

COVID-19 NEWS OF INTEREST

# CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

April 14, 2020

## AUTHORS

**Paul J. Pantano, Jr. | Athena Eastwood | Rita M. Molesworth | J. Christopher Giancarlo  
Deborah A. Tuchman | Lisa Eskenazi | Neal E. Kumar | James E. Lippert  
Michael Hartz**

The Staff of the Commodity Futures Trading Commission have issued a series of no-action letters providing relief relating to the ongoing COVID-19 pandemic. Other than limited relief for unregistered members of a designated contract market or swap execution facility, the no-action relief is applicable only to entities that are registered with the Commission. Nevertheless, all market participants (including end-users) should stay abreast of further updates from Commission Staff and the exchanges on which they trade. Moreover, market participants should not view the relief as a signal that the Commission is relaxing its enforcement mandate. In fact, regulators are likely to scrutinize transactions that take place in illiquid markets or during acute market conditions. Market participants should, therefore, take particular care to ensure that their market activity does not appear to exacerbate or exploit these conditions.

Below is a summary of the relief that has been issued to date, organized by type of entity:<sup>1</sup>

- Swap Dealers (“SDs”): Page 2

<sup>1</sup> The CFTC also issued no-action relief to a particular insured depository institution with respect to its inclusion of certain crude oil, natural gas and natural gas liquids swaps in its calculation of major swap participant thresholds subject to conditions, including the periodic submission to DSIO of its aggregate uncollateralized outward exposure during the term of the relief. See CFTC Letter No. 20-10, *No-Action Position for Excluding Certain Commodity Swaps from Major Swap Participant Registration Threshold Calculation of an Insured Depository Institution* (March 20, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

- Futures Commission Merchants (“FCMs”) and Introducing Brokers (“IBs”): Page 3
- Swap Execution Facilities (“SEFs”): Page 4
- Designated Contract Markets (“DCMs”): Page 5
- Members of DCMs or SEFs that are not registered with the CFTC: Page 6
- Commodity Pool Operators (“CPOs”): Page 7
- Foreign Brokers exempt from IB registration (“30.5 Foreign Brokers”): Page 7
- Floor Brokers (“FBs”): Page 8
- Retail Foreign Exchange Dealers (“RFEDs”): Page 9

In addition to the Commission Staff no-action relief, the Commission extended the comment letter deadline for a number of recent proposed rules. A summary of the new comment letter deadlines is provided in Appendix I to this client alert.

### **Relief for Swap Dealers**

The Division of Swap Dealer and Intermediary Oversight (“DSIO”) issued time-limited relief to SDs from certain requirements relating to the recording of oral communications and creation of time-stamps. This relief also extends the deadline for submitting the Chief Compliance Officer (“CCO”) annual report.<sup>2</sup> CFTC Letter No. 20-06 provides the following relief:

**Recording of Oral Communications.** SDs are relieved from the requirement to make and keep records of oral communications pursuant to Commission regulation 23.202 if the personnel required to use recorded lines must be absent from their normal business site in accordance with the registrant’s written business continuity plan. This relief extends until June 30, 2020. Despite this relief, SDs still must:

1. Create and maintain a written record of each oral communication that it otherwise would have been required to record (each an “Unrecorded Communication”), including the date, time, identifying information of the participants and subject matter of the communication. Such written records must be

---

<sup>2</sup> CFTC Letter No. 20-06, *No-Action Positions for Swap Dealers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

maintained in accordance with the provisions of Commission regulation 23.202 applicable to written communications; and

2. Take affirmative steps to collect any written materials pertaining to the content of the Unrecorded Communication. This includes, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries. Such records must be maintained in the SD's required books and records pursuant to Commission regulation 1.31.

**Time-Stamps.** SDs are relieved from the requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 23.202 to the extent that the personnel responsible for making the record are required to be absent from their normal business site in accordance with the registrant's written business continuity plan. However, SDs relying upon this relief still must record the date and time, to the nearest minute, and maintain the record in accordance with Commission regulation 23.202. This relief extends until June 30, 2020.

