

CFTC Letter No. 14-16  
No-Action  
February 12, 2014  
Division of Market Oversight  
Division of Swap Dealer and Intermediary Oversight

**Conditional No-Action Relief with respect to Swaps Trading on Certain Multilateral Trading Facilities Overseen by Competent Authorities Designated by European Union Member States**

The Divisions of Market Oversight (“DMO”) and Swap Dealer and Intermediary Oversight (“DSIO”) (together, the “Divisions”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) are jointly issuing this letter to provide conditional no-action relief for: (1) qualifying multilateral trading facilities overseen by competent authorities designated by European Union Member States (“Qualifying MTFs”)<sup>1</sup> from the swap execution facility (“SEF”) registration requirement set out in section 5h(a)(1) of the Commodity Exchange Act (“CEA” or “Act”)<sup>2</sup> and Commission regulation 37.3(a)(1);<sup>3</sup> (2) parties executing swap transactions on Qualifying MTFs from (i) the trade execution mandate set out in section 2(h)(8) of the Act;<sup>4</sup> and (ii) their obligations to report such transactions in the methods and manners prescribed in applicable part 43 and 45 regulations;<sup>5</sup> and (3) swap dealers (“SDs”) and major swap participants (“MSPs”) executing swap transactions on Qualifying MTFs from (i) certain business conduct requirements under subpart H to part 23 of the Commission’s regulations, which sets forth business conduct standards for SDs and MSPs in their dealings with counterparties (the “External BCS”);<sup>6</sup> (ii) the confirmation requirement under Commission regulation 23.501;<sup>7</sup> and (iii) the swap trading relationship documentation requirements under Commission regulation 23.504.<sup>8</sup>

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<sup>1</sup> The relief provided by this letter is only available to Qualifying MTFs. For purposes of this letter, DMO and DSIO define the term Qualifying MTFs to mean multilateral trading facilities (“MTFs”) overseen by competent authorities designated by European Union Member States, and as defined in The Markets in Financial Instruments Directive, that satisfy the conditions set out in this letter. *See infra* note 29 and accompanying text.

<sup>2</sup> 7 U.S.C. § 7b-3(a)(1).

<sup>3</sup> *See* 17 CFR 37.3(a)(1).

<sup>4</sup> 7 U.S.C. § 2(h)(8).

<sup>5</sup> *See* 17 CFR parts 43 & 45.

<sup>6</sup> *Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012).

<sup>7</sup> *See* 17 CFR 23.501.

<sup>8</sup> Nothing in this letter provides relief from the SD and MSP registration requirements. Furthermore, nothing in this letter should be interpreted as preventing a participant of a Qualifying MTF from complying with reporting or other obligations to which it may be subject under EU Regulation No 648/2012 (EMIR).

Such no-action relief would be triggered by DMO's issuance of a letter acknowledging receipt of an MTF's relief request to DMO that includes, in the form and manner described below, a certification that the MTF: (1) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology; (2) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, certain SEF regulatory requirements concerning non-discriminatory access by market participants and an appropriate level of oversight; (3) meets certain reporting and clearing-related requirements; and (4) does not allow trading by U.S. persons who are not eligible contract participants ("ECPs")<sup>9</sup> on its platform. This no-action relief will expire upon the effective date of any final rules implementing the Commission's authority, under CEA section 5h(g),<sup>10</sup> to exempt facilities that are "subject to comparable, comprehensive supervision and regulation on a consolidated basis by . . . the appropriate governmental authorities in the home country of the facility" from the SEF registration requirement of CEA section 5h(a)(1) and Commission regulation 37.3(a)(1).<sup>11</sup>

This no-action letter is being issued simultaneously with CFTC Letter No. 14-15,<sup>12</sup> which allows additional time for MTFs to comply with the conditions for obtaining the longer-term relief provided by this no-action letter, and for DMO to consider certifications made by MTFs pursuant to this no-action letter.

This no-action letter is structured in two basic parts: (1) Section I of the letter describes the conditional no-action relief being provided by DMO to Qualifying MTFs from the SEF registration requirement of CEA section 5h(a)(1) and Commission regulation 37.3(a)(1) and to parties executing swap transactions on Qualifying MTFs from the trade execution mandate of CEA section 2(h)(8); and (2) Section II of the letter describes the conditional no-action relief being provided by DSIO to SDs and MSPs executing swap transactions on Qualifying MTFs from certain specified business conduct and swap trading relationship documentation requirements under Part 23 of the Commission's regulations.

## **I. Conditional no-action relief provided by DMO**

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<sup>9</sup> See *infra* note 43 and accompanying text.

<sup>10</sup> See 7 U.S.C. § 7b-3(g).

<sup>11</sup> In addition, DMO and DSIO retain the authority, in their discretion, to terminate or otherwise modify the terms of the no-action relief provided herein at any time, including upon a determination by DMO that the MTF's certification is inaccurate.

<sup>12</sup> CFTC No Action Letter No. 14-15 (February 12, 2014). CFTC Letter No. 14-15 provides short-term no-action relief for: (1) MTFs overseen by competent authorities designated by European Union Member States from the SEF registration requirement set out in section 5h(a)(1) of the CEA and Commission regulation 37.3(a)(1); and (2) parties executing swap transactions on MTFs from the trade execution mandate set out in section 2(h)(8) of the Act. The short-term no-action relief provided by CFTC Letter No. 14-15 will expire on March 24, 2014.

## **A. Background**

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),<sup>13</sup> Title VII of which amended the CEA to establish a comprehensive new regulatory framework for swaps. One key goal of the Dodd-Frank Act was to bring greater pre-trade and post-trade transparency to the swaps market.<sup>14</sup> By requiring the trading of swaps on SEFs and designated contract markets (“DCMs”), the Dodd-Frank Act enabled all market participants to benefit from viewing the prices of available bids and offers and from having access to transparent and competitive trading platforms. CEA section 5h, as added by the Dodd-Frank Act, established a comprehensive regulatory framework for swaps trading, including: (i) registration, operation, and compliance requirements for SEFs and (ii) fifteen core principles.<sup>15</sup> Applicants and registered SEFs are required to comply with the core principles as a condition of obtaining and maintaining their registration as a SEF.<sup>16</sup>

### **1. SEF registration requirement**

CEA Section 5h(a)(1), as added by the Dodd-Frank Act, provides that no person may operate a facility for the trading or processing of swaps unless the facility is registered as a SEF or DCM.<sup>17</sup>

In its SEF Final Rulemaking,<sup>18</sup> the Commission interpreted the broad registration provision in section 5h(a)(1) of the Act. Commission regulation 37.3(a)(1) requires the registration as a SEF or DCM of any person operating a facility that offers a trading system or platform on which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform (a “multilateral swaps trading platform”).<sup>19</sup> The Commission explained that this interpretation of the registration requirement for SEFs is

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<sup>13</sup> Public Law 111–203, 124 Stat. 1376 (2010), available at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

<sup>14</sup> Pre-trade transparency with respect to the swaps market refers to making information about a swap available to the market, including bid (offers to buy) and offer (offers to sell) prices, quantity available at those prices, and other relevant information before the execution of a transaction. Such transparency lowers costs for investors, consumers, and businesses; lowers the risks of the swaps market to the economy; and enhances market integrity to protect market participants and the public. The Dodd-Frank Act also ensures that a broader universe of market participants receive pricing and volume information by providing public and regulatory reporting of such information upon the completion of every swap transaction (*i.e.*, post-trade transparency). *Core Principles and Other Requirements for Swap Execution Facilities, Final Rule*, 78 Fed. Reg. 33476, 33477, (June 4, 2013) (“SEF Final Rulemaking”).

