



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

Ms. Fran Kenck
Chief Compliance Officer
Tassat Derivatives LLC
22 West 21st
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New York, New York 10010

Re: No-Action Relief from Swap Execution Facility Reinstatement Requirements under Commission Regulation 37.3(d)

Dear Ms. Kenck:

This letter responds to your letter, dated August 10, 2020, by which you request, on behalf of Tassat Derivatives LLC (“Tassat”), the Division of Market Oversight (“DMO” or the “Division”) of the Commodity Futures Trading Commission (the “Commission”) grant Tassat no-action relief, pursuant to Commission Regulation 140.99,¹ from the reinstatement requirements under Commission Regulation 37.3(d)² (the “Request Letter”).³ The Division issues this letter to provide time-limited relief, subject to certain conditions, as set forth below.

I. Background

A. trueEX LLC’s Transfer of its Registration to Tassat

On November 6, 2019, pursuant to Commission Regulation 37.3(e),⁴ the Commission issued an order (“Transfer Order”) approving the transfer of trueEX LLC’s (“trueEX”) SEF registration⁵ to its affiliated company, Tassat.⁶ Tassat acquired the SEF registration from trueEX

¹ 17 C.F.R. § 140.99.

² 17 C.F.R. § 37.3(d).

³ Letter from Fran Kenck, Chief Compliance Officer, Tassat Derivatives LLC, to Dorothy Dewitt, Director, Division of Market Oversight (August 10, 2020) (“Request Letter”).

⁴ 17 C.F.R. § 37.3(e).

⁵ trueEX is a Delaware limited liability company, and received temporary SEF registration on September 20, 2013 and full SEF registration on January 22, 2016. trueEX operated as a SEF for almost six years with interest rate swaps as its core business. trueEX also was designated as a contract market (“DCM”) on September 25, 2012 and

in an asset transfer, which included the transfer of key trueEX personnel, and all work product related to the development of a physically deliverable Bitcoin swap Tassat intends to launch.⁷ In the Transfer Order, the Commission found, subject to certain conditions,⁸ the petitioners demonstrated, as required by Section 5h of the Commodity Exchange Act (“Act”), 7 U.S.C § 7b-3, and Commission Regulations 37.3(c) and (e),⁹ Tassat will comply with the provisions in the Act and Commission regulations thereunder for registration as a SEF. According to the Request Letter, since the transfer, Tassat has been operational and in compliance with all Core Principles and Commission regulations pertaining to SEFs.¹⁰ Tassat also has been working on launching its Bitcoin swap contract.

B. Delays in the Launch of Tassat’s Bitcoin Contract

According to the Request Letter, trueEX started discussions with DMO staff in late 2017, regarding the listing of derivatives on virtual currencies, such products being developed by its affiliated company, Tassat.¹¹ To this end, over many months, trueEX and Tassat jointly worked with staff from DMO, Division of Clearing and Risk (“DCR”), and Division of Swap Dealer and Intermediary Oversight (“DSIO”) in the enhanced review process described in CFTC Advisory 18-14 (“Staff Advisory 18-14”) to self-certify a physically deliverable Bitcoin swap contract.¹² In June 2019, before the product was certified, the board of trueEX Group decided to wind down trueEX SEF’s existing interest rate swap (“IRS”) business and delist all IRS products, and transfer to Tassat the SEF registration and all assets necessary for Tassat to carry on the virtual currency business.¹³ Concurrent with the wind down of the IRS business, trueEX and Tassat

was deemed dormant as a DCM on November 1, 2019. trueEX Group was the holding company of trueEX LLC, and is currently the holding company of Tassat, along with a few technology-related companies.

⁶ See CFTC, Order of Transfer of Swap Execution Facility Registration (November 6, 2019) *available at* <https://www.cftc.gov/sites/default/files/filings/documents/2019/orgsefrueexsignedorder191107.pdf> ; *see also* Press Release, CFTC, CFTC Approves Transfer of trueEX LLC Swap Execution Registration to Tassat Derivatives LLC (Nov. 7, 2019), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8076-19>.