**CCO Annual Report.** The Commission Staff extended by 30 days the date on which an SD otherwise would be required to furnish its CCO annual report to the Commission pursuant to Commission regulation 3.3 ("Original Annual Report Filing Deadline"), provided that the SD's Original Annual Report Filing Deadline is prior to September 1, 2020.

### **Relief for Futures Commission Merchants and Introducing Brokers**

DSIO issued time-limited relief to FCMs and IBs from certain requirements relating to the recording of oral communications and the creation of time-stamps.<sup>3</sup> The relief also extends the deadline for submitting the CCO annual report. CFTC Letter No. 20-03 provides the following relief:

**Recording of Oral Communications.** FCMs and IBs are relieved from the requirement to make and keep records of oral communications pursuant to Commission regulation 1.35 if the personnel required to use recorded lines must be absent from their normal business site, in accordance with the registrant's written business continuity plan. This relief extends until June 30, 2020. Despite this relief, FCMs and IBs still must:

1. Create and maintain a written record of each Unrecorded Communication, including the date, time, identifying information of participants and subject matter of the communication. Such written records must be maintained in accordance with the provisions of Commission regulation 1.35 applicable to written communications; and

---

<sup>3</sup> CFTC Letter No. 20-03, *No-Action Positions for Futures Commission Merchants and Introducing Brokers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

2. Take affirmative steps to collect any written materials created by any affected personnel pertaining to the content of the Unrecorded Communication. This includes, without limitation, handwritten notes, transcripts and/or summaries. Such records must be maintained in the registrant's required books and records pursuant to Commission regulation 1.31.

**Time-Stamps.** FCMs and IBs are relieved from the requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 1.35 or 155.3 to the extent that the personnel responsible for making the record are required to be absent from their normal business site in accordance with the registrant's written business continuity plan. However, FCMs relying upon this relief still must record the date and time, to the nearest minute, and maintain the record in accordance with Commission regulation 1.35 or 155.3, respectively. This relief extends until June 30, 2020.

**CCO Annual Report.** The Commission Staff provided each FCM with a 30-day extension from its Original Annual Report Filing Deadline, provided that the FCM's Original Annual Report Filing Deadline is prior to September 1, 2020.

### Relief for Swap Execution Facilities

The Division of Market Oversight ("DMO") issued two time-limited no-action relief letters to SEFs from certain requirements relating to voice recording, monitoring of swap trading, and the submission of CCO annual compliance reports ("ACRs") and fourth quarter financial reports.

**Voice Recording.** CFTC Letter No. 20-07 provides relief until June 30, 2020 from Commission regulations 37.205(a)-(b) (requiring SEFs to capture and retain audit trail data); 37.400(b) (requiring monitoring of swap trading); 37.406 (requiring trade reconstruction); 37.1000(a)(1) (requiring maintenance of business records); and 37.1001 (requiring maintenance of business records), to the extent that non-compliance with those regulations would occur due to displacement of "voice trading personnel" from their normal business sites in connection with the COVID-19 pandemic response.<sup>4</sup> This relief is subject to the following conditions:

1. The SEF must continue to record voice communications at its normal business sites;
2. The SEF must make reasonable efforts to demonstrate compliance by having those voice trading personnel who are not located at the SEF's normal business sites create written or electronic records of Unrecorded Communications, including the date, time, identifying information of the persons participating, and subject matter of any Unrecorded Communication as soon as practicable after the conversation;

---

<sup>4</sup> CFTC Letter No. 20-07, *No-Action Positions for Swap Execution Facilities to Facilitate Physical Separation of Voice Trading Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

3. The terms of all transactions executed on the SEF must continue to be captured and recorded on the SEF's systems regardless of the location of the voice trading personnel;
4. Orders entered on the SEF's trading facility or platform by voice trading personnel, regardless of location, must be retained in the SEF system's normal electronic audit trail and be 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 recordings of voice trading personnel. However, SEFs remain required to conduct monitoring and surveillance pursuant to regulation 37.400(b)—including through review of written records created pursuant to condition (2) above—albeit on a delayed rather than real-time basis;
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 the no-action relief.

