



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Market Oversight

CFTC Letter No. 17-61  
No-Action  
November 20, 2017  
Division of Market Oversight

**Re: No-Action Relief for Swap Execution Facilities from Compliance with the Timing Requirements of Commission Regulation 37.1501(f)(2) Relating to Chief Compliance Officer Annual Compliance Reports and Commission Regulation 37.1306(d) Relating to Fourth Quarter Financial Reports**

Ladies and Gentlemen:

This letter responds to a request from multiple registered swap execution facilities (“SEFs”),<sup>1</sup> dated October 16, 2017, to the Division of Market Oversight (“Division”) of the U.S. Commodity Futures Trading Commission (“Commission”) for relief from the timing requirements for a chief compliance officer (“CCO”) of a SEF to submit an annual compliance report (“ACR”) to the Commission, as set forth in Commission regulation 37.1501(f)(2).<sup>2</sup> This letter also responds to the SEFs’ request for relief from the timing requirement for a SEF to file its fourth fiscal quarter financial report with the Commission, as set forth in Commission regulation 37.1306(d).<sup>3</sup>

### **Background**

Section 5h(f)(15)(D) of the Commodity Exchange Act (“Act”) requires the CCO of a SEF to annually prepare and sign an ACR.<sup>4</sup> The SEF CCO must submit the ACR concurrently with the filing of the SEF’s fourth fiscal quarter financial report.<sup>5</sup> Pursuant to its statutory authority, the Commission promulgated Commission regulation 37.1501(e)-(f) which, among other things, requires a SEF CCO to prepare and sign an ACR.<sup>6</sup> The ACR must cover the time

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<sup>1</sup> The requesting parties are: 360 Trading Networks, Inc.; Cboe SEF, LLC (f/d/b/a Bats Hotspot SEF, LLC); Chicago Mercantile Exchange, Inc.; GTX SEF, LLC; LatAm SEF, LLC; LedgerX LLC; Tradition SEF, Inc.; and trueEX LLC.

<sup>2</sup> 17 C.F.R. § 37.1501(f)(2).

<sup>3</sup> 17 C.F.R. § 37.1306(d).

<sup>4</sup> 7 U.S.C. 7b-3(f)(15)(D)(i).

<sup>5</sup> 7 U.S.C. 7b-3(f)(15)(D)(ii)(I).

<sup>6</sup> 17 C.F.R. § 37.1501(e)-(f).

period from the end of the period covered by a previously filed ACR and, at a minimum, the ACR must contain the information enumerated in Commission regulation 37.1501(e)(1)-(6).<sup>7</sup> Commission regulation 37.1501(f)(2) requires a SEF's CCO to file the ACR with the Commission not later than 60 calendar days after the end of the SEF's fiscal year<sup>8</sup> and file the ACR concurrently with the SEF's fourth fiscal quarter financial report.<sup>9</sup> Pursuant to Commission regulation 37.1306(d), a SEF must file the fourth fiscal quarter financial report with the Commission not later than 60 calendar days after the end of the SEF's fiscal year.<sup>10</sup>

### **Requested No-Action Relief**

For the reasons summarized below, you request no-action relief permitting a SEF CCO to: (1) file the ACR with the Commission not later than 90 calendar days after the fiscal year-end, rather than the 60 calendar days currently required, and (2) concurrently submit the fourth fiscal quarter financial report to the Commission not later than 90 calendar days after the fiscal year-end, rather than the 60 calendar days currently required.

In support of your request for an additional 30 days to file both the ACR and the fiscal fourth quarter financial report with the Commission, you raise, among other things, time and resource constraints in gathering information from numerous sources and completing multiple year-end reports. Specifically, you state that “[a]t year end, finance departments are required to prepare annual and quarterly reports for all entities within a particular group. This requires information gathering from numerous sources, preparation of a consolidated audit, complying

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<sup>7</sup> Commission regulation 37.1501(e) provides that the ACR, must at a minimum contain:

- (1) A description of the SEF's written policies and procedures, including the code of ethics and conflict of interest policies;
- (2) A review of each applicable Commission regulation and each subsection and core principle of section 5h of the Act. The review must: identify the SEF's policies and procedures that are designed to ensure compliance with the Act and the Commission regulations; provide a self-assessment as to the effectiveness of these policies and procedures; and discuss areas for improvement and recommend potential or prospective changes or improvements to the SEF's compliance program and resources;
- (3) A list of any material changes to compliance policies and procedures since the last ACR;
- (4) A description of the financial, managerial, and operational resources set aside for compliance with respect to the Act and Commission regulations, including a description of the SEF's self-regulatory program's staffing and structure, a catalogue of investigations and disciplinary actions taken since the last ACR, and a review of the performance of disciplinary committees and panels;
- (5) A description of any material compliance matters, including noncompliance issues identified through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint, and an explanation of how they were resolved; and
- (6) A CCO certification that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the ACR is accurate and complete.

