

MEMO# 32914

November 17, 2020

CFTC Staff Extends No-Action Relief for SEFs from Certain Block Trade Requirements

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November 17, 2020 TO: ICI Members

Derivatives Markets Advisory Committee SUBJECTS: Derivatives RE: CFTC Staff Extends No-Action Relief for SEFs from Certain Block Trade Requirements

The Division of Market Oversight (DMO) of the Commodity Futures Trading Commission (CFTC or “Commission”) recently issued Staff Letter No. 20-35,[\[1\]](#) which temporarily extends the no-action relief provided in Staff Letter No. 17-60.[\[2\]](#) The relief is summarized below.

Letter No. 17-60 provided conditional no-action relief to swap execution facilities (SEFs) that have rules and/or procedures that provide for the use of the SEF’s non-order book trading systems or platforms to facilitate the execution of block trades for intended-to-be-cleared swaps.[\[3\]](#) In September, the CFTC adopted final amendments to its swap data reporting rules, including its regulations under Part 43 regarding real-time public reporting and dissemination of swap data.[\[4\]](#) As part of that rulemaking, the CFTC codified the relief provided in Letter No. 17-60, by amending the definition of “block trade” to provide that block trades for intended-to-be-cleared swaps may be executed on a SEF’s non-order book trading systems or platforms.[\[5\]](#)

The amended definition of “block trade” will apply upon the implementation date for the Part 43 amendments which, for most of the amendments including the amended definition of “block trade,” is 18 months after publication of the final rule in the Federal Register (which has not yet occurred).[\[6\]](#) The relief provided in Letter No. 17-60, however, expires on November 15, 2020. Accordingly, Letter No. 20-35 temporarily extends the relief provided in Letter No. 17-60 until the implementation date of the Commission’s Part 43 real-time public reporting rules. DMO’s no-action relief is subject to the same conditions that were included in Letter No. 17-60. The letter similarly includes the staff’s confirmation “that if a SEF permitted the execution of an intended to be cleared swap, whether on or subject to the rules of a SEF, without a pre-execution credit check, it would be in violation of Commission regulation 37.702(b).”[\[7\]](#)

endnotes

[1] CFTC Staff Letter No. 20-35 (Nov. 13, 2020), *available at* <https://www.cftc.gov/csl/20-35/download>.

[2] CFTC Staff Letter No. 17-60 (Nov. 14, 2017), *available at* <https://www.cftc.gov/sites/default/files/csl/pdfs/17/17-60.pdf>.

[3] Swaps that are intended to be cleared are swaps (i) of a type accepted for clearing by a derivatives clearing organization, and (ii) intended to be submitted for clearing contemporaneously with execution.

[4] For a summary of the amended rules, *please see* ICI Memorandum No. 32813 (Oct. 7, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32813.

[5] As amended, “block trade” is defined as a publicly reportable swap transaction that: (i) involves a swap listed on a SEF or Designated Contract Market (DCM); (ii) is executed on a SEF’s trading system or platform that is not an order book as defined in Regulation 37.3(a)(3), or occurs away from the SEF’s or DCM’s trading system or platform and is executed pursuant to the SEF’s or DCM’s rules and procedures; (iii) has a notional or principal amount at or above the appropriate minimum block size (AMBS) applicable to such swap; and (4) is reported subject to the rules and procedures of the SEF or DCM and the rules described in Part 43, including the appropriate time delay requirements set forth in Regulation 43.5.

[6] The Commission provided an additional 12 months (for a total of 30 months) for compliance with Regulations 43.4(h) and 43.6 and the new post-initial block and cap sizes calculated, respectively, according to the 67-percent and 75-percent notional amount calculations under the amended regulations.

[7] DMO also notes that “while block trades may not be facilitated through a SEF’s order book functionality, pursuant to this no-action relief, SEFs are permitted to use request-for-quote [RFQ] functionalities to facilitate the execution of a block trade. The Division notes also that a block trade executed through a SEF’s RFQ functionality pursuant to this no-action relief would not be subject to the minimum participant requirement set forth in Commission regulation 37.9(a)(3). Finally, the Division notes that trades above the minimum block size may occur on the SEF’s order book; however, they will not receive treatment as block trades and will not be afforded a reporting time delay.”