



U.S. COMMODITY FUTURES TRADING COMMISSION

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Market Participants
Division

Division of
Market Oversight

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Re: No-Action Positions for Floor Brokers and Introducing Brokers from Oral Communications Recordkeeping Requirements and Designated Contract Markets from Audit Trail Requirement in Continued Response to the COVID-19 Pandemic¹

Ladies and Gentlemen:

This letter is in response to a request received by the Market Participants Division (“MPD”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) from CME Group Inc. (“CME”), ICE Futures U.S. (“IFUS”), and the Minneapolis Grain Exchange, LLC (“MGEX”) on behalf of persons participating in CME/IFUS/MGEX affiliated designated contract markets (“DCMs”) that are registered with the Commission as floor brokers (“FBs”) or introducing brokers (“IBs”).² Specifically, CME/IFUS/MGEX request that certain relief from oral recordkeeping requirements for FBs and IBs (described below) be granted for a brief period of time to allow FBs and IBs to complete the implementation of certain technology solutions that would permit full compliance with such requirements.

On March 17, 2020, in connection with an industry-wide response to the coronavirus disease 2019 (“COVID-19”), MPD (formerly known as the Division of Swap Dealer and Intermediary Oversight) issued CFTC Staff Letters 20-03 and 20-04, which among other things, provided relief to FBs and IBs from any requirement to make and keep records of oral communications pursuant to Commission regulation 1.35³ if the personnel

¹ This letter contains one or more collections of information under Office of Management and Budget (“OMB”) number 3038-0049. No person is required to respond to a request for information unless a valid OMB number is displayed.

² Although the no-action position was requested on behalf of FBs and IBs participating in CME/IFUS/MGEX affiliated DCMs, the no-action position provided herein is available to all FBs and IBs registered with the Commission.

³ 17 CFR 1.35.

required to use recorded lines are required by the written business continuity plan of any DCM to be absent from their normal business site, *provided* that: (A) a written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication, is created and maintained as a written communication in accordance with Commission regulation 1.35; and (B) the FB or IB takes affirmative steps to collect any written materials pertaining to the content of the oral communication, including, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries, and maintains them in its required books and records pursuant to Commission regulation 1.31⁴ (the “**Oral Recordkeeping Relief**”).

In conjunction with the MPD’s Oral Recordkeeping Relief in CFTC Staff Letters 20-03 and 20-04, DMO issued CFTC Staff Letter 20-09 which provided relief to DCMs for the failure to comply with audit trail and related requirements pursuant to CEA sections 5(d)(4) and (10), as well as Commission regulations thereunder, to the extent that non-compliance relates to the displacement, in connection with the COVID-19 pandemic response, of FBs, IBs, and other market participants from an exchange’s trading floor and/or other designated premises from which customer orders may be placed. This relief included relief from CEA sections 5(d)(4) and (10), as well as Commission regulations thereunder, for DCMs that may have been unable to produce a complete audit trail and meet other audit trail-related requirements due to the inability of FBs and IBs to meet their requirements under Commission regulation 1.35 and record voice communications.

MPD and DMO extended such relief pursuant to CFTC Staff Letter 20-19, issued on June 9, 2020, and CFTC Staff Letter 20-26, issued on September 11, 2020 (together with CFTC Staff Letters 20-03 and 20-04, the “**COVID-19 Letters**”).⁵

I. Summary of Requests

The second extension of the Oral Recordkeeping Relief issued in September of 2020 was accompanied by a statement by the MPD and DMO Directors noting MPD’s and DMO’s understanding that, during the time of the second extension, registrants would be able to complete the final steps necessary to come into full compliance with CFTC regulations, including those related to oral recordkeeping, and further noting that “the bar for . . . granting a third extension will be quite high.”⁶

⁴ 17 CFR 1.31.

⁵ CFTC Staff Letters related to COVID-19 are available on the Commission’s website: <http://www.cftc.gov/coronavirus>.

⁶ CFTC Release Number 8240-20 (Sept. 11, 2020), available at: <https://www.cftc.gov/PressRoom/PressReleases/8240-20>.

CME/IFUS/MGEX recognize the high standard for granting further relief from the oral recordkeeping requirements and therefore CME/IFUS/MGEX have committed to provide to MPD and DMO within 30 days of the issuance of any no-action relief a written status report detailing the efforts taken by the CME/IFUS/MGEX exchanges to advise affected parties of their obligations at the conclusion of the relief and to assist, where possible, in highlighting solutions for compliance with the requirements.

