup>2</sup>

**I. Background**

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)<sup>3</sup> amended the Commodity Exchange Act (“CEA”)<sup>4</sup> to establish a comprehensive new regulatory framework for swaps. CEA section 5h provides that to be registered and maintain registration, a SEF must comply with fifteen enumerated core principles and any requirements the Commission may impose by rule or regulation.<sup>5</sup> Among the core principle requirements for SEFs, Core Principle 2<sup>6</sup> requires that a SEF have the capacity to detect, investigate and enforce its rules, and capture information that may be used in establishing whether violations of those rules have occurred.

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<sup>1</sup> This letter responds to a letter dated November 2, 2020 from 360 Trading Networks, Inc., MarketAxess SEF Corporation, tpSEF, Inc., and Tradition SEF, Inc. requesting the Division extend the relief provided under CFTC Letter No. 17-54.

<sup>2</sup> The Division previously provided no-action relief for SEFs from the audit trail requirements in Commission regulation 37.205 related to post-execution allocation information in Letter Nos. 15-68 on December 22, 2015 and 17-54 on October 31, 2017.

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> 7 U.S.C. 1, et seq. (2012).

<sup>5</sup> CEA section 5h, as enacted by section 733 of the Dodd-Frank Act; 7 U.S.C. 7b-3 (2012).

<sup>6</sup> CEA section 5h(f)(2); 7 U.S.C. 7b-3(f)(2).

On June 4, 2013, the Commission published final regulations governing SEFs.<sup>7</sup> Among the regulations promulgated under Core Principle 2, Commission regulation 37.205(a) requires SEFs to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. The audit trail data must be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and provide evidence of any violations of the SEF's rules. Additionally, the audit trail should enable the SEF to track an order from the time of receipt through fill, allocation, or other disposition. Finally, Commission regulation 37.205(b)(2) requires, among other things, a SEF include in its electronic transaction history database the "identification of each account to which fills are allocated."<sup>8</sup>

## **II. Requested Relief**

The requesting parties note SEFs are still unable to capture post-execution allocation information in their audit trail as these allocations occur away from the SEF, either between the derivatives clearing organization ("DCO") and the clearing firm or the customer, or at the middleware provider. Further, DCOs and swap data repositories ("SDRs") decline to provide SEFs such information due to confidentiality concerns. Even if SEFs could obtain the information from either DCOs, SDRs, middleware providers, or the swap counterparties, the requesting parties note the infrastructure necessary to securely transmit the post-execution allocation information, such as an application-programming interface or secure file transfer protocol site, is currently not in place.

## **III. Extension of No-Action Relief**

The Division acknowledges the practical challenges SEFs continue to face in obtaining post-execution allocation information. SEFs are still unable to capture post-execution allocation information in their audit trail as these allocations occur away from the SEF, DCOs and SDRs decline to provide SEFs such information due to confidentiality concerns. Furthermore, the infrastructure necessary to securely transmit the post-execution allocation information, such as an application-programming interface or secure file transfer protocol site, is currently not in place. Therefore, the Division is extending the relief provided in CFTC Letter No. 17-54 to SEFs from the audit trail requirements in Commission regulation 37.205 related to post-execution allocation information. Extending this time-limited relief will enable the Division and the Commission to consider permanent solutions for assisting SEFs with their audit trail obligations related to post-execution allocation information 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, 2021 or (ii) the applicable effective date or compliance date of a Commission action, including without limitation a rulemaking or order,

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<sup>7</sup> Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) ("SEF Final Rules").

<sup>8</sup> On November 30, 2018, the Commission published proposed amendments to certain part 37 regulations, including amendments to the audit trail rules related to post-execution allocation information. First, proposed regulation 37.205(a) would require a SEF to capture the audit trail data only through execution on the SEF, rather than through "fill, allocation, or other disposition." Second, proposed regulation 37.205(b)(2) would eliminate some of the information required in a SEF's transaction history database, including the "identification of each account to which fills are allocated." The Commission acknowledged in the proposal that "SEFs are still routinely unable to obtain this information pursuant to the requirements of 37.205(a) and (b)(2)." *See* Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946, 62005 (Nov. 30, 2018).

providing a permanent solution for SEF audit trail obligations related to post-execution allocation information.

Pursuant to Commission regulation 140.99, the Division will not recommend that the Commission take enforcement action against any SEF that does not capture post-execution allocation information in its audit trail or conduct associated audit trail reviews of post-execution allocations, as required by Commission regulations 37.205(a) and (b)(2), subject to the following conditions:

1. The SEF must have a rule which requires that market participants provide post-execution allocation information to the SEF for particular trades, in the event that the SEF, at the request of the Commission or otherwise, requests such information; and
2. In the course of a trade practice surveillance or market surveillance investigation into any trading activity involving post-execution allocations, upon such request pursuant to condition 1 above, the SEF must ascertain whether a post-execution allocation was made, and if so, the SEF must request, obtain and review the post-execution allocation information as part of its investigation.

#### **IV. 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. This letter does not bind the Commission or Commission staff outside of DMO, and the relief issued by it does not excuse persons relying on it from compliance with: (i) audit trail obligations under Commission regulation 37.205, including the audit trail obligations under Commission regulations 37.205(a) and (b)(2) not pertaining to post-trade allocation information; or (ii) other applicable requirements of the CEA or the Commission's regulations thereunder, in particular, the applicable recordkeeping requirements under Commission regulation 1.35. 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 Rachel Berdansky, Deputy Director, Division of Market Oversight, at (202) 418-5429 or [rberdansky@cftc.gov](mailto:rberdansky@cftc.gov), David Steinberg, Associate Director, Division of Market Oversight, at 202-418-5102 or [dsteinberg@cftc.gov](mailto:dsteinberg@cftc.gov), or Swati Shah, Special Counsel, Division of Market Oversight, at (202) 418-5042 or [sshah@cftc.gov](mailto:sshah@cftc.gov).

Sincerely,

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Director  
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