



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

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

I. Introduction

The Division of Market Oversight (“**DMO**”) is issuing this letter to amend the terms of the DMO No-Action Positions¹ in CFTC Staff Letter 20-39² in connection with the following action 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. 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**”).³

The DMO No-Action Positions in CFTC Staff Letter 20-39 provide, subject to certain conditions, that DMO will not recommend an enforcement action against: a multilateral trading facility (“**MTF**”) or organised trading facility (“**OTF**”) that is authorized within the UK and listed in Appendix A to the Exemptive Order, as amended, for failure to register as a swap execution facility (“**SEF**”) pursuant to Commodity Exchange Act

¹ For avoidance of doubt, this letter does not alter, amend, supersede, or terminate any of the Market Participant Division No-Action Positions within CFTC Staff Letter 20-39, including relief related to Comparability Determination for the European Union: Certain Entity-Level Requirements; Comparability Determination for the European Union: Certain Transaction-Level Requirements; and Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (collectively, the “**EU Comparability Determinations**”).

² CFTC Staff Letter 20-39 (November 24, 2020), *available at* <https://www.cftc.gov/csl/20-39/download>. CFTC Staff Letter 20-39 extended time-limited no-action relief pursuant to CFTC Staff Letter 19-08. CFTC Staff Letter 19-08 (April 5, 2019), *available at* <https://www.cftc.gov/csl/19-08/download>.

³ 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. *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>.

(“CEA”) section 5h(a)(1) and Commission Regulation 37.3(a)(1); or 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.

This letter will amend the DMO No-Action Positions in CFTC Staff Letter 20-39 to expand the scope of the no-action relief to three MTFs and one OTF authorized in the UK not currently receiving relief under CFTC Staff Letter 20-39, but similarly situated as those UK MTFs and OTFs currently subject to relief.

The DMO No-Action Positions in CFTC Staff Letter 20-39 were provided in accordance with the Joint Statement by UK and US Authorities on Continuity of Derivatives Trading and Clearing Post-Brexit of February 25, 2019.⁴ This letter will supersede the DMO No-Action Positions in CFTC Staff Letter 20-39, and the relief provided by this letter will become effective immediately upon issuance. No person may rely on the DMO No-Action Positions in CFTC Staff Letter 20-39 after the issuance of this letter.⁵

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.⁶

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**”).⁷ Pursuant to the Withdrawal Agreement, the UK left the EU as of the end of January 31, 2020 and entered into a transition period that expired on December 31, 2020.

To prepare for the expiration of the transition period, the UK government took actions to provide regulatory certainty, including passing the European Union (Withdrawal) Act 2018 (“**EU(W)A**”), which transposed relevant EU law and regulations into UK law and regulations, and granted authority previously vested in certain EU institutions to the Financial Conduct Authority (“FCA”), 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 applies in the UK after the expiration of the transition period.

The foregoing actions by the UK government aim to preserve the regulatory status quo for UK MTFs and OTFs benefitting from the Exemptive Order in all material respects

⁴ 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.

⁵ See *supra* note 1.

⁶ 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>.

⁷ 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>.

following the expiration of the transition period. Accordingly, in order to provide regulatory certainty, DMO provided time-limited no-action relief in connection with the Existing Commission Action in CFTC Staff Letter 20-39.⁸

Pursuant to the Withdrawal Agreement, the UK ceased to be a member of the EU, although during the Brexit transition period EU law and EU regulatory, budgetary, supervisory, judiciary, and enforcement instruments and structures continued to apply in the UK as if it were a member of the EU. Accordingly, in July 2020, the Commission amended the Exemptive Order to make clear that during the Brexit transition period the Exemptive Order continued to apply to UK-authorized MTFs and OTFs.⁹

In November 2020, ahead of the end of the Brexit transition period, CFTC Staff Letter 20-39 was issued to UK-authorized MTFs and OTFs and their market participants. The relief in CFTC Staff Letter 20-39 was meant to provide certainty and maintain the status quo of the Exemptive Order upon the expiration of the Brexit transition period while the Commission works on a determination for UK authorized MTFs and OTFs under CEA section 5h(g).

Recently, FCA staff identified three MTFs and an OTF that are not currently recognized under the Existing Commission Action, and therefore were not subject to the no-action relief under CFTC Staff Letter 20-39. In particular, FCA staff identified the following UK-authorized swap trading facilities:

1. GFI Brokers - MTF;
2. GFI Securities LTD - MTF;
3. GFI Securities LTD - OTF; and
4. Integral MTF.

The FCA staff represented that the MTFs and OTF listed above meet the requirements of the Exemptive Order and would have been eligible for inclusion in Appendix A of the Exemptive Order prior to the end of the Brexit transition period. Therefore, FCA staff requested DMO staff to grant no-action relief to these swap trading facilities until the Commission issues an exemptive order for UK MTFs and OTFs under CEA section 5h(g).

III. Staff Positions

(A) No-Action Positions

In the Exemptive Order, the Commission determined that the EU's regulatory frameworks for MTFs and OTFs, respectively, satisfy the standard set forth in section 5h(g) of the CEA¹⁰ for granting an exemption from the requirement to register with the

⁸ See *supra* note 2.

⁹ See *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>.

¹⁰ 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.

Commission as a SEF pursuant to CEA section 5h(a)(1).¹¹ 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).¹²

Because the EU laws and regulations relevant to the Exemptive Order have been 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 this letter (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.¹³

¹¹ 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).

¹² 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.

¹³ 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 which continue to apply to counterparties that are subject to such reporting requirements;
- (2) The swap trading eligibility requirement of CEA section 2(e); and
- (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.

The 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) December 31, 2021.

IV. Conclusion

This letter, and the positions taken herein, represent only the views of DMO staff, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. This letter and the no-action position taken herein are not binding on the Commission.¹⁴ 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 DMO staff. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Finally, as with all staff letters, 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.

Very truly yours,

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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.

¹⁴ *See* 17 CFR 140.99(a)(2) (“A no-action letter binds only the issuing Division... and not the Commission or other Commission staff.”).

Appendix A

List of UK Authorized MTFs and OTFs covered by this No-Action Relief

Trading Facility Name	Category (MTF or OTF)	Home Country
Bloomberg Multilateral Trading Facility Limited	MTF	United Kingdom
BGC Brokers LP - OTF	OTF	United Kingdom
Creditex Brokerage LLP - MTF	MTF	United Kingdom
Currenex MTF	MTF	United Kingdom
Digital Vega MTF	MTF	United Kingdom
Dowgate	MTF	United Kingdom
FX Connect - MTF	MTF	United Kingdom
GFI Brokers - MTF	MTF	United Kingdom
GFI Brokers - OTF	OTF	United Kingdom
GFI Securities LTD - MTF	MTF	United Kingdom
GFI Securities LTD - OTF	OTF	United Kingdom
ICAP Securities OTF	OTF	United Kingdom
Integral MTF	MTF	United Kingdom
iSWAP MTF	MTF	United Kingdom
Kyte Broking Limited	OTF	United Kingdom
Refinitiv Transaction Services Limited	MTF	United Kingdom
Sunrise - OTF	OTF	United Kingdom
TP ICAP UK MTF	MTF	United Kingdom
Trad-X	MTF	United Kingdom
Tradeweb Europe Limited MTF	MTF	United Kingdom
Tradition OTF	OTF	United Kingdom
Tradition-NEX OTF	OTF	United Kingdom
Tullett Prebon Europe OTF	OTF	United Kingdom
Tullett Prebon Europe MTF	MTF	United Kingdom