*See* 17 C.F.R. § 37.1501(e)(1)-(6).

<sup>8</sup> 17 C.F.R. § 37.1501(f)(2).

<sup>9</sup> *Id.*

<sup>10</sup> 17 C.F.R. § 37.1306(d).

with various statutory reporting requirements, as well as budgeting and forecasting for the pending year.”

In addition to the staffing resources needed to prepare the fourth quarter financial report, you state that preparation of the ACR:

requires a more extensive year-end information gathering process than a financial report. Registrants must conduct an extensive review and documentation process involving personnel across the registrant’s business, including entity-wide functions. This process includes gathering and analyzing numerous policies and procedures and reviewing any required changes thereto, analyzing the results of testing and assessments, identifying and investigating non-compliance issues during the prior year, [and] determining any modification or improvements to the plan and meeting with senior supervisory and management personnel.

You further state that:

[a]n extension is needed not only to address the difficulties in preparing these reports but is needed each year in order to conduct the substantive reviews required by the Commission in order to create an in-depth, substantial discussion on the state of the compliance program and financial status with the SEF’s senior management and board of directors.

Additionally, you state that the ACR is based upon annual testing plans which “are often not concluded until the end of the fiscal year, and the resulting reports may not be issued until sometime during the first quarter of the following fiscal year.”

In response to this request the Division acknowledges that other Commission regulations currently require CCOs of Derivatives Clearing Organizations<sup>11</sup> as well as swap dealers (“SDs”), major swap participants (“MSPs”), and futures commission merchants (“FCMs”)<sup>12</sup> to file ACRs not later than 90 days after the fiscal year end.<sup>13</sup> The Division also recognizes the amount of time and resources that a CCO must dedicate to the preparation of the ACR and is of the view that an additional 30 days will enable the SEF CCO to devote sufficient time and resources to the creation of a comprehensive ACR. Further, the Division recognizes the resource constraints on SEFs in preparing multiple year-end reports which justifies an additional 30 days to prepare and concurrently file the fourth quarter financial report and the ACR.

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<sup>11</sup> 17 C.F.R. § 39.10(c)(4)(ii).

<sup>12</sup> 17 C.F.R. § 3.3(f)(2)(i).

<sup>13</sup> Your request notes that granting relief to allow a 30-day extension to file the ACR is consistent with the relief previously provided by the Commission’s Division of Swap Dealer and Intermediary Oversight for CCOs of FCMs, SDs, and MSPs to file annual reports not later than 90 calendar days of the fiscal year end. CFTC Letter No. 15-15 (March 27, 2015), available: <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/15-15.pdf>.

### **No-Action Relief for SEFs**

The Division has reviewed your request and determined that granting no-action relief is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against any SEF or SEF CCO for failure to submit an ACR within the 60-day period prescribed in Commission regulation 37.1501(f)(2); provided, however, that such ACR is submitted to the Commission not later than 90 days after the end of the SEF's fiscal year. Additionally, the Division will not recommend that the Commission take an enforcement action against any SEF or SEF CCO for failure to submit the fourth quarter financial report pursuant to Commission regulation 37.1306(d), within the 60-day period prescribed in Commission regulation 37.1306(d); provided, however, that such fourth quarter financial report is submitted to the Commission not later than 90 days after the end of the SEF's fiscal year.

**This no-action relief shall commence on the date of issuance of this letter and expire on 11:59 pm (Eastern Time) November 30, 2020.**

Market participants should be aware that the no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements contained in the Act or the Commission's regulations thereunder.

This letter, and the no-action positions taken herein, represent the views of the Division only, and do not necessarily represent the positions or views of the Commission or of any other division or office of the Commission. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Abigail Knauff, Special Counsel, Division of Market Oversight, at (202) 418-5123 or [aknauff@cftc.gov](mailto:aknauff@cftc.gov).

Sincerely,

Amir Zaidi  
Director  
Division of Market Oversight