For the following reasons, CME/IFUS/MGEX request a very brief additional period of relief for FBs and IBs. First, to date, due to COVID-19, CME has only re-opened the CME Eurodollar options pit for open outcry trading and a significant portion of the FB community is unable to trade from the CME/IFUS/MGEX exchanges' facilities. Second, CME/IFUS/MGEX members and market participants, including IBs, in activating their business continuity plans, continue to work from alternate locations. Finally, CME/IFUS/MGEX are concerned that available technology solutions which enable remote workers to comply with the abovementioned recording requirements continue to be out of the reach of smaller registrants with limited resources. As such, it may be difficult or impossible for many such impacted registrants to comply with Commission regulation 1.35 while working remotely at this time. As a result, CME/IFUS/MGEX believe that an extension of the requested no-action relief due to this displacement is reasonable and appropriate in light of the ongoing COVID-19 pandemic and the reasonable measures that CME/IFUS/MGEX and other exchanges continue to follow to address the pandemic.

Further, CME/IFUS/MGEX request corresponding relief from CEA sections 5(d)(4) and (10), as well as Commission regulations thereunder, for DCMs that would otherwise be unable to comply with those requirements in light of the relief from oral recordkeeping for FBs and IBs.

II. MPD No-Action Position

In light of the foregoing and in order to continue to support an orderly response to the COVID-19 pandemic, MPD believes that a brief period of no-action relief is warranted.

Accordingly, until **March 31, 2021**, MPD will not recommend that the Commission take an enforcement action against any FB or IB for the failure to comply with any requirement to make and keep records of oral communications pursuant to Commission regulation 1.35 if the personnel required to use recorded lines are required by the written business continuity plan of any DCM to be absent from their normal business site, *provided* that:

- (A) A written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication, is created and maintained as a written communication in accordance with Commission regulation 1.35;

- (B) The FB or IB takes affirmative steps to collect any written materials pertaining to the content of the oral communication, including, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries, and maintains them in its required books and records pursuant to Commission regulation 1.31; and
- (C) The FB or IB complies with all applicable rules of any DCM on which such FB or IB has trading privileges.

MPD does not expect to extend this relief further. FBs or IBs relying on this relief should be prepared to explain any lack of progress toward meeting the oral communications recordkeeping requirement pursuant to Commission regulation 1.35 by notice to MPDNoAction@CFTC.gov well in advance of the deadline for this relief set forth above.

Further, MPD expects that FBs and IBs relying on the relief provided by this letter will establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic.⁷

III. DMO No-Action Position

In order to support an orderly response to the COVID-19 pandemic, DMO believes that a brief period of no-action relief set is warranted.

Until **March 31, 2021**, DMO will not recommend that the Commission take an enforcement action against any DCM for the failure to comply with audit trail and related requirements pursuant to CEA sections 5(d)(4) and (10), as well as Commission regulations thereunder, to the extent that non-compliance arises from the inability of IBs and FBs to record voice communications as a result of their displacement, in connection with the COVID-19 pandemic response, from a DCM's trading floor and/or other designated premises from which customer orders may be placed. This relief is subject to the applicable conditions stated below. Generally, DMO expects the DCMs to remain particularly vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that this relief does not facilitate or allow FBs and IBs to take advantage of market volatility to engage in improper trading.

1. The DCMs will require FBs and IBs to continue to conduct customer business in accordance with the same exchange rules applicable to the trading conducted on

⁷ MPD notes the National Futures Association (“NFA”) has issued a notice to its members (“Members”) regarding the applicability of “branch office requirements” to Members responding to the COVID-19 pandemic. Pursuant to the notice, NFA has stated that it will not pursue a disciplinary action against a Member that permits associated persons (“APs”) to temporarily work from locations not listed as a branch office and without a branch manager provided that the Member implements and documents alternative supervisory methods to adequately supervise the APs' activities and meet its recordkeeping requirements. See NFA Notice I-20-12 Coronavirus Update—NFA Branch Office Requirements, available at: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5214>.

the trading floor, or otherwise in compliance with relief provided by MPD in this letter, including preparation of a written record of oral communications.

2. Customer orders entered into the trading platform by FBs and IBs will be retained in the DCM system's normal electronic audit trail and subject to existing credit and risk filters.
- 3 All other exchange rules, including those relating to the handling of customer orders and trade practices, will continue to apply to IBs and FBs trading activity during the duration of the no-action relief provided in this letter.

IV. Conclusion

This letter, and the positions taken herein, represent the views of MPD and 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 MPD and 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, MPD and DMO retain 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, MPD, at (202) 418-5949 or ffisanich@cftc.gov, or Roger Smith, Associate Chief Counsel, DMO, at (202) 418-5344 or rsmith@cftc.gov.

Sincerely,

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cc: Regina Thoele, Compliance
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