



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Market Participants  
Division

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**Re: Revised No-Action Relief in Connection With Certain Previously Granted Commission Determinations and Exemptions, in Response to the Withdrawal of the United Kingdom From the European Union**

**I. Introduction**

The Division of Market Oversight (“**DMO**”) and the Market Participants Division (“**MPD**”) (together, the “**Divisions**”) are jointly issuing this letter to extend time-limited no-action relief pursuant to CFTC Staff Letter 19-08<sup>1</sup> in connection with the following actions (collectively, the “**Existing Commission Actions**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”), in response to the withdrawal of the United Kingdom (“**UK**”) from the European Union (“**EU**”), commonly referred to as “**Brexit**.”

1. Comparability Determination for the European Union: Certain Entity-Level Requirements;<sup>2</sup>
2. Comparability Determination for the European Union: Certain Transaction-Level Requirements;<sup>3</sup>
3. Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (with items 1 and 2, the “**EU Comparability Determinations**”);<sup>4</sup> and

<sup>1</sup> CFTC Staff Letter 19-08 (April 5, 2019), available at <https://www.cftc.gov/csl/19-08/download>.

<sup>2</sup> Comparability Determination for the European Union: Certain Entity-Level Requirements (December 27, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30980a.pdf>.

<sup>3</sup> Comparability Determination for the European Union: Certain Transaction-Level Requirements (December 27, 2013), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30981a.pdf>.

<sup>4</sup> Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (October 18, 2017), available at

4. In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (the “**Exemptive Order**”).<sup>5</sup>

Letter 19-08 was provided in accordance with the Joint Statement by UK and US Authorities on Continuity of Derivatives Trading and Clearing Post-Brexit of February 25, 2019.<sup>6</sup> This letter will supersede Letter 19-08, and the relief provided by this letter will become effective as of the Brexit Transition Period Expiration Date defined below. No person may rely on Letter 19-08 after the Brexit Transition Period Expiration Date. As of the date of this letter, the Divisions anticipate that the Brexit Transition Period Expiration Date will be December 31, 2020.

## II. Background

In June 2016, the people of the UK voted by referendum to leave the EU. On March 29, 2017, the UK submitted notification of its intention to withdraw from the EU at the conclusion of a two year period pursuant to Article 50 of the Treaty on European Union.<sup>7</sup>

On October 19, 2019, the UK and the EU entered into the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the “**Withdrawal Agreement**”).<sup>8</sup> Pursuant to the Withdrawal Agreement, the UK left the EU as of the end of January 31, 2020 and entered into a transition period set to expire on December 31, 2020 (as such date may be modified or extended from time to time, the “**Brexit Transition Period Expiration Date**”).

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<https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2017-22616a.pdf>.

<sup>5</sup> In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities (December 8, 2017), *available at* [https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/mtf\\_otforder12-08-17.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@requestsandactions/documents/ifdocs/mtf_otforder12-08-17.pdf). *See also* In the Matter of the Exemption of Multilateral Trading Facilities and Organised Trading Facilities Authorized Within the European Union from the Requirement to Register with the Commodity Futures Trading Commission as Swap Execution Facilities: Second Amendment To Appendix A To Order Of Exemption (July 23, 2020), *available at* <https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs>.

<sup>6</sup> Available at <https://www.cftc.gov/PressRoom/PressReleases/7876-19>. Pursuant to the Joint Statement, the Commission committed to extending existing regulatory relief granted by the CFTC to EU firms, including UK firms, to UK firms at the point of the UK’s withdrawal from the EU.

<sup>7</sup> *See* Article 50 of the Treaty on European Union, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M050&from=EN>.

<sup>8</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Nov. 12, 2019), *available at*: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29>.

Pursuant to the Withdrawal Agreement, the UK has ceased to be a member of the EU, although during the transition period EU law and EU regulatory, budgetary, supervisory, judiciary, and enforcement instruments and structures have continued to apply in the UK as if it were a member of the EU.

To prepare for the expiration of the transition period, the UK government has taken actions to provide regulatory certainty, including passing the European Union (Withdrawal) Act 2018 (“**EU(W)A**”), which, at the expiration of the transition period, will transpose relevant EU law and regulations into UK law and regulations, and grant existing authority vested in certain EU institutions to the Financial Conduct Authority, the Bank of England including the Prudential Regulation Authority, and Her Majesty’s Treasury. Commission staff has been engaged with staff of the relevant UK authorities to learn about the regulatory and supervisory framework that will apply in the UK upon the expiration of the transition period.

The foregoing actions by the UK government aim to preserve the regulatory status quo for UK entities benefitting from the Existing Commission Actions in all material respects following the expiration of the transition period. Accordingly, in order to provide regulatory certainty, the Divisions are providing time-limited no-action relief in connection with the Existing Commission Actions, as described below.

### **III. Staff Positions**

#### **(A) MPD No-Action Positions**

Pursuant to the EU Comparability Determinations and related Commission rules and guidance, the Commission has recognized that compliance by certain registered swap dealers with certain requirements under EU laws and regulations will constitute compliance with corresponding requirements under certain Commission regulations. Because the EU laws and regulations relevant for the EU Comparability Determinations will be transposed into UK laws and regulations pursuant to the EU(W)(A), MPD believes that temporary no-action relief is warranted. Accordingly, MPD will not recommend that the Commission take enforcement action against a swap dealer registered with the Commission if, in lieu of complying with the corresponding Commission regulations, it complies with the UK laws and regulations transposed pursuant to the EU(W)A in the same manner and subject to the same conditions contained in the EU Comparability Determinations with respect to the corresponding EU laws and regulations. This MPD relief will expire upon the earlier of (i) the effective date of any comparability determination issued by the Commission for the UK to the extent such determination encompasses the subject matter of the EU Comparability Determinations; or (ii) the date that is one year following the Brexit Transition Period Expiration Date.

