



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Division of
Market Oversight

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CFTC Letter No. 15-65
No-Action
December 8, 2015
Division of Swap Dealer and Intermediary Oversight
Division of Market Oversight

Re: Extension of No-Action Relief: Certain Recordkeeping Requirements under Commission Regulation 1.35(a)

Ladies and Gentlemen:

This letter extends the no-action relief provided in CFTC Staff Letter No. 14-147 and is in response to a letter dated October 21, 2015 received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) and the Division of Market Oversight (“**DMO**”) (collectively, the “**Divisions**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) from the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”) and the Managed Funds Association (“**MFA**”) (the “**SIFMA AMG/MFA Letter**”). In such letter, SIFMA AMG and MFA requested an extension of the no-action relief provided in CFTC Staff Letter No. 14-147. If not extended, such relief will expire on December 31, 2015.

CFTC Staff Letter No. 14-147 granted no-action relief to commodity trading advisors (“**CTAs**”) that are registered with the Commission and are members of designated contract markets (“**DCMs**”) or swap execution facilities (“**SEFs**”) from the requirement to record oral communications under Commission Regulation 1.35(a). CFTC Staff Letter No. 14-147 also granted no-action relief with regard to the form and manner requirements in Commission Regulation 1.35 that apply to records of oral and written communications that lead to the execution of a transaction in a commodity interest and related cash or forward transactions. Specifically, the Divisions stated that they would not recommend an enforcement action against a market participant subject to Commission Regulation 1.35 on the grounds that such records are not linked to a particular transaction.¹

¹ On November 3, 2014, the Commission proposed an amendment to Regulation 1.35(a) (“**Proposed Amendment**”). See Notice of Proposed Rulemaking, Records of Commodity Interest and Related Cash or Forward Transactions, 79 Fed. Reg. 68140 (Nov. 14, 2014). In connection with the Proposed Amendment, on December 16, 2014, the Divisions issued CFTC Staff Letter No. 14-147. In CFTC Staff Letter No. 14-147, the Divisions extended the relief in CFTC Staff Letter No. 14-60 by continuing to provide relief for CTAs that are members of a DCM or of a SEF from the oral recordkeeping requirements under Regulation 1.35 for swaps and expanding that relief for

No-Action Relief

As the Commission continues to consider the issues in the Proposed Amendment, the Divisions believe an extension of the no-action relief in CFTC Staff Letter No. 14-147 is warranted. Accordingly, with respect to Regulation 1.35(a), the Divisions will not recommend an enforcement action against a CTA that is a member of a DCM or of a SEF for failure to maintain records of oral communications and will not recommend an enforcement action against a market participant subject to Regulation 1.35(a) on the grounds that its records of oral and written communications that lead to the execution of a transaction are not linked to or otherwise identified with a particular transaction.²

This no-action relief shall expire on the effective date of any final Commission action with respect to the Proposed Amendment.

This letter, and the positions taken herein, represent the views of the Divisions and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations previously made to the Divisions in connection with the no-action letters referenced herein. Any different, changed or omitted material facts or circumstances might render this no-action relief void. This letter does not create or confer any rights or obligations on any person or persons subject to compliance with the CEA that bind the Commission or any of its other offices or division. As with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, at their discretion.

Should you have any questions, please contact the undersigned or, for DSIO issues, please contact Katherine Driscoll, Associate Chief Counsel, at (202) 418-5544, and for DMO issues, please contact Duane Andresen, Associate Director, at (202) 418-5492.

CTAs with regard to all required oral communications, not just those that lead to the execution of a swap. With respect to the form and manner requirements of Regulation 1.35(a), the Divisions also indicated that they would not recommend an enforcement action against a market participant on the grounds that its records of oral and written communications that lead to the execution of a transaction are not linked or otherwise identified with a particular transaction.

² This letter does not affect the relief granted in CFTC Staff Letter No. 14-72, Time-Limited No-Action Relief for Members of Designated Contract Markets and Swap Execution Facilities that Are Not Registered with the Commission from the Requirement to Record Written Communications, Pursuant to Commission Regulation 1.35(a), in Connection with the Execution of a Transaction in a Commodity Interest and Related Cash or Forward Transactions (May 22, 2014), available at: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/14-72.pdf>. Under CFTC Staff Letter No. 14-72, members of DCMs and SEFs that are not registered or required to register with the Commission in any capacity do not have to retain text messages and do not have to comply with the form and manner requirements for maintaining required records. The relief provided in CFTC Staff Letter No. 14-72 remains effective until the effective date of any final Commission action, including without limitation a rulemaking, an order, or a determination not to take action with respect to this relief.

Very truly yours,

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Director
Division of Market Oversight

Cc: Regina Thoele, Compliance
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Jamila A. Piracci, OTC Derivatives
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