<sup>15</sup> See 7 U.S.C. § 7b–3.

<sup>16</sup> *Id.*

<sup>17</sup> 7 U.S.C. § 7b-3(a)(1).

<sup>18</sup> See SEF Final Rulemaking, 78 Fed. Reg. 33476.

<sup>19</sup> 17 CFR 37.3(a)(1).

consistent with the statute and helps further the goals announced in CEA section 5h: to promote the trading of swaps on SEFs and pre-trade price transparency in the swaps market.<sup>20</sup>

Under the Commission’s interpretation, section 5h(a)(1) of the Act requires a facility to register as a DCM or SEF if it operates “a facility for the trading or processing of swaps” even if only swaps that are not subject to the trade execution mandate are executed or traded on the facility.<sup>21</sup>

CEA Section 2(i), added by the Dodd-Frank Act, provides that the swap provisions of the CEA, including any rules or regulations thereunder, will not apply to activities outside the United States unless those activities “have a direct and significant connection with activities in, or effect on, commerce of the United States” or contravene such Commission rules or regulations as are necessary or appropriate to prevent evasion of the swaps provisions of the CEA enacted under Title VII of the Dodd-Frank Act.<sup>22</sup> Accordingly, the SEF/DCM registration requirement of CEA section 5h(a)(1) and Commission Regulation 37.3(a)(1) may apply to a multilateral swaps trading platform that is located outside the United States where the trading or executing of swaps on or through the platform creates a “direct and significant” connection to activities in, or effect on, commerce of the United States.

## **2. November 15, 2013, DMO Guidance on SEF registration**

In a guidance document published by DMO on November 15, 2013, DMO stated that a foreign multilateral platform with the requisite nexus to U.S. commerce under section 2(i) of the Act may be required to register as a SEF or DCM pursuant to section 5h(a)(1) of the Act, and Commission regulation 37.3(a)(1). In pertinent part, DMO explained its view concerning which activities may have the requisite “direct and significant connection with activities in, or effect on, commerce of the United States” within the meaning of CEA section 2(i):

[DMO] expects that a multilateral swaps trading platform located outside the United States that provides U.S. persons or persons located in the U.S. (including personnel and agents of non-U.S. persons located in the United States) (U.S.-located persons) with the ability to trade or execute swaps on or pursuant to the rules of the platform, either directly or indirectly through an intermediary, will register as a SEF or DCM. [DMO] believes that U.S. persons and U.S.-located persons generally comprise those persons whose activities have the requisite ‘direct and significant’ connection with activities in, or effect on, commerce of the United States within the meaning of CEA section 2(i). [DMO] further believes that a multilateral swaps trading platform’s provision of the ability to trade or execute swaps on or through the platform to U.S. persons or U.S.-located persons

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<sup>20</sup> See 78 Fed. Reg. at 33481.

<sup>21</sup> See 78 Fed. Reg. at 33481 n. 88. The Commission made clear in footnote 88 of the SEF Final Rulemaking that the trade execution requirement is separate and distinct from the requirement to register as a SEF or DCM. See *infra* discussion of the trade execution requirement at Section I.A.3.

<sup>22</sup> 7 U.S.C. § 2(i).

may create the requisite connection under CEA section 2(i) for purposes of the SEF/DCM registration requirement.

[DMO] notes that foreign-based platforms already registered with their home country may register as a SEF or DCM. DMO expects to work with such platforms that apply for registration and with home country regulators to determine whether alternative compliance arrangements are appropriate, in recognition of comparable and comprehensive home country regulation.<sup>23</sup>

### **3. Trade Execution Mandate**

The transaction-level requirements under the CEA include the requirement that a swap must be submitted to a registered or exempt derivatives clearing organization (“DCO”) for clearing if the Commission has determined that the swap is required to be cleared, unless one of the parties to the swap is eligible for an exception to, or exemption from, the clearing requirement and elects not to clear the swap.<sup>24</sup> Integrally linked to the clearing requirement is the trade execution requirement, as set out in section 2(h)(8) of the Act, which mandates that swaps required to be cleared and made available to trade must generally be traded on DCMs or SEFs. Specifically, section 2(h)(8) of the Act provides that, unless a clearing exception or exemption applies and is elected,<sup>25</sup> a swap that is subject to a clearing requirement must be executed on a DCM, SEF, or SEF that is exempt from registration under CEA section 5h(f),<sup>26</sup> unless no such DCM or SEF makes the swap available to trade. Commission regulations implementing the process for a

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<sup>23</sup> *Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities*, November 15, 2013, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmosefguidance111513.pdf>.

In DMO’s view, factors that would be relevant in evaluating the SEF/DCM registration requirement of CEA Section 5h(a)(1) and Commission Regulation 37.3(a)(1) as they apply to multilateral swaps trading platforms located outside the United States, would generally include, but not be limited to: (1) whether a multilateral swaps trading platform directly solicits or markets its services to U.S. persons or U.S.-located persons; or (2) whether a significant portion of the market participants that a multilateral swaps trading platform permits to effect transactions are U.S. persons or U.S.-located persons. Market participant means a person that directly or indirectly effects transactions on a SEF. This includes persons with trading privileges on the SEF and persons whose trades are intermediated. *Id.* See also 78 Fed. Reg. at 33506.

<sup>24</sup> See CEA sections 2(h)(1)(A) (clearing requirement) and 2(h)(7) (end-user exception to the clearing requirement); see also Commission regulations 50.2, 50.4 and subpart C of part 50 (codifying exceptions and exemptions to the clearing requirement).

<sup>25</sup> See CEA section 2(h)(8)(B) (end-user exception); See also *Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act*, 78 Fed. Reg. 33606 n.1 (Jun. 4, 2013) (inter-affiliate exemption).

<sup>26</sup> Although CEA section 2(h)(8)(A)(ii) refers to exemption from registration under CEA section 5h(f), it is DMO’s view that this reference to 5h(f) is a mis-citation and should be interpreted to mean 5h(g). CEA section 5h(g) is the only provision in CEA section 5h that addresses exempting facilities from the SEF registration requirement.

DCM or SEF to make a swap available to trade were published in the Federal Register on June 4, 2013.<sup>27</sup>

By requiring mandatorily cleared swaps that are made available to trade to be executed on a DCM or SEF – each with its attendant pre- and post-trade transparency and safeguards to ensure market integrity – the trade execution requirement furthers the statutory goals of financial stability, market efficiency, and enhanced transparency.