⁷ See Transfer Order at 2 (stating, Tassat will be the surviving entity and successor-in-interest to the Transferor SEF and will retain and assume all assets and liabilities associated with the SEF’s ongoing operations and regulated activities.)

⁸ In the Transfer Order, the Commission also stated the approval of the transfer is subject to all representations made by Tassat to the Commission in its request as well as Tassat’s compliance with the terms of the applicable no-actions letters previously relied upon by trueEX. Included among the representations made by Tassat are: as the surviving entity and successor in interest to trueEX, it will retain and assume all assets and liabilities associated with the SEF’s ongoing operations and regulated activities; it will assume responsibility for complying with all application provisions of the Act and Commission regulations promulgated thereunder including those promulgated under Part 37 and appendices thereto; and it will comply with all self-regulatory responsibilities and will maintain and enforce all self-regulatory programs. *See Id.* at 2-3.

⁹ 17 C.F.R. §§ 37.3 (c) and (e).

¹⁰ Request Letter at 3.

¹¹ *Id.* at 1.

¹² CFTC Staff Advisory No. 18-14: Advisory with respect to Virtual Currency Derivative Product Listings, May 21, 2018.

¹³ Request Letter at 1.

completed the enhanced review process with Commission staff. In the Request Letter, Tassat notes due to the decision to transfer the SEF registration, trueEX Group decided to launch the Bitcoin swap product under Tassat once the registration was transferred.¹⁴ In terms of the timing, Tassat notes the transfer request was initiated in June 2019, and trueEX ceased operations in July 2019, with its last trade occurring on July 19, 2019.¹⁵ Before it ceased its operations, trueEX self-certified the uncleared physically deliverable Bitcoin swap, which became effective July 26, 2019.¹⁶ As noted above, trueEX's SEF registration was transferred to Tassat in November 2019.

In the Request Letter, Tassat states it has encountered numerous delays, both internal and external, impacting the launch of its Bitcoin swap product, despite inheriting a fully operational SEF, including its key personnel.¹⁷ Tassat states the timing for approval of the transfer coincided with significant leadership changes at the Commission and changes in key Commission staff during the summer and fall of 2019, and those changes delayed final approval of the transfer.¹⁸ Tassat also notes in early 2020, there were significant leadership changes at Tassat, specifically the loss of key members of its senior management team, including its CEO and CFO.¹⁹ Moreover, the transition of new individuals into those roles was difficult as the timing coincided with business disruptions caused by the Covid 19 pandemic.²⁰ Tassat also states the Covid 19 pandemic impeded Tassat's ability to finalize necessary agreements with partners, market participants, and other stakeholders.²¹

Tassat states, despite the delays, it has not stopped working on, and preparing for, the launch of its Bitcoin swap contract.²² Tassat anticipates launching the contract during the third quarter of 2020.²³ As of August 1, 2020,²⁴ however, pursuant to Commission Regulation 40.1(f), Tassat was deemed dormant because it had no trading for a period of 12 consecutive months, requiring Tassat to seek reinstatement of its SEF registration in order to continue to operate.²⁵

¹⁴ *Id.*

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *See id.*

²³ *Id.*

²⁴ Under Regulation 40.1 a dormant SEF is defined as “any swap execution facility on which no trading has occurred for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month.” Under this definition, trueEX's last trade date was July 19, 2019 and the first day of the most recent calendar month was August 1, 2020.

²⁵ Although trueEX's registration was not transferred to Tassat until November 6, 2019, the twelve month period for purposes of determining dormancy was based upon trueEX's last trade on July 19, 2020. Tassat notes in its Request Letter, review of the registration transfer occurred over three of the twelve months determining dormancy. Request Letter at 3.

