U.S. COMMODITY FUTURES TRADING COMMISSION
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Market Participants Division

Division of Market Oversight

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Re: Extended and Revised No-Action Positions 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 amend the previously granted no-action positions related to the withdrawal of the United Kingdom ("**UK**") from the European Union ("**EU**"), known as "Brexit." In this letter, the Divisions are extending time-limited no-action positions taken in CFTC Staff Letter 21-24[1] in connection with the following actions (collectively, the "**Existing Commission Actions**") of the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**"), in response to Brexit:

1. Comparability Determination for the European Union: Certain Entity-Level Requirements;[2]

2. Comparability Determination for the European Union: Certain Transaction-Level Requirements;[3]

[1] CFTC Staff Letter 21-24 (November 17, 2021), *available at* https://www.cftc.gov/csl/21-24/download.

[2] 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.

[3] Comparability Determination for the European Union: Certain Transaction-Level Requirements (December 27, 2013), *available at*

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**");[4] and

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**").[5]

Additionally, DMO is amending the terms of the DMO No-Action Positions in CFTC Staff Letter 21-24 to expand the scope of the no-action positions to an additional multilateral trading facility ("**MTF**") authorized in the UK that is not currently covered by the no-action positions under CFTC Staff Letter 21-24, but similarly situated to those UK MTFs and organised trading facilities ("**OTFs**") currently covered by CFTC Staff Letter 21-24. Also, DMO is amending the terms of the DMO No-Action Positions in CFTC Letter 21-24 to remove an MTF and an OTF authorized in the UK from Appendix A to this letter, as a result of such facilities no longer being in operation.

This letter is 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.[6] It supersedes CFTC Staff Letter 21-24, and the Divisions' No-Action Positions taken in this letter will become effective immediately upon issuance. No person may rely on CFTC Staff Letter 21-24 after the issuance of this letter.

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

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https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-30981a.pdf.

[4] Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (October 18, 2017), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2017-22616a.pdf.

[5] 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.

[6] 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.

conclusion of a two-year period pursuant to Article 50 of the Treaty on European Union.[7]

In January 2020, the UK and the EU finalized 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**").[8] The Withdrawal Agreement entered into force on February 1, 2020.[9] 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 (the "**EU(W)A**"), which, at the expiration of the transition period, incorporated relevant EU law and regulations into UK law and regulations, and granted 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 now applies in the UK.

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.

In November 2020, ahead of the end of the Brexit transition period, CFTC Staff Letter 20-39 was issued to provide a no-action position benefiting certain swap dealers, as well as certain MTFs, OTFs, and their market participants. In August 2021, CFTC Staff Letter 21-17 was issued to amend the DMO no-action position provided in CFTC Staff Letter 20-39 to expand its scope to include three MTFs and one OTF authorized in the UK that were not eligible to rely on DMO's no-action position under CFTC Staff Letter 20-39, but were similarly situated to those UK MTFs and OTFs that were eligible to rely on such position. In November 2021, CFTC Staff Letter 21-24 was issued to extend the time-limited no-action positions provided in CFTC Staff Letters 20-39 and 21-17.

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[7] *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.

[8] 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. *See also* Questions and Answers on the United Kingdom's withdrawal from the European Union on 31 January 2020 (Jan. 24, 2020), *available at* https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_104 (stating the President of the European Council, Charles Michel, and the President of the European Commission, Ursula von der Leyen, signed and the Prime Minister of the United Kingdom, Boris Johnson, would sign the Withdrawal Agreement on January 24, 2020).

[9] *See* "The EU-UK Withdrawal Agreement", *available at* https://ec.europa.eu/info/strategy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en.

These CFTC staff letters were meant to maintain the status quo of the Existing Commission Actions while the Commission worked with the relevant UK authorities to analyze relevant UK law and, where appropriate, replicate the Existing Commission Actions for UK entities. The Commission and the relevant UK authorities have not yet completed this work. Accordingly, the Divisions are further extending the time-limited no-action positions provided in CFTC Staff Letter 21-24, 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 have been incorporated into UK laws and regulations pursuant to the EU(W)A, MPD believes that temporarily extending the no-action position is warranted.

Accordingly, MPD will not recommend that the Commission take enforcement action against a swap dealer registered with the Commission for failure to comply with Commission regulation(s) found to be comparable in an EU Comparability Determination if, in lieu of complying with such Commission regulation(s), it complies with the UK laws and regulations incorporated 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 position will expire upon the earlier of either: (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) December 31, 2024.

(B) DMO 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 Commodity Exchange Act ("**CEA**")[10] 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).[11] Based on this determination, the Commission granted

[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(g).

[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. §

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 incorporated into UK laws and regulations pursuant to the EU(W)A, DMO believes that temporary no-action positions are 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]

7b-3(a)(1). 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.

[13] This no-action position does not affect any other requirements under the CEA or the Commission's regulations. In particular, 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.

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-

The DMO no-action positions taken in this letter will expire upon the earlier of either: (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, 2024.

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 staff positions taken in this letter do 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 staff positions taken in 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 this letter, and the positions taken 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; Frank Fisanich, Chief Counsel, MPD, at (202) 418-5949 or ffisanich@cftc.gov; or Jacob Chachkin, Associate Chief Counsel, MPD, at (202) 418-5496 or jchachkin@cftc.gov.

Sincerely,

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registered DCO, the Eligible UK Facility must, as a condition of receiving the above no-action position 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.

cc: Regina Thoele, Compliance
National Futures Association, Chicago

Michael Otten, OTC Derivatives
National Futures Association, New York

Appendix A

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

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
Digital Vega MTF	MTF	United Kingdom
Dowgate	MTF	United Kingdom
EBS UK MTF	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
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