## **B. Application of current law to MTFs**

MTFs are overseen by competent authorities designated by European Union Member States and operate trading platforms for financial instruments, including swaps. The Markets in Financial Instruments Directive (“MiFID I Directive”)<sup>28</sup> defines the term MTF to mean a “multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract....”<sup>29</sup>

If an MTF’s activities trigger a jurisdictional nexus under section 2(i) of the Act, then, absent regulatory relief, that MTF would need to register as a SEF or DCM, even if the MTF confined itself to executing swaps that were not subject to the trade execution requirement or if an exception to the trade execution requirement applies.<sup>30</sup> CEA section 5h(a)(1) makes clear that “[n]o person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.”<sup>31</sup> Additionally, since every MTF that executes swaps operates a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade

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<sup>27</sup> See generally 78 Fed. Reg. 33606. Under Commission Regulations 37.10 and 38.12, respectively, a SEF or DCM may submit a determination for Commission review that a mandatorily cleared swap is available to trade based on enumerated factors. To this date, the Commission has received five available-to-trade determinations, self-certified pursuant to Commission regulation 40.6, for certain interest rate swaps and credit default swaps. Four of those determinations were self-certified by operation of law, respectively, on January 16, 2014, January 22, 2014, January 27, 2014, and January 29, 2014; the other determination remains subject to DMO’s review. Pursuant to Commission regulations 37.12 and 38.11, transactions involving available-to-trade swaps therein will be subject to the trade execution mandate 30 days from the date upon which the determination was self-certified by operation of law. As a result of these certifications, transactions involving certain interest rate swap and credit default swap contracts will be subject to the trade execution requirement, effective February 15, 2014, February 21, 2014, February 26, 2014, and February 28, 2014, respectively.

<sup>28</sup> MiFID is a cornerstone of the EU’s regulation of financial markets, which “aimed to harmonise the initial authorisation and operating requirements for investment firms including conduct of business rules. It also provided for the harmonisation of some conditions governing the operation of regulated markets.” Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004L0039:20060428:EN:HTML>.

<sup>29</sup> MiFID I Directive, Article 4(15).

<sup>30</sup> See *supra* notes 24–25 and accompanying text.

<sup>31</sup> 7 U.S.C. § 7b-3(a)(1).

swaps with more than one other market participant on the system or platform, an MTF would be required to register as a SEF or DCM pursuant to Commission regulation 37.3, if its activities trigger a jurisdictional nexus under section 2(i) of the Act.<sup>32</sup>

Furthermore, parties that execute a swap that is subject to a clearing requirement under CEA section 2(h)(1)(A) and Commission regulations 50.2 and 50.4, on an MTF that is not also a DCM, SEF, or SEF that is exempt from registration under CEA section 5h, would violate the trade execution mandate set out in section 2(h)(8), unless no such DCM or SEF makes the swap available to trade.

### **C. The Path Forward Statement**

On July 11, 2013, then-CFTC Chairman Gary Gensler and Commissioner Michel Barnier of the European Commission (“EC”) announced a path forward expressing their mutual understandings on cross-border activities (“Path Forward Statement”).<sup>33</sup> The Path Forward Statement recognizes certain common goals, namely: “to protect the public at large from the financial risks that led to bailouts and economic recession” and “to lower risk and promote transparency in a market that is truly global by agreeing to report all over-the-counter derivatives to trade repositories, to centrally clear OTC derivatives and, where appropriate, require trading on transparent and multilateral venues.”<sup>34</sup> With respect to trading and transparency, the Path Forward Statement provided:

As the markets and regulatory regimes continue to evolve, and in order to ensure a level playing field, promote participation in transparent markets, and promote market efficiency, the CFTC will extend appropriate time-limited transitional relief to certain EU-regulated multilateral trading facilities (MTFs), in the event that the CFTC’s trade execution requirement is triggered before March 15, 2014. Such relief would be available for MTFs that have multilateral trading schemes, a sufficient level of pre- and post-trade price transparency, non-discriminatory access by market participants, and an appropriate level of oversight. The CFTC staff will issue no-action letters to this effect. In addition, the CFTC will consult with the EC in giving consideration to extending regulatory relief to trading platforms that are subject to requirements that achieve regulatory outcomes that are comparable to those achieved by the requirements for SEFs. Both parties will in January 2014 assess progress.

While important EU rules on mandatory trade execution and trading platforms under the Markets in Financial Instruments Directive and Regulation are almost complete, we are

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<sup>32</sup> See 17 CFR 37.3(a)(1).

<sup>33</sup> Press Release pr6640-13, *Cross-Border Regulation of Swaps/Derivatives Discussions between the Commodity Futures Trading Commission and the European Union – A Path Forward*, July 11, 2013, available at <http://www.cftc.gov/PressRoom/PressReleases/pr6640-13>.

<sup>34</sup> *Id.*

working collaboratively to share ideas and ensure harmonization to the maximum extent possible.<sup>35</sup>

DMO interprets the Path Forward Statement as (1) stating that the CFTC will provide conditional, time limited no-action relief for MTFs from the trade execution and registration requirements of CEA sections 2(h)(8) and 5h(a)(1), respectively; and (2) contemplating a future Commission rulemaking under CEA section 5h(g) to exempt facilities which are “subject to comparable, comprehensive supervision and regulation on a consolidated basis by . . . the appropriate governmental authorities in the home country of the facility” from the SEF registration requirement (that would replace any conditional relief issued to MTFs under (1)).

#### **D. Scope of no-action relief provided by DMO**

DMO is issuing this letter to provide conditional no-action relief for Qualifying MTFs from the registration requirement set out in section 5h(a)(1) of the Act and Commission regulation 37.3(a)(1). An MTF may obtain the relief provided by this letter if (1) the MTF submits a relief request to DMO, consistent with the requirements of Commission regulation 140.99, that includes, in the form and manner described below, a certification that the MTF (a) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology as specified below, (b) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the SEF regulatory requirements concerning non-discriminatory access by market participants and an appropriate level of oversight as specified below, (c) meets the reporting and clearing-related requirements specified below, and (d) does not allow trading by U.S. persons who are not ECPs on its platform; and (2) DMO has issued a letter acknowledging receipt of, and granting such relief request.<sup>36</sup>

An MTF’s no-action relief request letter must contain a list of those regulatory requirements established by the appropriate governmental authorities in the home country of the facility that an MTF is subject to and compliant with that are in accordance with the SEF regulatory requirements concerning trading methodology as specified below. Similarly, an MTF’s no-action relief request letter must contain a list of those regulatory requirements established by the

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<sup>35</sup> *Id.*

<sup>36</sup> DMO’s issuance of a letter acknowledging receipt of, and granting an MTF’s relief request will not constitute a determination by DMO that the MTF: (1) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology; (2) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the specified requirements applicable to SEFs concerning non-discriminatory access by market participants and an appropriate level of oversight; (3) meets the specified reporting and clearing-related requirements; and/or (4) does not allow trading by U.S. persons who are not ECPs on its platform.

appropriate governmental authorities in the home country of the facility that an MTF is subject to and compliant with that are comparable to, and as comprehensive as, the SEF regulatory requirements concerning non-discriminatory access by market participants and an appropriate level of oversight as specified below. These lists must be accompanied by supporting explanations as to why such regulatory requirements are either in accordance with (for trading methodology requirements), or comparable to, and as comprehensive as (for access and oversight requirements), each specified SEF requirement. Such explanations must be set forth on a requirement-by-requirement basis and address each specified Commission regulation.<sup>37</sup> DMO has provided an addendum, attached to this no-action letter as appendix A, to be used by the MTF in making its certification to DMO.<sup>38</sup>

