

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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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

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**ORDER OF EXEMPTION**

Commodity Exchange Act (“CEA”) section 5h(g) authorizes the Commodity Futures Trading Commission (“Commission”) to exempt, conditionally or unconditionally, a swap execution facility (“SEF”) from registration under CEA section 5h if the Commission finds that the 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.”

Whereas, multilateral trading facilities and organised trading facilities are trading venue categories under European Union (“EU”) law;

Whereas, a “multilateral trading facility” or “MTF” is defined in Article 4(1)(22) of the amended Markets in Financial Instruments Directive (“MiFID II”) as “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 in accordance with Title II of [MiFID II];”

Whereas, an “organised trading facility” or “OTF” is defined in Article 4(1)(23) of MiFID II as “a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in ... derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of [MiFID II];”

Whereas, legal acts of the EU, including in particular MiFID II, the Markets in Financial Instruments Regulation (“MiFIR”) and the Market Abuse Regulation (“MAR”), establish EU-wide requirements with respect to MTFs and OTFs;

Whereas, MiFIR and MAR are regulations whose requirements apply directly and uniformly to MTFs and OTFs in all EU Member States;

Whereas, MiFID II is a directive that sets forth objectives, including objectives with respect to the regulation of MTFs and OTFs, that must be adopted or “transposed” by EU Member States into their national law;

Whereas, the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (“DG FISMA”) is the department of the European Commission (“EC”) responsible for EU policy on banking and finance;

Whereas, Commission staff has engaged in extensive and ongoing communications with DG FISMA staff to understand more fully both the EU-wide requirements that apply with respect to MTFs and OTFs, as well as the mechanisms whereby implementation of such requirements will be supervised and enforced by the EC, and compliance with such requirements will be supervised and enforced by the appropriate governmental authorities in the home countries in which MTFs and OTFs are authorized;

Whereas, based on the information and representations provided by DG FISMA staff, the Commission has determined that there are appropriate and effective mechanisms to ensure

consistent application within the individual EU Member States of the EU-wide requirements that apply with respect to MTFs and OTFs, such that these EU-wide requirements can fairly serve as the basis for determining whether, in accordance with the standard set forth in CEA section 5h(g), MTFs and OTFs that are authorized within the EU are subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities within their respective home countries; and

Whereas, based on the information and representations provided by DG FISMA staff, regarding the EU-wide requirements that apply with respect to MTFs and OTFs, the Commission has determined that, when evaluated against the regulatory and supervisory regime that applies with respect to SEFs under the CEA and the Commission's regulations, MTFs and OTFs that are authorized within the EU are subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities within their respective home countries;

Therefore, the Commission has determined that the respective regulatory frameworks for MTFs and OTFs satisfy the statutory standard set forth in CEA section 5h(g) for granting an exemption from the SEF registration requirement.

Whereas, DG FISMA staff has requested an exemption from the SEF registration requirement, pursuant to CEA section 5h(g), on behalf of the MTFs and OTFs listed in Appendix A to this Order, and has represented that each such MTF and OTF will, as of January 3, 2018, be authorized and in good standing in an EU Member State that has completed its transposition of MiFID II requirements;

Whereas, pursuant to the determination made in this Order that the respective regulatory frameworks for MTFs and OTFs satisfy the standard, set forth in CEA section 5h(g), for granting

an exemption from the SEF registration requirement, DG FISMA staff may request to amend the list in Appendix A to include additional MTFs or OTFs that are authorized and in good standing in an EU Member State that has completed its transposition of MiFID II requirements; and

Whereas, DG FISMA has represented to the Commission that:

- (1) DG FISMA will instruct the EU Member State national competent authorities who authorized the trading venues included on the Commission's list of exempted MTFs and OTFs to notify the Commission, within ten business days, when an MTF or OTF included on such list becomes ineligible for inclusion because it is no longer authorized by the relevant national competent authority;
- (2) DG FISMA will provide the Commission with notice of any decision to refer an EU Member State to the Court of Justice of the European Union in application of Article 258 of the Treaty on the Functioning of the European Union, in connection with any matter related to MTFs or OTFs, or any EU requirement that is applicable to MTFs or OTFs, within ten business days of the effective date of such decision being taken;
- (3) DG FISMA will inform the Commission, as soon as DG FISMA is aware, of any material changes to the status of a Member State, as it pertains to its membership within the EU; and
- (4) DG FISMA will provide the Commission with notice, and copies in the English language of the text, of any material change to MiFID II, MiFIR, MAR, or any other EU regulatory requirement that is applicable to MTFs or OTFs.