## **(B) DMO No-Action Positions**

In the Exemptive Order, the Commission determined that the EU's regulatory frameworks for multilateral trading facilities (“**MTFs**”) and organised trading facilities (“**OTFs**”), respectively, satisfy the standard set forth in section 5h(g) of the Commodity Exchange Act (“**CEA**”)<sup>9</sup> for granting an exemption from the requirement to register with the Commission as a swap execution facility (“**SEF**”) pursuant to CEA section 5h(a)(1).<sup>10</sup> Based on this determination, the Commission granted an exemption from SEF registration to each of the MTFs and OTFs listed in Appendix A to the Exemptive Order, as such Appendix A may be amended by the Commission from time to time. Facilities that are granted an exemption from SEF registration pursuant to CEA section 5h(g) are also eligible facilities upon which counterparties may satisfy the trade execution requirement of CEA section 2(h)(8).<sup>11</sup>

Because the EU laws and regulations relevant to the Exemptive Order will be transposed into UK laws and regulations pursuant to the EU(W)A, DMO believes that temporary no-action relief is warranted. Accordingly, DMO will not recommend that the Commission take an enforcement action against:

- (a) An MTF or OTF that is authorized within the UK and listed in Appendix A to the Exemptive Order, as amended (each, an “**Eligible UK Facility**”), for failure to register as a SEF pursuant to CEA section 5h(a)(1) and Commission Regulation 37.3(a)(1); or
- (b) A counterparty that is subject to the trade execution requirement pursuant to CEA section 2(h)(8), if such counterparty executes a swap that is subject to such trade execution requirement on an Eligible UK Facility.<sup>12</sup>

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<sup>9</sup> CEA section 5h(g) authorizes the Commission to grant an exemption from SEF registration if the Commission finds that a “swap execution facility ... is subject to comparable, comprehensive supervision and regulation on a consolidated basis by ... the appropriate governmental authorities in the home country of the facility.” 7 U.S.C. § 7b-3.

<sup>10</sup> Pursuant to CEA section 5h(a)(1), no person may operate a facility for the trading or processing of swaps unless the facility is registered by the Commission as a SEF or as a designated contract market. 7 U.S.C. § 7b-3. CEA section 5h(a)(1) is implemented in the Commission's regulations through Commission Regulation 37.3(a)(1). 17 CFR 37.3(a)(1).

<sup>11</sup> Facilities that are granted an exemption from SEF registration pursuant to CEA section 5h(g) may also offer trading in swaps that are not subject to the trade execution requirement to U.S. person counterparties. *See* 7 U.S.C. § 7b-3.

<sup>12</sup> This no-action relief does not affect any other requirements under the CEA or the Commission's regulations. In particular, as explained in the Exemptive Order, swap transactions executed on Eligible UK Facilities must still comply with:

- (1) The reporting requirements of Parts 43 and 45 of the Commission's regulations;
- (2) The swap trading eligibility requirement of CEA section 2(e); and

The DMO relief provided herein will expire upon the earlier of (i) the effective date of any exemptive order issued by the Commission pursuant to CEA section 5h(g), for MTFs and OTFs authorized within the UK; or (ii) the date that is one year following the Brexit Transition Period Expiration Date.

#### **IV. Conclusion**

This letter, and the positions taken herein, represent the views of the Divisions 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 provided in 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 the Divisions. 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 Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in their 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](mailto:rsmith@cftc.gov); or Frank Fisanich, Chief Counsel, MPD, at (202) 418-5949 or [ffisanich@cftc.gov](mailto:ffisanich@cftc.gov).

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(3) The following clearing-related requirements:

- (i) When a swap transaction executed by a U.S. person on an Eligible UK Facility is a “customer” position subject to CEA section 4d, the transaction, if intended to be cleared, must be cleared through a Commission-registered futures commission merchant (“FCM”) at a Commission-registered derivatives clearing organization (“DCO”);
- (ii) When a swap transaction executed by a U.S. person on an Eligible UK Facility is a “proprietary” position under Commission Regulation 1.3, the transaction, if intended to be cleared, must be cleared either through a Commission-registered DCO or a clearing organization that has been exempted from DCO registration by the Commission pursuant to CEA section 5b(h) (an “Exempt DCO”); and
- (iii) When a swap transaction is subject to the Commission’s clearing requirement under Part 50 of the Commission’s regulations, and is entered into by a person that, pursuant to CEA section 2(h)(1), is subject to such clearing requirement, the transaction must be cleared either through a Commission-registered DCO or an Exempt DCO; provided that, consistent with (i) above, if the transaction is a “customer” position subject to CEA section 4d, it must be cleared through a Commission-registered FCM at a Commission-registered DCO, and cannot be cleared through an Exempt DCO.

If, as a result of the clearing arrangements that an Eligible UK Facility has in place, some swap transactions executed on the Eligible UK Facility are cleared by a clearing organization that is not a Commission-registered DCO, the Eligible UK Facility must, as a condition of receiving the above relief from the SEF registration requirement, have a rule in its rulebook that requires the types of swap transactions described in clauses (i), (ii) and (iii) above, if intended to be cleared, to be cleared in a manner consistent with the requirements described in clauses (i), (ii) and (iii), respectively. See Exemptive Order at 6-7.

Very truly yours,

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cc: Regina Thoele, Compliance  
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