**Submission of ACRs and Fourth Quarter Financial Reports.** CFTC Letter No. 20-08 extends the filing deadlines for ACRs and fourth quarter financial reports required pursuant to Commission regulations 37.1501(f)(2) and 37.1306(d); provided that the SEF's original deadline is prior to September 1, 2020.<sup>5</sup> SEFs now have until 120 days after the end of their fiscal year to file such reports.

### **Relief for Designated Contract Markets**

DMO issued time-limited relief to DCMs from certain requirements relating to audit trails.<sup>6</sup> CFTC Letter No. 20-09 provides the following relief, which expires on June 30, 2020:

DCMs are relieved from complying with audit trail and related requirements pursuant to Commodity Exchange Act ("CEA") sections 5(d)(4) and (10) and the Commission's regulations thereunder (requiring real-time monitoring of trading,

---

<sup>5</sup> CFTC Letter No. 20-08, *No-Action Positions for Swap Execution Facilities to Extend Submission Timeframes for Annual Compliance Reports and Fourth Quarter Financial Reports in Response to the COVID-19 Pandemic* (March 17, 2020).

<sup>6</sup> CFTC Letter No. 20-09, *No-Action Relief to Designated Contract Markets to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

comprehensive trade reconstruction and recording of identifying trade information). This relief applies only to the extent that non-compliance relates to the displacement—in connection with COVID-19—of floor brokers, other registrants and unregistered members of DCMs (collectively, “Affected Market Participants”) from an exchange’s trading floor and/or other designated premises from which customer orders may be placed. The Commission still expects DCMs to remain vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that Affected Market Participants cannot take advantage of market volatility to engage in improper trading. To that end, the relief is subject to the following conditions:

1. DCMs must require Affected Market Participants to continue to conduct customer business in accordance with the same exchange rules applicable to the trading conducted on the trading floor, or otherwise in compliance with relief granted pursuant to DSIO’s No-Action Letters 20-02, 20-03, 20-04, 20-05 and 20-06, including preparation of a written record of oral communication;
2. Customer orders entered into the trading platform by Affected Market Participants must be retained in the DCM system’s normal electronic audit trail and subject to existing credit and risk filters; and
3. All other exchange rules, including those relating to the handling of customer orders and trade practices, must continue to apply to Affected Market Participant trading activity during the duration of any no-action relief.

### **Relief for Unregistered Members of a DCM or SEF**

DSIO issued certain time-limited relief to persons that are members of DCMs or SEFs and that are not registered with the Commission in any capacity (“Unregistered Members”).<sup>7</sup> CFTC Letter No. 20-02 provides the following relief, which expires on June 30, 2020:

In addition to the relief provided to FCMs and IBs in CFTC Letter No. 20-03, Unregistered Members received partial relief from the requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 1.35 if the personnel responsible for making such records are required to be absent from their normal business site. However, Unregistered Members relying upon the relief still must record the date and time, to the nearest minute, and maintain the record in accordance with Commission regulation 1.35. This relief is expressly conditioned on the Unregistered Member’s compliance with all applicable rules of any DCM and/or SEF on which the Member has trading privileges.

---

<sup>7</sup> CFTC Letter No. 20-02, *No-Action Positions for Certain Members of Designated Contract Markets and Swap Execution Facilities to Facilitate Physical Separation of Personnel in Response to COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

### **Relief for Commodity Pool Operators**

DSIO issued time-limited relief to CPOs from certain requirements relating to the filing of Form CPO-PQR, Pool Annual Reports, and Pool Periodic Account Statements.<sup>8</sup> Willkie previously published a detailed description of this relief, [available at this link](#). CFTC Letter No. 20-11 provides the following relief:

**Form CPO-PQR under Commission regulation 4.27.** Each Small and Mid-Sized CPO has until May 15, 2020 to file its annual report on Form CPO-PQR. Each Large CPO has until July 15, 2020 to file its first quarter report on Form CPO-PQR.

