

MEMO# 35494

October 24, 2023

CFTC Staff Extends No-Action Relief Regarding Compliance with Block Threshold and Cap Size Amendments

[35494]

October 20, 2023

TO: Derivatives Markets Advisory Committee RE: CFTC Staff Extends No-Action Relief Regarding Compliance with Block Threshold and Cap Size Amendments

On October 18, 2023, the Commodity Future Trading Commission's ("Commission") Division of Market Oversight ("Division") issued no-action relief to Chicago Mercantile Exchange Inc., ICE Trade Vault, LLC, DTCC Data Repository (US) LLC, and KOR Reporting Inc. (collectively, the SDRs), that extends relief from compliance with the Commission's amended block and cap amendments, which came into effect in 2021, through July 1, 2024.[\[1\]](#) The no-action relief is summarized below.

The Commission's 2020 amendments to its swap data reporting rules included amendments to Commission regulation 43.4(h), regarding post-initial cap sizes, and amendments to Commission regulation 43.6, regarding block trades and large notional off-facility swaps. These amendments generally increased swap block thresholds from 50% notional amount to a post-initial 67% notional amount and increased cap sizes from a 67% notional amount to a post-initial 75% notional amount.[\[2\]](#) Compliance with these amendments was required by May 25, 2023.

On January 31, 2022, the Commission's Division of Data published CFTC Letter No. 22-03, which, among other things, stated that the Division of Data would not recommend that the Commission commence an enforcement action against an entity for failure to comply with the block and cap amendments before December 4, 2023, provided that the entity complied with the Commission's block trade threshold and cap size requirements that were in effect on January 1, 2021.[\[3\]](#) These were generally the 50% notional amount for block thresholds and 67% notional amount for cap sizes. On April 19, 2023, the Commission staff published updated post-initial block and cap sizes, reflecting the 67% notional amount for block thresholds and the 75% notional amount for cap sizes.[\[4\]](#)

The SDRs requested a further extension of Letter No. 22-03 because the lack of alignment between the December expiration of Letter 22-03 and the January 29, 2024 date by which the Commission expects compliance with the new unique product identifier requirements

for certain asset classes is "unworkable from an operational and technological standpoint and would create significant inefficiencies for SDRs." The SDRs therefore requested an extension of the no-action relief until at least January 29, 2024.^[5]

The Division granted the requested extension, stating that it will not recommend that the Commission commence an enforcement action against an entity for failure to comply with the block and cap amendments before July 1, 2024, provided that the entity complies with the Commission's block trade and cap size requirements that were in effect on January 1, 2021. The Division stated that "it does not currently intend to extend the no-action position provided in this letter beyond July 1, 2024."

In a lengthy joint statement, Commissioners Mersinger and Pham supported the extension of the no-action relief but stated that they "are deeply disturbed by the statement in the extension letter that staff 'does not currently intend to extend the no-action position provided . . . beyond July 1, 2024.'" ^[6] They asserted that the Commission never applied a data-driven analysis to reliable data to determine appropriate swap block thresholds and has an obligation to do so. They summarized the administrative history of this issue, pointing out that prior Commissioners who approved the amendments to the block thresholds did so with the expectation that the Commission would analyze new swap data to determine whether the 67% threshold set in 2013 remained appropriate. The Commissioners therefore urged a further extension until December 4, 2024. They explained that this would provide a full year of swap data under the amended swap data reporting rules as of December 2023, followed by six months to evaluate the data, and then an additional six months to arrange compliance ahead of a go-live date of December 4, 2024.

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Notes

^[1] CFTC No-Action Letter No. 23-15 (Oct. 18, 2023), available at <https://www.cftc.gov/csl/23-15/download>.

^[2] For a summary of the CFTC's final swap data reporting rules, please see ICI Memorandum No. 32813 (Oct. 7, 2020), available at <https://www.ici.org/memo32813>.

^[3] CFTC No-Action Letter No. 22-03 (Jan. 31, 2022), available at <https://www.cftc.gov/csl/22-03/download>.

^[4] See Revised Post-Initial Appropriate Minimum Block Sizes and Post-Initial Cap Sizes for Publicly Reportable Swap Transactions December 4, 2023 Effective Date (as required by Rule 43.6(g)(6)) (Apr. 19, 2023), available at https://www.cftc.gov/media/8416/Part43_45BlockThresholdsCapSizes0423/download.

^[5] The Division noted that the International Swaps and Derivatives Association, Inc. (ISDA) and the Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG) each separately requested an extension of the no-action relief until December 4, 2024, but declined to grant relief through that date.

^[6] See Joint Statement of Commissioners Summer K. Mersinger and Caroline D. Pham

Regarding Swap Block Thresholds (Oct. 18, 2023), available at
<https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerphamstatement101823>.

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