Absent this relief request, Tassat claims it would not be able to launch for more than six months until it completes the reinstatement process, adding to the delays and financial losses it already experienced.²⁶

C. Regulations Relating to SEF Dormancy

Under Commission Regulation 40.1(f), a SEF becomes dormant if there is no trading on the SEF “for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month....”²⁷ Under Commission Regulations 40.1(b) and (g), respectively, the contracts/products and rules of a dormant SEF are also dormant.²⁸ Under Section 5h of the Act and Commission Regulation 37.3(a), a SEF must be properly registered in order to operate, which includes the listing of contracts for trading.²⁹ The Commission’s dormancy regulations were originally promulgated to address the concern dormant registered entities are considered inactive and “may no longer meet applicable statutory and regulatory requirements.”³⁰

II. Request for No-Action Relief

As discussed above, prior to becoming dormant on August 1, 2020, Tassat was unable to launch its certified Bitcoin swap contract due to internal and external delays. Tassat requests relief from the reinstatement requirements under Commission Regulation 37.3(d), so Tassat can launch its contract for trading prior to reinstatement of Tassat’s registration.³¹ Tassat requests this relief until the Commission has made a determination with respect to Tassat’s application for reinstatement which, as represented in the Request Letter, Tassat agrees to file with the Commission no later than one month from the date of issuance of this no-action relief provided by the Division.³²

²⁶ *Id.* at 2.

²⁷ 17 C.F.R. § 40.1(f).

²⁸ *See* 17 C.F.R. § 40.1(b) and (g).

²⁹ Commission Regulation 37.3(d) provides a dormant SEF may reinstate its registration under the procedures of Commission Regulation 37.3(b), the procedures for initial registration as a SEF by which the Commission may make a determination the applicant has demonstrated compliance with the Act and the Commission's regulations applicable to SEFs. An applicant for reinstatement may rely upon previously submitted materials if such materials accurately describe the dormant SEF’s conditions at the time it applies for reinstatement of its registration. As part of the reinstatement process under Commission Regulation 37.3(d), a dormant SEF would also be required to re-certify its dormant contracts and rules. *See* 17 C.F.R. § 37.3(b) and (d).

³⁰ *See* Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, 67 FR 62873, 62874 (Oct. 9, 2002) (stating : “[t]he Commission proposed to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading...it must demonstrate that it continues to satisfy the criteria for designation or registration”); *see also* Amendments Pertinent to Registered Entities and Exempt Commercial Markets, 73 FR 8599, 8600 (Feb. 14, 2008) (stating: “[t]he Commission recognizes that a significant period of inactivity can potentially have a negative impact on a registered entity’s ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission’s regulations, and self-regulatory best practices”).

³¹ Request Letter at 4-5.

³² *Id.* at 5.

According to the Request Letter, Tassat believes such relief is warranted for the following reasons.

A. The Commission's Policy Concerns Underlying the Dormancy Requirement are Inapplicable to Tassat

The Request Letter asserts the public policy purpose of the SEF dormancy provisions is to discourage the abandonment of regulated operations which, over time, may fail to continue to meet the "criteria for designation or registration"³³ as criteria evolves.³⁴ Tassat notes rules and policies of a dormant SEF may become stale during the period when it was inactive, and changes may have taken place in the markets not reflected in the dormant SEF's rules or in the terms and conditions of the contracts listed.³⁵ In addition, Tassat notes after a sustained period of inactivity, Commission staff may have little insight into the operations of the SEF.³⁶ Tassat further notes the reinstatement process established by Commission Regulation 37.3(d) enables staff to revisit a dormant SEF, given a lapse of time since registration, and evaluate whether rules and processes are in compliance.³⁷

The Request Letter asserts these policy concerns are inapplicable to Tassat. Tassat notes the dormancy period (applicable first to trueEX and then Tassat) commenced after the last trade was executed on trueEX in July 2019, and the registration transfer was approved by the Commission on November 6, 2019.³⁸ During the period from July 19th, when trueEX had its last trade to November 6, 2020, Tassat was unable to provide services and launch products as a SEF, while waiting for Commission approval of the SEF registration transfer.³⁹ In essence, Tassat states the period it had to launch and trade the new product to avoid dormancy was not a 12 month period due to the timing of the transfer request review period.