**Pool Annual Reports under Commission Regulations 4.22(c) and 4.7(b)(3).** The CPO of any full Part 4 or 4.7 pool has an additional 45 days to distribute to investors (and file with the National Futures Association) the pool's annual financial statements that otherwise would be due on or before April 30, 2020. This relief does not foreclose a CPO from requesting an additional extension of time (up to 180 days from the pool's year-end), consistent with Commission regulation 4.22(f).

**Pool Periodic Account Statements under Commission Regulations 4.22(b) and 4.7(b)(2).** For reporting periods ending on or before April 30, 2020, the CPO of any full Part 4 or 4.7 pool has an additional 15 days to distribute to investors the pool's periodic account (income) statements.

### **Relief for Foreign Brokers Exempt from Introducing Broker Registration with the CFTC Under Regulation 30.5**

DSIO issued time-limited relief that allows foreign brokers affiliated with an FCM to continue to accept orders from U.S. persons for execution on a DCM, and continue to rely upon the exemption from registration as an IB under Commission regulation 30.5 ("30.5 Foreign Broker"), subject to certain conditions.<sup>9</sup> This relief expires on September 30, 2020. Unlike other no-action relief related to the COVID-19 crisis, as noted below, a 30.5 Foreign Broker must file notice with the Commission both when it begins and when it ceases to rely upon the no-action relief. The relief is subject to the following conditions:

1. The 30.5 Foreign Broker is a person controlling, controlled by, or under common control with an FCM that is registered with the Commission;

---

<sup>8</sup> CFTC Letter No. 20-11, *No-Action Positions for Commodity Pool Operators in Response to the COVID-19 Pandemic* (March 20, 2020).

<sup>9</sup> CFTC Letter No. 20-12, *No-Action Position for Foreign Brokers Exempt Pursuant to Commission Regulation 30.5 to Handle U.S. Futures Market Orders in Response to the COVID-19 Pandemic* (March 31, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

2. The 30.5 Foreign Broker is appropriately licensed or registered in a jurisdiction for which the Commission has issued an exemptive order under Commission regulation 30.10;
3. The 30.5 Foreign Broker introduces on a fully disclosed basis to FCMs registered with the Commission only institutional customers, as defined by Commission regulation 1.3, for the purpose of trading on a DCM;
4. The 30.5 Foreign Broker accepts, but does not solicit, orders from, and does not handle the customer funds of, any person located in the U.S. for trading on a DCM;
5. Subject to the relief provided by DSIO under CFTC Staff Letter No. 20-03 (which provides relief for FCMs and IBs, as discussed above), the 30.5 Foreign Broker creates and maintains the records required by Commission regulation 1.35 with respect to its brokerage activities with U.S. persons, and complies with Commission regulation 1.31 with respect thereto, including providing prompt access thereto to representatives of the Commission and the U.S. Department of Justice upon request;
6. Each FCM with which the 30.5 Foreign Broker is affiliated files with the National Futures Association an acknowledgement that it will be jointly and severally liable for any violations of the CEA or the Commission's regulations by the 30.5 Foreign Broker in connection with its introducing activities in which it engages in reliance on this letter; and
7. The 30.5 Foreign Broker provides written notice to DSIO both when it begins and when it ceases to rely on this relief.

### **Relief for Floor Brokers**

DSIO issued time-limited relief to FBs from certain requirements relating to the recording of oral communications, creation of time-stamps, physical location, and introducing broker registration.<sup>10</sup> CFTC Letter No. 20-04 provides the following relief, which expires on June 30, 2020:

**Recording of Oral Communications.** FBs are relieved from the requirement to make and keep records of oral communications pursuant to Commission regulation 1.35 if the personnel required to use recorded lines must be absent from their normal business site in accordance with the registrant's written business continuity plan. Despite this relief, FBs still must:

---

<sup>10</sup> CFTC Letter No. 20-04, *No-Action Positions for Floor Brokers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

1. Create and maintain a written record of each Unrecorded Communication, including the date, time, identifying information of the participants and subject matter of the communication. Such written records must be maintained in accordance with the provisions of Commission regulation 1.35 applicable to written communications; and
2. Take affirmative steps to collect any written materials pertaining to the content of the Unrecorded Communication. This includes, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries. Such records must be maintained in the registrant's required books and records pursuant to Commission regulation 1.31.