In evaluating whether it satisfies the requirements concerning non-discriminatory access by market participants and an appropriate level of oversight as specified in section I.E.1.(ii)–(iii) of this letter, an MTF should follow an outcomes-based approach whereby an MTF may certify that it is subject to and compliant with regulatory requirements by the appropriate governmental authorities in the facility’s home country that are comparable to, and as comprehensive as, the requirements for SEFs listed below if the particular requirements achieve the same regulatory objectives as those achieved by the particular SEF regulatory provisions.<sup>39</sup> Notably, an MTF would not have to maintain requirements identical to those for SEFs in order to be subject to a comparable, comprehensive set of requirements to those applicable to SEFs. This approach builds on the Commission’s traditional policy of recognizing comparable regulatory regimes based on international coordination and comity principles with respect to cross-border activities, as described in the Cross Border Guidance.<sup>40</sup>

DMO will not recommend that the Commission take enforcement action against a Qualifying MTF for failure to register as a SEF under section 5h(a)(1) of the Act or Commission regulation 37.3(a)(1). A Qualifying MTF has a duty to inform DMO promptly of any material change, or

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<sup>37</sup> In explaining why such regulatory requirements are comparable to, and as comprehensive as, the specified SEF requirements concerning non-discriminatory access by market participants and an appropriate level of oversight, an MTF may include analysis prepared by its home country regulator as to the comparability and comprehensiveness of such regulatory requirements.

<sup>38</sup> Any MTF that submits a relief request or receives relief pursuant to this letter must cooperate with any DMO request for further explanation or support of the MTF’s no-action relief request in order for DMO to determine whether such no-action relief request is appropriate and complete. DMO retains the discretion to make such a request of an MTF at any time before or after the issuance of a letter granting no-action relief to an MTF, as DMO may choose to issue an relief letter prior to completing an in-depth analysis of the subject MTF’s no-action relief request.

<sup>39</sup> The regulatory objectives sought by each applicable SEF requirement might not be readily apparent upon review of the relevant rule text alone. Accordingly, MTFs should review the final and proposed SEF Rulemaking Federal Register releases to facilitate analysis of the regulatory outcome that each applicable SEF requirement is intended to achieve. *See* SEF Final Rulemaking; *see also* *Core Principles and Other Requirements for Swap Execution Facilities*, Proposed Rules, 76 Fed. Reg. 1214 (Jan. 7, 2011).

<sup>40</sup> *See Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 45292, 45342 (Jul. 26, 2013)(“Cross-Border Guidance”).

failure to comply with the requirements listed below, that would render its certification inaccurate. DMO clarifies that any Qualifying MTF receiving the relief provided by this letter may also rely on the relief provided to SEFs by CFTC No-Action Letters 13-66 and 13-81<sup>41</sup> to the extent that such an MTF complies with the same terms and conditions applicable to SEFs under Letters 13-66 and 13-81.

In addition, if the trade execution requirement of section 2(h)(8) of the CEA is triggered for a particular swap, DMO will not recommend that the Commission commence an enforcement action against any parties executing transactions in such swap on an MTF that receives the relief provided in this letter, for failure to comply with such trade execution requirement.<sup>42</sup> DMO will maintain a current list on the CFTC's website of Qualified MTFs that have been provided with relief pursuant to this letter. Market participants are advised to consult with such list prior to executing any transaction in a swap subject to the trade execution requirement of CEA section 2(h)(8). Furthermore, since a Qualifying MTF must certify that it reports all swap transactions to a Commission-registered or provisionally-registered SDR as if it were a SEF, in compliance with parts 43 and 45 of the Commission's regulations, counterparties to such MTF transactions that are so reported by the MTF would be relieved from their obligations to report such transactions under the part 43 and 45 regulations.

Nothing in this no-action letter contemplates relief from the requirement of CEA section 2(e) that platforms that permit swaps trading by U.S. persons who are not ECPs must register as DCMs.<sup>43</sup> Accordingly, an MTF that wishes to qualify for the relief provided by this letter must additionally certify that it does not allow trading by U.S. persons who are not ECPs on its platform.

This no-action relief will expire upon the effective date of any final rules implementing the Commission's authority, under CEA section 5h(g), to exempt facilities which are "subject to comparable, comprehensive supervision and regulation on a consolidated basis by . . . the appropriate governmental authorities in the home country of the facility" from the SEF registration requirement of CEA section 5h(a)(1) and Commission regulation 37.3(a)(1).<sup>44</sup>

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<sup>41</sup> See CFTC No-Action Letter No. 13-66 (October 25, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-66.pdf>; CFTC No-Action Letter No. 13-81 (December 23, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-81.pdf>.

<sup>42</sup> As noted below, an MTF cannot qualify for the relief provided in this letter unless it provides execution methods for Required Transactions in a manner that complies with the requirements of Commission regulation 37.9(a)(2)(i), *i.e.* in accordance with an order book, or with an order book in conjunction with a request for quote ("RFQ") system. 17 CFR 37.9(a)(2)(i). A Required Transaction means any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act. 17 CFR 37.9(a)(1).

<sup>43</sup> 7 U.S.C. § 2(e). Only ECPs, as defined in Commission regulation 1.3(m), may execute a swap on a SEF. 17 CFR 37.702(a). The Commission addressed the scope of the term U.S. person in its Cross-Border Guidance, 78 Fed. Reg. 45292.

<sup>44</sup> As previously noted, DMO and DSIO retain the authority, in their discretion, to terminate or otherwise modify the terms of the no-action relief provided herein at any time, including upon a DMO determination that the MTF's

This no-action letter is being issued simultaneously with CFTC Letter No. 14-15, which allows additional time for MTFs to comply with the conditions for obtaining the longer-term relief provided by this no-action letter, and for DMO to consider relief requests made by MTFs pursuant to this no-action letter. The short-term no-action relief provided by CFTC Letter No. 14-15 will expire on March 24, 2014.

#### **E. Requirements for an MTF seeking relief pursuant to this no-action letter**

An MTF will qualify for the relief provided in this letter upon DMO's issuance of a no-action relief letter acknowledging the MTF's certification that the MTF:

- (1) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology specified in section I.E.1.(i) of this letter;
- (2) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the requirements applicable to SEFs as specified in section I.E.1.(ii)–(iii) of this letter;
- (3) meets the reporting and clearing-related requirements specified in section I.E.2. of this letter; and
- (4) does not allow trading by U.S. persons who are not ECPs on its platform.

#### **1. SEF-related requirements**

The requirements that are applicable to SEFs and that would be applied to MTFs seeking no-action relief are categorized under the same five factors that were specified in the Path Forward Statement, namely: a multilateral trading scheme; a sufficient level of pre-trade price transparency; a sufficient level of post-trade price transparency; non-discriminatory access by market participants; and an appropriate level of oversight.

