



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 17-54
No-Action
October 31, 2017
Division of Market Oversight

Re: No-Action Relief for Swap Execution Facilities from Certain Audit Trail Requirements in Commission Regulation 37.205 Related to Post-Execution Allocation Information

Ladies and Gentlemen:

This letter responds to a request from multiple parties¹ that the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) extend the relief provided in CFTC Letter No. 15-68. The letter provides that, subject to certain conditions, the Division will not recommend enforcement action against a swap execution facility (“SEF”) which does not capture post-execution allocation information in its audit trail or conduct audit trail reviews of post-execution allocations, as required by Commission regulations 37.205(a) and (b)(2). Absent further action from the Division, the relief provided in CFTC Letter No. 15-68 will expire on November 15, 2017.

The Division continues to assess audit trail requirements related to post-execution allocation information and will thus extend the no-action relief provided under CFTC Letter No. 15-68 until 11:59 pm (Eastern Time) November 15, 2020.

Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)² amended the Commodity Exchange Act (the “Act”)³ to establish a comprehensive new regulatory framework for swaps. Section 5h of the Act provides that to be registered and maintain registration, a SEF must comply with fifteen enumerated core principles and any requirements that the Commission may impose by rule or regulation.⁴ Among the core principle requirements for SEFs, Core Principle 2⁵ requires a SEF to have the capacity to detect, investigate and enforce its rules, and to capture information in its audit trail that may be used in establishing whether violations of those rules have occurred.

¹ The requesting parties are: Chicago Mercantile Exchange, Inc.; Clear Markets, Inc.; GTX SEF, LLC; ICE Swap Trade LLC LatAm SEF, LLC; MarketAxess SEF Corporation; Seed SEF LLC; Thomson Reuters SEF LLC; trueEX LLC; and 360 Trading Networks, Inc. Each of the requesters is currently operating as a registered swap execution facility.

² Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. 1, et seq. (2012).

⁴ Section 5h of the Act; 7 U.S.C. 7b-3.

⁵ Section 5h(f)(2) of the Act; 7 U.S.C. 7b-3(f)(2).

On June 4, 2013, the Commission published final regulations governing SEFs.⁶ Among the regulations promulgated under Core Principle 2, Commission regulation 37.205(a) requires SEFs to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. The audit trail data must be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and provide evidence of any violations of the SEF's rules. In addition, the audit trail should enable the SEF to track an order from the time of receipt through fill, allocation, or other disposition. The requirement to capture allocation information in the audit trail is also addressed in Commission regulation 37.205(b)(2), which requires a SEF's electronic transaction history database to include, among other things, "identification of each account to which fills are allocated."

Requested Relief

The requesting parties again note that SEFs are unable to capture post-execution allocation information in their audit trail as trade allocations are made away from SEFs and typically occur between the clearing firm or the customer and the derivatives clearing organization ("DCO"), or at the middleware provider. Thus, the requesting parties assert that SEFs typically do not have access to post-execution allocation information, and for the most part are unable to obtain such information from third parties, such as DCOs and swap data repositories ("SDRs"), due to confidentiality concerns.

Even if SEFs could obtain the information from DCOs, SDRs or middleware providers, or alternatively, from the counterparties to the swap, the requesting parties note that the infrastructure necessary to securely transmit the post-execution allocation information, such as an application-programming interface or secure file transfer protocol site, is currently not in place.

No-Action Relief for SEFs

The Division acknowledges the practical challenges that SEFs face in obtaining post-execution allocation information as these allocations occur away from the SEFs, after a trade has been executed. The Division is therefore extending the no-action relief granted by CFTC Letter No. 15-68. The Division will not recommend that the Commission take enforcement action against any SEF that does not capture post-execution allocation information in its audit trail or conduct associated audit trail reviews of post-execution allocations, as required by Commission regulations 37.205(a) and (b)(2), subject to the following conditions:

1. The SEF must have a rule which requires that market participants provide post-execution allocation information to the SEF for particular trades, if the SEF, at the request of the Commission or otherwise, requests such information; and

⁶ Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013).

2. In the course of a trade practice surveillance or market surveillance investigation into any trading activity involving post-execution allocations, upon such request pursuant to condition 1 above, the SEF must ascertain whether a post-execution allocation was made, and if so, the SEF must request, obtain and review the post-execution allocation information as part of its investigation.

This no-action relief shall commence on the date of issuance of this letter and expire on 11:59 pm (Eastern Time) November 15, 2020.

The no-action relief provided herein does not relieve SEFs of any other audit trail obligations under Commission regulation 37.205, including the audit trail obligations under Commission regulations 37.205(a) and (b)(2) that do not pertain to post-execution allocation information. Additionally, market participants should be aware that the no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the Act or the Commission's regulations thereunder, in particular, the applicable recordkeeping requirements under Commission regulation 1.35.

This letter, and the no-action position taken herein, represents the view of the Division only, and does not necessarily represent the positions or views of the Commission or of any other division or office of the Commission's staff. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or nmarkowitz@cftc.gov, Rachel Berdansky, Deputy Director, Division of Market Oversight, at (202) 418-5429 or rberdansky@CFTC.gov, Jonathan Lave, Associate Director, Division of Market Oversight, at (202) 418-5983 or jlave@CFTC.gov, or Swati Shah, Special Counsel, Division of Market Oversight, at (202) 418-5042 or sshah@cftc.gov.

Sincerely,

Amir Zaidi
Director
Division of Market Oversight