

CFTC and NFA Provide Relief to Swap Dealers and Other Derivatives Intermediaries in Response to COVID-19

March 19, 2020

On March 17, 2020, the Commodity Futures Trading Commission (“CFTC”) issued a package of temporary relief¹ to swap dealers and other derivatives market intermediaries through a series of no-action letters in response to coronavirus disease 2019 (“COVID-19”). The CFTC determined this temporary relief was necessary because COVID-19 has caused significant compliance challenges for market participants, as personnel have been displaced from their normal business offices due to social distancing and other measures, and the relief aims to help facilitate ordinary trading and liquidity in the derivatives markets.

RELIEF FOR SWAP DEALERS

The relief package, which was accompanied by a National Futures Association (“NFA”) [notice](#) providing parallel relief, includes [CFTC Staff Letter 20-06](#), which provides relief for swap dealers to facilitate the physical separation of personnel in response to COVID-19. In particular, this Staff Letter states that the CFTC’s Division of Swap Dealer and Intermediary Oversight (“DSIO”) will not recommend that the CFTC take enforcement action against any swap dealer for the failure to comply with certain regulations, subject to conditions, including the following:

Oral Communications and Time-Stamps. Until June 30, 2020, any requirement to (1) make and keep recordings of oral communications pursuant to CFTC regulation 23.202 or (2) record the date and time by time-stamp or other timing device pursuant to CFTC regulation 23.202, in each case if the relevant personnel are required by the swap dealer’s written business continuity plan to be absent from their normal business site. However, this relief is subject to the conditions that the swap dealer must ensure that:

- a written record of the oral communication, including date, time, identifying information of the persons participating and subject matter of the communication, is created and maintained as a written communication in accordance with CFTC

¹ See [here](#) and [here](#) for relief issued by the CFTC.

regulation 23.202 and, for purposes of any time-stamp requirement, that a record of the date and time, to the nearest minute, is otherwise created and maintained pursuant to CFTC regulation 23.202; and

- affirmative steps are taken to collect any written materials created by any affected personnel pertaining to the content of the oral communication, including, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries, and the swap dealer must maintain them in its required books and records pursuant to CFTC regulation 1.31.

Chief Compliance Officer Annual Report. Any requirement to furnish an annual report pursuant to CFTC regulation 3.3 prior to September 1, 2020. The CFTC is postponing the due date for such reports by 30 calendar days following the date on which the annual report would otherwise have been required to be furnished pursuant to CFTC regulation 3.3.

The Staff Letter notes that swap dealers relying on the relief described above 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, and that as COVID-19-related risks decrease, the DSIO expects swap dealers to return to compliance with all regulatory obligations from which relief has been provided. The Staff Letter does not provide discussion as to whether or when the staff may provide further guidance.

RELIEF FOR OTHER MARKET PARTICIPANTS

In addition to Staff Letter 20-06, CFTC staff has also issued no-action letters 20-02, 20-03, 20-04, 20-05, 20-07, 20-08 and 20-09, providing similar temporary forms of relief to futures commission merchants, introducing brokers, retail foreign exchange dealers, floor brokers, designated contract markets, swap execution facilities and members of designated contract markets and swap execution facilities.

On March 13, 2020, the NFA also [provided relief](#) from certain branch requirements for its non-swap dealer members to allow for the temporary relocation of associated persons to locations that are not listed as a branch office and that do not have a branch manager. This relief is subject to certain conditions, including that such NFA members must implement alternative supervisory methods to adequately supervise the associated persons' activities and meet their recordkeeping requirements.

INITIAL MARGIN RELIEF FOR SMALLER FINANCIAL ENTITIES

On March 18, the CFTC also [adopted](#) its previously proposed one-year extension of the initial margin compliance deadline for swap dealers transacting with financial end users with the smallest uncleared swaps portfolios (with average daily aggregate notional amounts less than \$50 billion). Though this rule was proposed prior to the COVID-19 pandemic to align the CFTC initial margin compliance deadline with a similar extension adopted by the U.S. prudential banking regulators, the CFTC noted that the timing of this action is also aimed at addressing the spread of the coronavirus and its challenging effect on financial markets.

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Please do not hesitate to contact us with any questions.



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