##### **(i) A multilateral trading scheme and sufficient level of pre-trade price transparency**

- (a) An MTF must certify that it maintains an order book that is subject to, and in compliance with, regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance

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certification is inaccurate. Additionally, DMO and/or DSIO could determine that certain relief is no longer warranted, and that alternatively SEF or DCM registration is necessary, in circumstances where a significant proportion of the market participants that an MTF permits to effect transactions are U.S. persons or U.S.-located persons; or where a significant proportion of an MTF's trading volume is attributable to U.S. persons or U.S.-located persons. In order to monitor these levels of participation and volume from U.S. persons and U.S.-located persons, MTFs that receive no-action relief pursuant to this no-action letter may be required as a condition of that relief to submit periodic reports to CFTC staff concerning those levels of participation and volume, as well as the levels of participation and volume attributable to non-U.S. person and non-U.S.-located persons.

with the order book definition in Commission regulation 37.3(a)(3) and which is available as an execution method for all swaps traded on the MTF.<sup>45</sup>

(b) An MTF must certify that any Required Transaction, as defined by Commission regulation 37.9(a)(1),<sup>46</sup> that is not a block trade, as defined by Commission regulation 43.2,<sup>47</sup> is executed on the MTF in a manner that complies with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the requirements of Commission regulation 37.9(a)(2)(i).<sup>48</sup>

(c) An MTF must certify that it maintains appropriate minimum block sizes and requirements related to block trades in accordance with the requirements of Commission regulation 43.6.<sup>49</sup>

(ii) Non-discriminatory access by market participants

An MTF must certify that it is subject to and compliant with regulatory requirements that ensure non-discriminatory access by market participants that are comparable to, and as comprehensive as, Commission regulation 37.202 (Access requirements).<sup>50</sup>

(iii) An appropriate level of oversight

An MTF must certify that it is subject to and compliant with oversight requirements that are comparable to, and as comprehensive as, the oversight rules applicable to SEFs as listed below.

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<sup>45</sup> 17 CFR 37.3(a)(3).

<sup>46</sup> 17 CFR 37.9(a)(1).

<sup>47</sup> 17 CFR 43.2.

<sup>48</sup> 17 CFR 37.9(a)(2)(i). Under Commission regulation 37.9(a)(2)(i), Required Transactions, that are not block trades, must be traded: (1) on an order book, or (2) on an order book operating in conjunction with an RFQ system, as defined in Commission regulation 37.9(a)(3). Commission regulation 37.9(a)(3) provides that under such an RFQ system, market participants must transmit an RFQ to buy or sell a specific instrument to no less than three market participants in the trading system or platform. Staff notes that the Commission provided a phase-in compliance period from August 5, 2013 until October 2, 2014, during which market participants may transmit RFQs to two market participants. See SEF Final Rulemaking at 33497. MTFs that operate order book plus RFQ systems to meet this condition for relief may utilize the same phase-in compliance period and approach as applies to SEFs executing Required Transactions.

<sup>49</sup> 17 CFR 43.6.

<sup>50</sup> 17 CFR 37.202. On November 14, 2013, DMO and DSIO, along with the Commission's Division of Clearing and Risk, provided guidance addressing the impartial access requirements in Commission regulation 37.202(a). *Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities*, November 14, 2013, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmostaffguidance111413.pdf>.

(a) Rule enforcement

- Commission regulation 37.200 (Compliance with rules);<sup>51</sup>
- Commission regulation 37.201 (Operation of swap execution facility and compliance with rules);<sup>52</sup>
- Commission regulation 37.203 (Rule enforcement program);<sup>53</sup>
- Commission regulation 37.205 (Audit trail);<sup>54</sup>
- Commission regulation 37.206 (Disciplinary procedures and sanctions);<sup>55</sup>

(b) Monitoring

- Commission regulation 37.400 (Monitoring of trading and trade processing);<sup>56</sup>
- Commission regulation 37.401 (General requirements);<sup>57</sup>
- Commission regulation 37.402 (Additional requirements for physical-delivery swaps);<sup>58</sup>
- Commission regulation 37.403 (Additional requirements for cash-settled swaps);<sup>59</sup>
- Commission regulation 37.404 (Ability to obtain information);<sup>60</sup>
- Commission regulation 37.405 (Risk controls for trading);<sup>61</sup>
- Commission regulation 37.406 (Trade reconstruction);<sup>62</sup>

(c) System safeguards

- Commission regulation 37.1400 (System safeguards);<sup>63</sup>
- Commission regulation 37.1401 (Requirements);<sup>64</sup>

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<sup>51</sup> 17 CFR 37.200.

<sup>52</sup> 17 CFR 37.201.

<sup>53</sup> 17 CFR 37.203.

<sup>54</sup> 17 CFR 37.205.

<sup>55</sup> 17 CFR 37.206.

<sup>56</sup> 17 CFR 37.400.

<sup>57</sup> 17 CFR 37.401.

<sup>58</sup> 17 CFR 37.402.

<sup>59</sup> 17 CFR 37.403.

<sup>60</sup> 17 CFR 37.404.

<sup>61</sup> 17 CFR 37.405.

<sup>62</sup> 17 CFR 37.406.

<sup>63</sup> 17 CFR 37.1400.

(d) Emergency authority

- Commission regulation 37.800 (Emergency authority).<sup>65</sup>

**2. Reporting and clearing-related requirements**

(i) Reporting requirements

An MTF must certify that it reports all swap transactions to a Commission-registered or provisionally-registered SDR as if it were a SEF, in compliance with parts 43 and 45 of the Commission's regulations.<sup>66</sup>

When an MTF reports part 45 creation data and initial part 43 data to a Commission-registered or provisionally-registered SDR, then, in order to avoid duplicative reporting for such transactions, that MTF must have rules that affirmatively prohibit reporting of part 45 creation data and initial part 43 data by the counterparties to such transactions.

(ii) Clearing-related requirements

Section 2(h)(1) of the Act requires certain persons to submit a swap for clearing to either a Commission-registered DCO, or to a DCO that is exempt from registration, if the swap is required to be cleared.<sup>67</sup> The implementing Commission regulations for this statutory requirement are contained in part 50 of the Commission's regulations.<sup>68</sup> Specifically, Commission regulation 50.2 describes the obligations of those persons who are subject to the clearing requirement in CEA Section 2(h)(1),<sup>69</sup> and Commission regulation 50.4 specifies the classes of swaps that must be cleared.<sup>70</sup>

An MTF must certify that it meets the following clearing-related requirements:

- (a) Transactions executed on or through the MTF that are required to be cleared pursuant to Commission regulations 50.2 and 50.4, and which are entered into by a person subject to CEA section 2(h)(1), are cleared by: (1) a Commission-registered

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<sup>64</sup> 17 CFR 37.1401.

<sup>65</sup> 17 CFR 37.800.

<sup>66</sup> 17 CFR parts 43 & 45. In keeping with the Path Forward Statement, such reporting by an MTF would guarantee a sufficient level of post-trade price transparency with respect to all swaps transactions executed on an MTF.

<sup>67</sup> 7 U.S.C. § 2(h)(1).

<sup>68</sup> 17 CFR part 50.

<sup>69</sup> 17 CFR 50.2; 7 U.S.C. 2(h)(1).

<sup>70</sup> 17 CFR 50.4.