**Time-Stamps.** FBs are relieved from the requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 1.35 to the extent that the personnel responsible for making the record are required to be absent from their normal business site in accordance with the registrant's written business continuity plan. However, FBs relying upon this relief must still record the date and time, to the nearest minute, and maintain the record in accordance with Commission regulation 1.35.

**Physical Location and Introducing Broker Registration.** FBs are relieved from the requirement to be physically located in any pit, ring, post or other place provided by a contract market pursuant to the "floor broker" definition in Commission regulation 1.3—but only if the FB is required to be absent from such place by the written business continuity plan of any designated contract market. Furthermore, FBs are relieved from the requirement to register as an IB solely due to the failure to be physically located in any pit, ring, post or other place provided by a contract market participant pursuant to the "floor broker" definition in Commission regulation 1.3—but only if the FB is required to be absent from such place by the written business continuity plan of any designated contract market.

### **Relief for Retail Foreign Exchange Dealers**

DSIO issued time-limited relief to RFEDs from certain requirements relating to the recording of oral communications and creation of time-stamps.<sup>11</sup> CFTC Letter No. 20-05 provides the following relief, which extends until June 30, 2020:

**Recording of Oral Communications.** RFEDs are relieved from the requirement to make and keep records of oral communications pursuant to Commission regulation 1.35 if the personnel required to use recorded lines must be absent from their normal business site in accordance with the registrant's written business continuity plan. Despite this relief, RFEDs still must:

---

<sup>11</sup> CFTC Letter No. 20-05, *No-Action Positions for Retail Foreign Exchange Dealers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic* (March 17, 2020).

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

1. Create and maintain a written record of each Unrecorded Communication, including the date, time, identifying information of the participants and subject matter of the communication. Such written records must be maintained in accordance with the provisions of Commission regulation 1.35 applicable to written communications; and
2. Take affirmative steps to collect any written materials pertaining to the content of the Unrecorded Communication. This includes, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries. Such records must be maintained in the registrant's required books and records pursuant to Commission regulation 1.31.

**Time-Stamps.** RFEDs are relieved from the requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulations 1.35 and 5.18 if the personnel responsible for making the record are required to be absent from their normal business site in accordance with the registrant's written business continuity plan. However, RFEDs relying upon this relief still must record the date and time, to the nearest minute, and maintain the record in accordance with Commission regulations 1.35 and 5.18.

### Appendix I

#### Extension of CFTC Comment Letter Deadlines

Proposed Rule	Original Comment Deadline	Revised Comment Deadline
Position Limits for Derivatives	04/29/2020	05/15/2020
Swap Execution Facility Requirements and Real-Time Reporting Requirements	04/20/2020	05/22/2020
Certain Swap Data Repository and Data Reporting Requirements	05/20/2020	05/22/2020
Amendments to the Real-Time Public Reporting Requirements	05/20/2020	05/22/2020
Amendments to the Swap Data Recordkeeping and Reporting Requirements	05/20/2020	05/22/2020

---

## CFTC Staff Provide COVID-19 Relief to Registrants and Market Participants

Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

---

<b>Paul J. Pantano, Jr.</b> 202 303 1211 ppantano@willkie.com	<b>Athena Eastwood</b> 202 303 1212 aeastwood@willkie.com	<b>Rita M. Molesworth</b> 212 728 8727 rmolesworth@willkie.com	<b>J. Christopher Giancarlo</b> 212 728 3816 jcgiancarlo@willkie.com
---	---	--	--

<b>Deborah A. Tuchman</b> 212 728 8491 dtuchman@willkie.com	<b>Lisa Eskenazi</b> 212 728 3349 leskenazi@willkie.com	<b>Neal E. Kumar</b> 202 303 1143 nkumar@willkie.com	<b>James E. Lippert</b> 212 728 8945 jlippert@willkie.com
---	---	--	---

**Michael Hartz**  
202 303 1161  
mhartz@willkie.com

Copyright © 2020 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Palo Alto, San Francisco, Chicago, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).