Accordingly, the Commission hereby exercises its discretion pursuant to CEA section 5h(g) and ORDERS that each of the MTFs and OTFs listed in Appendix A to this Order, as such

Appendix may be amended by the Commission from time to time, is exempt from the requirement to register as a SEF pursuant to CEA section 5h;

Therefore, transactions involving swaps that are subject to CEA section 2(h)(8) may be executed on an MTF or OTF listed in Appendix A to this Order, as such Appendix may be amended by the Commission from time to time; and

Therefore, transactions involving swaps that are not subject to CEA section 2(h)(8) also may be executed on an MTF or OTF listed in Appendix A to this order, as such Appendix may be amended by the Commission from time to time.

The Commission reserves the right to enter into appropriate memoranda of understanding or similar arrangements with EU Member State national competent authorities that have jurisdiction over any MTF or OTF that falls within the scope of this Order.

In the event of any changes in the material facts or circumstances pursuant to which this Order is issued, or for any reason in the Commission's discretion, and after appropriate notice to DG FISMA and the relevant MTF(s) and/or OTF(s) listed in Appendix A to this Order (as such Appendix may be amended by the Commission from time to time), and opportunity for DG FISMA and such MTF(s) and/or OTF(s) to respond, the Commission may modify, condition, suspend, terminate or otherwise restrict the terms of this Order, as appropriate and permitted by law, on the Commission's own motion.

This Order does not affect any other requirements under the CEA or the Commission's regulations. The Commission particularly emphasizes that the following requirements continue to apply:

- (1) The reporting requirements set forth in Parts 43 and 45 of the Commission's regulations continue to apply to counterparties that are subject to such reporting

requirements, in connection with swap transactions executed on an MTF or OTF that is exempt from SEF registration pursuant to this Order;

- (2) This Order will not affect the application of CEA section 2(e), under which it is unlawful for any U.S. person, other than an eligible contract participant as defined in CEA section 1a(18), to enter into a swap unless the swap is entered into on, or subject to the rules of, a designated contract market.
- (3) The following clearing-related requirements will continue to apply to swap transactions executed on an MTF or OTF that is exempt from SEF registration pursuant to this Order:
  - i. When a swap transaction executed by a U.S. person on such an MTF or OTF 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 such an MTF or OTF is a “proprietary” position under Commission Regulation 1.3(y), 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,

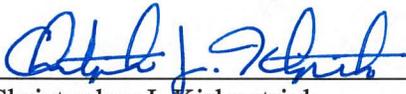
the transaction must be cleared either through a Commission-registered DCO or an Exempt DCO; provided that, consistent with (i) above, if the transaction is a “customer” position subject to CEA section 4d, it must be cleared through a Commission-registered FCM at a Commission-registered DCO, and cannot be cleared through an Exempt DCO.

If, as a result of the clearing arrangements that such an MTF or OTF has in place, some swap transactions executed on the MTF or OTF are cleared by a clearing organization that is not a Commission-registered DCO, the MTF or OTF must, as a condition of exemption from SEF registration pursuant to this Order, 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.

This Order shall become effective as of January 3, 2018.

Issued in Washington, DC, on this 8th day of December, 2017.

By the Commission.

  
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Christopher J. Kirkpatrick  
Secretary of the Commission

## Appendix A

### **List of MTFs and OTFs that are authorized and in good standing within the EU that are subject to this Exemption Order**

#### Trading Venue Name and Category (MTFs, OTFs)

Bloomberg Multilateral Trading Facility Limited (MTF)

BGC Brokers LP (OTF)

Dowgate (MTF)

EBS MTF (MTF)

GFI Brokers Limited (OTF)

ICAP Global Derivatives (MTF)

ICAP Securities (OTF)

ICAP WCLK (MTF)

iSWAP (MTF)

NEX SEF Limited (MTF)

Sunrise Brokers LLP (OTF)

Trad-X (MTF)

Tradeweb Europe Limited (MTF)

Tradition (OTF)

Tullett Prebon Europe (OTF)

Tullett Prebon Europe (MTF)