DCO; (2) a DCO that is exempt from registration; or (3) a central counterparty that has received no-action relief (“CCP with relief”) from the Commission’s Division of Clearing & Risk; and

(b) For transactions that are required to be cleared as described above, the MTF routes such transactions to a DCO, exempt DCO, or CCP with relief (as appropriate) in a manner that is acceptable to such clearing house and coordinates with each such DCO, exempt DCO, or CCP with relief to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of Commission regulation 39.12(b)(7).<sup>71</sup>

## **F. Conclusion**

The no-action relief provided by DMO in section I of this letter is limited to the application of CEA sections 5h(a)(1) and 2(h)(8), Commission regulation 37.3(a)(1), and to the entities and transactions described herein.

Section I of this letter, and the no-action position taken herein, reflects the views of DMO only, and not necessarily the position or views of the Commission or of any other division or office of the Commission’s staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the CEA or the regulations thereunder. As with all no-action letters, DMO retains the authority, in its discretion, to further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.<sup>72</sup>

## **II. Conditional no-action relief provided by DSIO**

### **A. Background**

In addition to the foregoing, DSIO is providing no-action relief for SDs and MSPs from (i) certain External BCS; (ii) the confirmation requirement under Commission regulation 23.501; and (iii) the swap trading relationship documentation requirements under Commission regulation 23.504. Such no-action relief is intended to provide broadly equivalent relief for swaps executed by SDs and MSPs on or pursuant to the rules of a Qualifying MTF as is available to SDs and MSPs when executing swaps on or pursuant to the rules of a SEF.

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<sup>71</sup> Consistent with the Cross Border Guidance related to swaps executed anonymously between a non-U.S. person and a U.S. person on a registered SEF and cleared, when a swap is similarly executed anonymously on a Qualifying MTF, neither the non-U.S. person nor the U.S. person counterparty will be required to take any further steps with regard to Section 2(h)(1)(A) of the CEA or Commission regulation 50.2. *See* Cross Border Guidance at 45351.

<sup>72</sup> Commission guidance or action taken during the pendency of this no-action relief, could supersede the relief granted herein.

As background, DSIO notes that the Commission's rules under the External BCS prohibit SDs and MSPs from engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.<sup>73</sup> In addition, the External BCS require SDs and MSPs to provide or obtain specific information from their counterparties, to obtain specific representations in writing from their counterparties, and to perform certain due diligence inquiries with respect to their counterparties prior to entering into (or in some cases, offering to enter into) a swap with such counterparties.<sup>74</sup> Certain safe harbors under the External BCS permit SDs and MSPs to rely on written representations from their counterparties and standardized disclosures, each of which may require amendments or supplements to an SD's or MSP's relationship documentation with such counterparties prior to entering into a swap with such counterparties.<sup>75</sup>

However, many of the External BCS do not apply either (i) when the SD or MSP does not know the identity of the counterparty to a swap prior to the execution of the swap, or (ii) when the swap is initiated on a DCM or SEF and the SD or MSP does not know the identity of the counterparty to a swap prior to the execution of the swap.<sup>76</sup>

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<sup>73</sup> See Commission regulation 23.410(a)(3). Nothing in this letter provides relief from compliance with the prohibition on fraud, manipulation, and other abusive practices under Commission regulation 23.410.

<sup>74</sup> See Commission regulation 23.402(b) (requiring SDs to obtain essential facts about their counterparty prior to execution of a transaction); § 23.430(a) (requiring SDs and MSPs to verify that a counterparty meets the eligibility standards for an ECP before offering to enter into or entering into a swap with such counterparty); § 23.431(a) (requiring SDs and MSPs to provide material information concerning a swap to its counterparty at a reasonably sufficient time prior to entering into the swap); § 23.431(b) (requiring SDs and MSPs to provide notice to counterparties that they can request and consult on the design of a scenario analysis); § 23.431(d) (requiring SDs and MSPs to provide notice to counterparties of the right to receive the daily mark from a DCO for cleared swaps); § 23.432 (requiring SDs and MSPs to provide notice to counterparties of the right to select clearing and the DCO on which a swap is to be cleared); § 23.434 (requiring SDs and MSPs that recommend a swap to have a reasonable basis to believe that the swap is suitable for the counterparty); § 23.440 (requiring SDs and MSPs that act as an advisor to a Special Entity to act in such entity's best interest); § 23.450 (requiring SDs and MSPs to inquire into the knowledge and status of a representative of a counterparty that is a Special Entity); and § 23.451 (prohibiting SDs from entering into swaps with certain governmental entities if it has made political contributions to an official of such entity).

<sup>75</sup> See Commission regulations 23.402(d), (e), and (f).

<sup>76</sup> See Commission regulations 23.402(b) and (c) (requiring SDs and MSPs to obtain and retain certain information only about each counterparty "whose identity is known to the SD or MSP prior to the execution of the transaction"), § 23.430(e) (not requiring SDs and MSPs to verify counterparty eligibility when a transaction is entered on a DCM or SEF and the SD or MSP does not know the identity of the counterparty prior to execution), § 23.431(c) (not requiring disclosure of material information about a swap if initiated on a DCM or SEF and the SD or MSP does not know the identity of the counterparty prior to execution (but see general prohibition of fraudulent, deceptive, or manipulative practices under § 23.410)), § 23.450(h) (not requiring SDs and MSPs to have a reasonable basis to believe that a Special Entity has a qualified, independent representative if the transaction with the Special Entity is initiated on a DCM or SEF and the SD or MSP does not know the identity of the Special Entity prior to execution), and § 23.451(b)(2)(iii) (disapplying the prohibition on entering into swaps with a governmental Special Entity within two years after any contribution to an official of such governmental Special Entity if the swap is initiated on a DCM or SEF and the SD or MSP does not know the identity of the Special Entity prior to execution).

SDs and MSPs executing a swap on or pursuant to the rules of a Qualifying MTF are also deemed to meet the requirement under Commission regulation 23.501 to ensure that each swap transaction is confirmed in writing whenever a swap transaction is executed on a SEF, provided that the rules of the SEF require that confirmation of the transaction take place at the same time as execution.<sup>77</sup>

Similarly, Commission regulation 23.504 contains an exception to the requirement that an SD or MSP execute swap trading relationship documentation with a counterparty prior to or contemporaneously with entering into a swap transaction with such counterparty. Commission regulation 23.504(a)(1) states that such documentation is not required with respect to swaps executed on a DCM or anonymously on a SEF if such swaps are cleared by a DCO and all terms of the swaps conform to the rules of the DCO and Commission regulation 39.12(b)(6).<sup>78</sup>

Recognizing the exceptions to the documentation requirements and the External BCS outlined above, and encouraged by the pre-clearing risk mitigation provided by compliance with the Commission's regulations for straight-through-processing of swaps intended to be cleared in parts 1, 23, 39, and 50 of the Commission's regulations, DSIO published No-Action Letter No. 13-70 on November 15, 2013 (the "November No-Action Letter").

The November No-Action Letter provided no-action relief to SDs and MSPs when entering into swaps that are (i) of a type accepted for clearing by a DCO, and (ii) intended to be submitted for clearing contemporaneously with execution (such swaps, "Intended-To-Be-Cleared Swaps" or "ITBC Swaps"). The November No-Action Letter provides relief for these swaps from certain disclosure and notice requirements and other duties imposed on SDs and MSPs pursuant to the External BCS, as well as certain documentation requirements imposed on SDs and MSPs pursuant to Commission regulation 23.504.

