

March 17, 2020

CFTC Provides Relief to Market Participants in Response to COVID-19

DSIO and DMO Issue No-Action Letters Granting Temporary, Conditional Relief to CFTC Registrants for Recordkeeping Requirements for Oral Communications, Time-Stamping Requirements and for the Filing of Annual Compliance Reports.

SUMMARY

On March 17, 2020, the Division of Swap Dealer and Intermediary Oversight (“DSIO”) and the Division of Market Oversight (“DMO”) of the U.S. Commodity Futures Trading Commission (“CFTC”) issued a number of no-action letters providing temporary, targeted relief to futures commission merchants, introducing brokers, swap dealers, retail foreign exchange dealers, floor brokers, and swap execution facilities and designated contract markets, in response to the COVID-19 (coronavirus) pandemic. CFTC staff noted in a release announcing the relief that the spread of coronavirus has caused compliance with certain CFTC requirements to be particularly challenging or impossible because of displacement of registrant personnel from their normal business sites due to social distancing and other measures.

The CFTC’s release quoted CFTC Chairman Heath P. Tarbert in explaining the CFTC’s rationale for providing the relief granted in each letter:

“These prudent, targeted, and temporary actions will help facilitate orderly trading and liquidity in our derivatives markets. The CFTC remains squarely focused on promoting their integrity, resilience, and vibrancy through sound regulation[.]”

RELIEF GRANTED

Subject to conditions in the March 17, 2020 no-action letters, DSIO and DMO have granted the following relief:

- ***Relief for Futures Commission Merchants and Introducing Brokers*** – DSIO has granted temporary, targeted no-action relief to futures commission merchants and introducing brokers from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications, as well as time-stamping requirements, when relevant personnel are located in remote, socially-distanced locations. DSIO has also granted no-action relief to futures commission merchants from the requirement to furnish annual compliance reports to the CFTC, for a period of 30 days from the date on which such reports would otherwise be required to be filed. The relief is expressly conditioned on firms complying with all applicable rules of any designated contract market or swap execution facility on which the futures commission merchant or introducing broker has trading privileges. See CFTC Letter No. 20-03.
- ***Relief for Swap Dealers*** – DSIO has granted temporary, targeted no-action relief to swap dealers from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications, as well as time-stamping requirements, when relevant personnel are located in remote, socially-distanced locations. DSIO has also granted no-action relief to swap dealers from the requirement to furnish annual compliance reports to the CFTC, for a period of 30 days from the date on which such reports would otherwise be required to be filed. The letter notes that registrants relying on the relief provided are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic. See CFTC Letter No. 20-06.
- ***Relief for Retail Foreign Exchange Dealers*** – DSIO has granted temporary, targeted no-action relief to retail foreign exchange dealers from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications, as well as time-stamping requirements, when relevant personnel are located in remote, socially-distanced locations. The letter notes that registrants relying on the relief provided are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic. See CFTC Letter No. 20-05.
- ***Relief for Floor Brokers*** – DSIO has granted temporary, targeted no-action relief to floor brokers from CFTC regulations requiring recording of oral communications related to voice

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trading and other telephonic communications as well as time-stamping requirements, when relevant personnel are located in remote, socially-distanced locations. DSIO has also granted relief from the requirement to be located on the premises of a designated contract market and to register as introducing brokers, which might otherwise have been triggered in connection with trading activities undertaken at remote, socially-distanced locations. The letter notes that registrants relying on the relief provided are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic. See CFTC Letter No. 20-04.

- ***Relief for Members of Designated Contract Markets and Swap Execution Facilities –*** DSIO has granted temporary, targeted no-action relief to members of designated contract markets (“DCMs”) and swap execution facilities (“SEFs”) from time-stamping requirements when located in remote, socially-distanced locations. The letter notes that the relief provided is expressly conditioned on the member’s compliance with all applicable rules of any designated contract market and/or swap execution facility on which the member has trading privileges. See CFTC Letter No. 20-02
- ***Relief for Designated Contract Markets and Swap Execution Facilities –*** On March 17, 2020, DMO provided relief to swap execution facilities (“SEFs”) from CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications with which the SEFs will be unable to comply, including certain audit trail requirements, recordkeeping requirements related to maintaining a complete audit trail, and monitoring requirements related to audit trail reconstruction. See CFTC Letter No. 20-07. In addition, DMO provided an extension of the time to submit annual compliance report filings in order to allow SEFs to continue to focus on supporting orderly and resilient markets while implementing recommended practices to curtail the spread of COVID-19. See CFTC Letter No. 20-08. DMO also granted relief to designated contract markets (“DCMs”) from audit trail and related requirements, expiring June 30, 2020. See CFTC Letter No. 20-09.

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