



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

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Division of  
Market Oversight

Dorothy DeWitt  
Director

**Re: No-Action Positions for Swap Execution Facilities to Facilitate Physical Separation of Voice Trading 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 several swap execution facilities (“**SEFs**”).<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 SEFs that the COVID-19 pandemic may present challenges in meeting certain of their obligations under the Commodity Exchange Act (“**CEA**”) and Commission regulations. These SEFs 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 efforts of SEFs to meet their regulatory obligations. In light of these developments, DMO is issuing this letter to assist SEFs with responding to the COVID-19 pandemic by providing temporary relief from certain obligations under the CEA and Commission regulations.

Specifically, SEFs 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 the SEF’s voice trading personnel from their normal business sites<sup>2</sup> due to implementing recommended practices, such as social distancing and closures, to curtail the spread of the COVID-19 pandemic.

The displacement of SEFs’ voice trading personnel from their normal business sites means that “voice communications related to indications of interest, requests for quotes, orders, and trades

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<sup>1</sup> This letter responds to requests received from the Wholesale Markets Brokers Association (“**WMBA**”) and DW SEF LLC.

<sup>2</sup> For purposes of this letter, the term ‘normal business sites’ includes alternative or disaster recovery sites that are utilized by SEFs as a component of their business continuity and disaster recovery plans .

may not be captured and recorded on the SEF's systems."<sup>3</sup> Therefore, SEFs have indicated that they may be unable to comply with certain audit trail requirements, recordkeeping requirements related to maintaining a complete audit trail, and monitoring requirements related to audit trail reconstruction.

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

In order to support an orderly response to the COVID-19 pandemic, DMO believes that the no-action relief set forth herein is warranted. SEFs relying on the relief provided by this letter are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from the remote locations, such as their homes, during the COVID-19 pandemic.<sup>4</sup> DMO further expects that as COVID-19-related risks decrease, SEFs 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 SEF for the failure to comply with the following Commission regulations: 37.205(a)-(b), 37.400(b), 37.406, 37.1000(a)(1), and 37.1001 to the extent that non-compliance arises from the inability of SEFs to record voice communications as a result of the displacement of voice trading personnel from their normal business sites in connection with the COVID-19 pandemic response. This relief is subject to the following applicable conditions:

1. The SEF continues to record voice communications at its normal business sites;
2. The SEF makes reasonable efforts to demonstrate compliance by having its voice trading personnel not located at the SEF's normal business sites create written or electronic records<sup>5</sup> of unrecorded oral communications, including date, time, identifying information of the persons participating, and subject matter of any unrecorded conversation as soon as practicable after the conversation;
3. The terms of all transactions executed on the SEFs continue to be captured and recorded on the SEF systems regardless of the location of the voice trading personnel;
4. Orders entered into the SEF's trading facility or platform by voice trading personnel, regardless of location, will be retained in the SEF system's normal electronic audit trail and subject to existing credit and risk filters;
5. Relief from Commission regulation 37.400(b) is limited to instances where the SEF cannot conduct in-person real-time monitoring of voice trading personnel and is unable to comprehensively and accurately reconstruct all trading because the SEF lacks the voice

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<sup>3</sup> See the WMBA no-action request letter at 1.

<sup>4</sup> For avoidance of doubt, this letter only applies when a SEF's voice trading personnel are unable to effectively utilize SEF operating and trading systems at the SEF's normal business sites due to the SEF's implementation of recommended practices to curtail the spread of the COVID-19 pandemic that requires that voice trading personnel not work at the SEF's normal business sites.

<sup>5</sup> Such as instant messaging or chat functionalities that are captured by the SEF's systems.

recordings of voice trading personnel. Otherwise, Commission regulation 37.400(b) continues to apply;<sup>6</sup>

6. All requirements under Commission regulations 37.1000(a)(1) and 37.1001, including requirements related to swap data reporting, will continue to apply except for the requirements related to maintaining a complete audit trail; and
7. Record retention requirements under Commission regulations 37.1000(a)(1) and 37.1001 will continue to apply to all trading activity records created during the duration of this no-action relief.

## **II. Conclusion**

DMO recognizes that SEFs may require additional or different relief in their efforts to comply with the requirements of the CEA and Commission regulations. As a result, any SEFs 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 SEF's particular fact 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 persons 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, the 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 Roger Smith, Special Counsel, DMO, at (202) 418-5344 or [rsmith@cftc.gov](mailto:rsmith@cftc.gov).

Sincerely,

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Dorothy D. DeWitt  
Director  
Division of Market Oversight

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<sup>6</sup> Where real-time monitoring is not practicable, SEFs would still be required to conduct monitoring and surveillance pursuant to regulation 37.400(b)—including through review of written records created pursuant to the above conditions for relief—albeit on a delayed rather than real-time basis.