Given the similarities between Qualifying MTFs and SEFs, DSIO believes that no-action relief for SDs and MSPs is warranted in the context of a swap executed by SDs and MSPs on or pursuant to the rules of a Qualifying MTF where such relief would be available to SDs and MSPs if executing the swap on or pursuant to the rules of a SEF. DSIO believes that such relief should be subject to the same conditions that would be applicable if the swap were executed on or

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<sup>77</sup> See Commission regulation 23.501(a)(4)(i).

<sup>78</sup> Commission regulation 39.12(b)(6):

(6) A derivatives clearing organization that clears swaps shall have rules providing that, upon acceptance of a swap by the derivatives clearing organization for clearing:

- (i) The original swap is extinguished;
- (ii) The original swap is replaced by an equal and opposite swap between the derivatives clearing organization and each clearing member acting as principal for a house trade or acting as agent for a customer trade;
- (iii) All terms of a cleared swap must conform to product specifications established under derivatives clearing organization rules; and
- (iv) If a swap is cleared by a clearing member on behalf of a customer, all terms of the swap, as carried in the customer account on the books of the clearing member, must conform to the terms of the cleared swap established under the derivatives clearing organization's rules.

pursuant to the rules of a SEF, including, for ITBC Swaps, whether or not the swap is currently cleared by a DCO or subject to a mandatory clearing determination by the Commission.

## **B. Scope of no-action relief provided by DSIO**

Accordingly, DSIO will not recommend that the Commission commence an enforcement action against an SD or MSP for:

1. Failure to comply with the requirements of the External BCS specified in Table 1 of Appendix B attached hereto with respect to any swap where:

- (a) The SD or MSP does not know the identity of the counterparty prior to execution of the swap; and
- (b) The swap is executed on or subject to the rules of a Qualifying MTF; or

2. Failure to comply with the requirements of the External BCS specified in Table 2 of Appendix B attached hereto, or the requirements of Commission regulation 23.504 (Swap trading relationship documentation) with respect to an ITBC Swap where:

- (a) The ITBC Swap is executed on or subject to the rules of a Qualifying MTF; and either
- (b) The ITBC Swap is of a type that was accepted for clearing by a DCO as of November 15, 2013; or
- (c) The ITBC Swap is of a type that is, as of the date of execution, required to be cleared pursuant to section 2(h)(1) of the CEA and part 50 of the Commission's regulations; or

3. Failure to comply with the requirements of the External BCS specified in Table 3 of Appendix B attached hereto, or the requirements of Commission regulation 23.504 (Swap trading relationship documentation) with respect to an ITBC Swap where:

- (a) The ITBC Swap is executed on or subject to the rules of a Qualifying MTF;
- (b) The ITBC Swap is of a type that was not being accepted for clearing by a DCO as of November 15, 2013; and
- (c) The ITBC Swap is not of a type that is, as of the date of execution, required to be cleared pursuant to section 2(h)(1) of the CEA and part 50 of the Commission's regulations.

4. Failure to comply with the confirmation requirements of Commission regulation 23.501 with respect to any swap transaction executed on a Qualifying MTF, provided that the rules of the Qualifying MTF establish that confirmation of all terms of the transaction shall take place at the same time as execution.<sup>79</sup>

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<sup>79</sup> For purposes of this letter, "confirmation" has the same meaning as provided in Commission regulation 23.500(c).

The relief specified in (2) and (3) above is, in each case, subject to the following conditions:

- (i) The SD or MSP is either a clearing member of the DCO to which the ITBC Swap will be submitted, or has entered into an agreement with a clearing member of such DCO for clearing of swaps of the same type as the ITBC Swap; and
- (ii) The SD or MSP does not require the counterparty or its clearing FCM to enter into a breakage agreement or similar agreement as a condition to executing the ITBC Swap.

### **C. Conclusion**

The foregoing DSIO no-action relief, and the positions taken therein, represent the views of DSIO 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 Act or in the Regulations issued thereunder, including all antifraud provisions of the Act. Further, this letter, and the relief contained herein, is based upon the representations made to DSIO. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

### **III. Contact Information**

If you have any questions concerning this correspondence, please contact David P. Van Wagner, Chief Counsel, DMO, at (202) 418-5481 or [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov); David N. Pepper, Attorney Advisor, DMO, at (202) 418-5565 or [dpepper@cftc.gov](mailto:dpepper@cftc.gov); Riva Spear Adriance, Senior Special Counsel, DMO, at (202) 418-5494 or [radriance@cftc.gov](mailto:radriance@cftc.gov); Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or [ffisanich@cftc.gov](mailto:ffisanich@cftc.gov); or Ward Griffin, Associate Chief Counsel, DSIO, at (202) 418-5425 or [wgriffin@cftc.gov](mailto:wgriffin@cftc.gov).

Sincerely,

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Vincent McGonagle  
Director  
Division of Market Oversight

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Gary Barnett  
Director  
Division of Swap Dealer and Intermediary Oversight



## **APPENDIX A**

### **Certification**

**Instructions:** The relief provided in this letter is only available to MTFs overseen by competent authorities designated by European Union Member States and is conditioned on DMO's issuance of a no-action relief letter acknowledging receipt of an MTF's relief request to DMO. An MTF's no-action relief request must be consistent with the requirements of Commission regulation 140.99 and must include, in the form and manner described in the letter, a certification that the MTF: (1) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology as specified in section I.E.1.(i) of the letter; (2) is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the SEF regulatory requirements concerning non-discriminatory access by market participants and an appropriate level of oversight as specified in section I.E.1.(ii)–(iii) of the letter; (3) meets the reporting and clearing-related requirements specified in section I.E.2. of the letter, and (4) does not allow trading by U.S. persons who are not ECPs on its platform.

The list below is being provided to aid MTFs in making appropriate and complete certifications to DMO as part of their no-action relief requests. Please provide your responses in an attached document addressing those regulatory requirements by the appropriate governmental authorities in the home country of the facility that the MTF is subject to, and compliant with, which are: (1) in accordance with each CFTC regulatory requirement applicable to SEFs that is listed in section I.E.1.(i) of the letter; and (2) comparable to, and as comprehensive as, each CFTC regulatory requirement applicable to SEFs that is listed in section I.E.1.(ii)–(iii) of the letter. Your responses must be accompanied by supporting explanations as to why such home country requirements are (1) in accordance with each CFTC regulatory requirement applicable to SEFs that is listed in section I.E.1.(i) of the letter; and (2) comparable to, and as comprehensive as, each CFTC regulatory requirement applicable to SEFs that is listed in section I.E.1.(ii)–(iii) of the letter.

In evaluating whether it satisfies the requirements specified in section I.E.1.(ii)–(iii) of the letter, an MTF may follow an outcomes-based approach. Under this approach, an MTF may certify that it is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the CFTC regulatory requirements applicable to SEFs if the particular requirements achieve the same regulatory objectives as the counterpart SEF regulatory requirement. In this context, “outcomes-based” refers not to what the regulations state, but instead to the actual consequences that they cause. Notably, an MTF would not have to maintain identical requirements in these areas as those for SEFs in order to be subject to a comparable, comprehensive set of requirements to SEFs.

