



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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Division of  
Market Oversight

Dorothy DeWitt  
Director

**Re: No-Action Relief to Designated Contract Markets to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic**

Ladies and Gentlemen:

This letter is in response to requests received by the Division of Market Oversight (“**DMO**”) of the Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) from multiple designated contract markets (the “**DCMs**”).<sup>1</sup>

The World Health Organization declared the coronavirus disease 2019 (“**COVID-19**”) outbreak a global pandemic on March 11, 2020. DMO understands from the DCMs that the COVID-19 pandemic may present challenges in meeting certain of their obligations under the Commodity Exchange Act (“**CEA**”) and Commission regulations thereunder. These DCMs may have significant operations in affected areas, or areas that may become affected, by the COVID-19 pandemic. Disruptions in transportation and limited access to facilities and support staff as a result of the COVID-19 pandemic could hamper the ability of the DCMs to meet their regulatory obligations. DMO is issuing this letter to assist the DCMs with responding to the COVID-19 pandemic by providing temporary relief from certain obligations under the CEA and Commission regulations.

Specifically, the DCMs have requested no-action relief for failure to comply with certain Commission regulations where compliance is anticipated to be particularly challenging or impossible because of displacement of personnel from their normal business sites due to implementing recommended practices, such as social distancing and closures, to curtail the spread of the COVID-19 virus.

The displacement of certain of the DCMs’ market participants from their respective trading floors and other designated premises<sup>2</sup> means that it may be impossible to record all voice

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<sup>1</sup> This letter responds to requests received from Chicago Mercantile Exchange, Inc., the Board of Trade of the City of Chicago, Inc., the New York Mercantile Exchange, Inc., and the Commodity Exchange, Inc. (collectively, “**CME Group**”), ICE Futures, U.S., Inc. (“**IFUS**”), and Minneapolis Grain Exchange, Inc. (“**MGEX**”).

<sup>2</sup> “Other designated premises” refers to exchange rules that may allow customer orders to be entered from the premises of an entity registered to conduct customer business.

communications that are required to be recorded by the DCMs or by market participants under Commission regulation 1.35. Therefore, the DCMs have indicated that such market participants will be unable to comply with certain audit trail requirements. In addition, market participants may be unable to comply with other self-regulatory requirements applicable to floor trading imposed under exchange rules, such as exchange requirements that require customer orders to be placed from certain designated premises and electronic timestamp requirements on block trade and exchange for related position orders.

The DCMs have also stated that they are unable to comply with certain obligations under Core Principle 4 in light of trading floor closure, including market monitoring and comprehensive and accurate reconstructions of daily trading activity. Market information, including audit trail information, may not be available as quickly as under normal circumstances to facilitate real-time monitoring and surveillance.

The CFTC's Division of Swap Dealer and Intermediary Oversight ("**DSIO**") has issued related relief to floor brokers ("**FBs**"), other registrants, and unregistered members of DCMs (collectively, "**Affected Market Participants**") from compliance with, among other things, the requirement to make and keep records of oral communications pursuant Commission regulation 1.35 ("**DSIO NALs 20-02, 20-03, 20-04, 20-05 and 20-06**").<sup>3</sup> As a condition to the relief provided under the DSIO NALs, if the personnel required to use recorded lines are required by the written business continuity plan of any DCM or Affected Market Participant to be absent from their normal business site, a written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication, must be created and maintained as a written communication in accordance with Commission regulation 1.35.

The DCMs state that as a result of the inability of FBs to meet their requirements under Commission regulation 1.35 and record voice communications, the DCMs' ability to produce a complete audit trail and meet other audit trail-related requirements under DCM Core Principles 4 and 10 and Commission regulations thereunder will be compromised.

## **I. DMO No-Action Position**

In order to support an orderly response to the COVID-19 pandemic, DMO believes that the no-action relief set forth herein is warranted. DMO expects that as COVID-19-related risks decrease, the DCMs will return to compliance with all regulatory obligations from which relief has been provided.

Until June 30, 2020, DMO will not recommend that the Commission take an enforcement action against any DCM for the failure to comply with audit trail and related requirements pursuant to CEA sections 5(d)(4) and (10), as well as Commission regulations thereunder, to the extent that non-compliance relates to the displacement, in connection with the COVID-19 pandemic

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<sup>3</sup> In their requests for relief, CME refers to "affected members and market participants," ICE refers to "floor brokers, introducing brokers, and the associated persons of introducing brokers and futures commission merchants," and MGEX refers to "floor brokers."

response, of Affected Market Participants from an exchange's trading floor and/or other designated premises from which customer orders may be placed. This relief is subject to the applicable conditions stated below. Generally, DMO expects the DCMs to remain particularly vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that this relief does not facilitate or allow Affected Market Participants to take advantage of market volatility to engage in improper trading.

1. The DCMs will require Affected Market Participants to continue to conduct customer business in accordance with the same exchange rules applicable to the trading conducted on the trading floor, or otherwise in compliance with relief granted pursuant to DSIO NALs 20-02, 20-03, 20-04, 20-05 and 20-06, including preparation of a written record of oral communications.
2. Customer orders entered into the trading platform by Affected Market Participants will be retained in the DCM system's normal electronic audit trail and subject to existing credit and risk filters.
3. All other exchange rules, including those relating to the handling of customer orders and trade practices, will continue to apply to Affected Market Participant trading activity during the duration of any no-action relief.

## **II. Conclusion**

DMO recognizes that DCMs may require additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, DCMs that require other relief are encouraged to contact DMO staff. DMO staff will address issues on a case-by-case basis in light of the requesting DCM's particular facts and circumstances.

This letter and the positions taken herein represent the views of DMO 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 registered entities relying on it from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter and the positions taken herein are based upon the facts and circumstances presented to DMO. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Finally, as with all staff letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, DMO, at (202) 418-5453 or [nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov); Israel Goodman, Special Counsel, DMO, at (202) 418-6715 or [igoodman@cftc.gov](mailto:igoodman@cftc.gov); or Marilee Dahlman, Special Counsel, DMO, at (202) 418-5264 or [mdahlman@cftc.gov](mailto:mdahlman@cftc.gov).

Sincerely,

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Dorothy DeWitt  
Director  
Division of Market Oversight