This certification also includes a set of reporting and clearing-related requirements that an MTF must certify that it meets.

Please sign and date the bottom of the certification, confirming that all of the information provided in the certification is correct, and include such certification in any no-action relief request.

**Name of MTF:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Contact Person, Position:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Home Country Regulator (European Union Member State Competent Authority):**

\_\_\_\_\_

**Is the MTF currently in good standing with its Home Country Regulator? Yes \_\_\_ No \_\_\_**

**A. Relevant CFTC Regulatory Provisions Applicable to SEFs**

Please address those regulatory requirements by the appropriate governmental authorities in the home country of the facility that the MTF is subject to, and compliant with, which are comparable to, and as comprehensive as, each listed CFTC regulatory requirement applicable to SEFs. These responses must be accompanied by supporting explanations as to why such requirements are comparable to, and as comprehensive as, each listed CFTC regulatory requirement applicable to SEFs.

**(1) A multilateral trading scheme and sufficient level of pre-trade price transparency**

(a) The MTF maintains an order book that is subject to, and in compliance with, regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the order book definition in Commission regulation 37.3(a)(3), and which is available as an execution method for all swaps traded on the MTF.

(b) Any Required Transaction, as defined by Commission regulation 37.9(a)(1), that is not a block trade, as defined by Commission regulation 43.2, is executed on the MTF in a manner that complies with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the requirements of Commission regulation 37.9(a)(2)(i).

(c) The MTF maintains appropriate minimum block sizes and requirements related to block trades that are in accordance with the requirements of Commission regulation 43.6.

(2) Non-discriminatory access by market participants

The MTF is subject to and compliant with regulatory requirements that ensure non-discriminatory access by market participants that are comparable to, and as comprehensive as, § 37.202 (Access requirements).

(3) An appropriate level of oversight

The MTF is subject to and compliant with oversight requirements that are comparable to, and as comprehensive as, the oversight rules applicable to SEFs as listed below.

(a) Rule enforcement

- (i) § 37.200 (Compliance with rules)
- (ii) § 37.201 (Operation of swap execution facility and compliance with rules)
- (iii) § 37.203 (Rule enforcement program)
- (iv) § 37.205 (Audit trail)
- (v) § 37.206 (Disciplinary procedures and sanctions)

(b) Monitoring

- (i) § 37.400 (Monitoring of trading and trade processing)
- (ii) § 37.401 (General requirements)
- (iii) § 37.402 (Additional requirements for physical-delivery swaps)
- (iv) § 37.403 (Additional requirements for cash-settled swaps)
- (v) § 37.404 (Ability to obtain information)
- (vi) § 37.405 (Risk controls for trading)
- (vii) § 37.406 (Trade reconstruction)

(c) System safeguards

- (i) § 37.1400 (System safeguards)
- (ii) § 37.1401 (Requirements)

(d) Emergency authority

- (i) Commission Regulation 37.800 (Emergency authority)

**B. Reporting and clearing-related requirements**

The MTF meets the following reporting and clearing-related requirements:

(1) Reporting requirements

The MTF reports all swap transactions to a Commission-registered or provisionally-registered swap data repository (“SDR”) as if it were a SEF, in compliance with parts 43 and 45 of the Commission’s regulations.

(2) Clearing-related requirements

(a) Transactions executed on or through the MTF that are required to be cleared pursuant to Commission regulations 50.2 and 50.4, and which are entered into by a party that is required to submit such transactions for clearing under CEA section 2(h)(1), are cleared by: (1) a Commission-registered DCO, (2) a DCO that is exempt from registration, or (3) a central counterparty that has received no-action relief (“CCP with relief”) from the Commission’s Division of Clearing & Risk; and

(b) For transactions that are required to be cleared as described above, the MTF routes such transactions to the DCO, Exempt DCO, or CCP with relief (as appropriate) in a manner that is acceptable to such clearing house and coordinates with each such DCO, exempt DCO, or CCP with relief to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of Commission regulation 39.12(b)(7).

**C. Eligible Contract Participants (“ECPs”)**

The MTF does not allow trading by U.S. persons who are not ECPs on its platform.

I certify that \_\_\_\_\_ is an MTF in good standing with its home country regulator (European Union Member State competent authority) \_\_\_\_\_, is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are in accordance with the SEF regulatory requirements concerning trading methodology, and meets the reporting and clearing-related requirements specified above. Additionally [MTF Name] is subject to and compliant with regulatory requirements established by the appropriate governmental authorities in the home country of the facility that are comparable to, and as comprehensive as, the SEF regulatory requirements specified above concerning non-discriminatory access by market participants and an appropriate level of oversight. Furthermore, the MTF does not allow trading by U.S. persons who are not ECPs on its platform. All of the information contained in this certification is true and correct. I, or another member of my organization, will promptly inform the Director of the CFTC’s Division of Market Oversight of any material change, or failure to comply with the requirements listed above, that would render this certification false or misleading.

Signature \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_



## APPENDIX B

### Specified External BCS Requirements

<b><u>TABLE 1</u></b>	
<b><u>Commission Regulation</u></b>	<b><u>Subject Matter</u></b>
§ 23.430	Verification of counterparty eligibility
§ 23.431(a)	Material risks, characteristics, incentives, mid-market mark
§ 23.431(b)	Scenario analysis
§ 23.431(d)(1)	Notice of right to receive daily mark from DCO for cleared swaps
§ 23.450	Requirements for swap dealers and major swap participants acting as counterparties to Special Entities
§ 23.451	Political contributions by certain swap dealers

<b><u>TABLE 2</u></b>	
<b><u>Commission Regulation</u></b>	<b><u>Subject Matter</u></b>
§ 23.402(b)-(f)	Know your counterparty, True name and owner, Reasonable reliance on representations, Manner of disclosure, and Disclosures in a standard format
§ 23.430	Verification of counterparty eligibility
§ 23.431(a)	Material risks, characteristics, incentives, mid-market mark
§ 23.431(b)	Scenario analysis
§ 23.431(d)(1)	Notice of right to receive daily mark from DCO for cleared swaps
§ 23.432(a)	Notice of right to select DCO
§ 23.432(b)	Notice of right to clearing
§ 23.434	Recommendations to counterparties--institutional suitability
§ 23.440	Requirements for swap dealers acting as advisors to Special Entities
§ 23.450	Requirements for swap dealers and major swap participants acting as counterparties to Special Entities
§ 23.451	Political contributions by certain swap dealers

<b><u>TABLE 3</u></b>	
<b><u>Commission Regulation</u></b>	<b><u>Subject Matter</u></b>

§ 23.402(b)-(f)	Know your counterparty, True name and owner, Reasonable reliance on representations, Manner of disclosure, and Disclosures in a standard format
§ 23.430	Verification of counterparty eligibility
§ 23.431(b)	Scenario analysis
§ 23.431(d)(1)	Notice of right to receive daily mark from DCO for cleared swaps
§ 23.432(a)	Notice of right to select DCO
§ 23.432(b)	Notice of right to clearing
§ 23.451	Political contributions by certain swap dealers