Tassat further notes it has never stopped being operational, from the time of the initiation of the transfer in June 2019, to date. Tassat has engaged with Commission staff regarding the launch of its Bitcoin swap contract, and it has continued to meet all of its regulatory obligations under the Commission's regulations.⁴⁰ In particular, Tassat states, while waiting for the approval of the SEF registration transfer from trueEX, Tassat staff worked with DMO's systems safeguard

³³ See Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations, 67 Fed. Reg. 62873, 62874 (Oct. 9, 2002).

³⁴ Request Letter at 3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* (explaining Tassat was unable to provide services and launch products as a SEF during the time the registration transfer was reviewed and approved by the Commission in November 2019, giving Tassat less than 12 months to launch).

⁴⁰ *Id.*

team from August 2019 through November 2019 on Tassat's planned changes to its platform in anticipation of launching Bitcoin swaps.⁴¹ Tassat also publically posted its rulebook, dated November 6, 2019, on its website upon the approval of the SEF transfer.⁴² This rulebook, used by trueEX's SEF, was modified to reflect necessary changes to the core business, and incorporated the contract specifications and workflow of the certified physically deliverable Bitcoin swap contract.⁴³

Tassat's chief compliance officer completed the 2019 Annual Compliance Review and filed it with the Commission in April 2020,⁴⁴ in compliance with Section 5h(f)(15)(D) of the Act⁴⁵ and Commission Regulation 37.1501(e).⁴⁶ Tassat states, although the SEF had not yet launched, the scope of the review in the report included a thorough review of policies and procedures, part of the asset transfer from trueEX for compliance with SEF Core Principles and Commission regulations.⁴⁷ Tassat also continued to make its quarterly financial filings and to maintain capital and liquid assets necessary to comply with Section 5h(f)(13)⁴⁸ and Commission Regulation 37.1300,⁴⁹ and has recently submitted its filing for the quarter ending June 30, 2020.⁵⁰ Moreover, in February 2020, Tassat responded to DMO inquiries related to its pandemic preparedness, and in June 2020, responded to the DMO resilience survey.⁵¹ Tassat states it provided responses at all times which indicated it was working toward an imminent launch date.⁵²

In its Request Letter, Tassat further attests all documentation and work product transitioned from trueEX is not stale and has been updated as necessary due to changing business conditions (most notably the Covid 19 pandemic).⁵³ Tassat states it recently engaged an external vendor to complete a full scope security assessment of its trading platform in anticipation of a third quarter launch.⁵⁴ Tassat also will make any necessary amendments to its rulebook prior to launch.⁵⁵

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 7 U.S.C. § 7b-3(f)(15) (requiring the chief compliance officer to file an annual report).

⁴⁶ 17 C.F.R. § 37.1501 (describing the annual report to be filed by the chief compliance officer).

⁴⁷ Request Letter at 3.

⁴⁸ 7 U.S.C. § 7b-3(f)(13) (requiring the SEF to have adequate financial, operational, and managerial resources to discharge its responsibility).

⁴⁹ 17 C.F.R. § 37.1300 (requiring the SEF to have adequate financial, operational, and managerial resources to discharge its responsibility).

⁵⁰ Request Letter at 3.

⁵¹ *Id.* at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

B. The Requested Relief Comports with Section 3 of the Act

Tassat's Request Letter references Section 3 of the Act which, in part, states the purpose of the Act is to, among other things, "promote responsible innovation."⁵⁶ Tassat states launching the physically deliverable Bitcoin swap contract has been delayed due to various factors as noted above, and the requirements regarding reinstatement should not now add an additional impediment to the conditions delaying Tassat's launch.⁵⁷ Tassat states the requested relief is not inconsistent with the purposes of the Act, but rather will provide a window of time to finalize agreements which have been delayed, most recently due to the impact of the Covid 19 pandemic.⁵⁸ In the spirit of "responsible innovation," Tassat has diligently followed the process for listing virtual currency derivatives as required by Staff Advisory 18-14, and has navigated the process by working collaboratively with DMO, DSIO, and DCR to address all regulatory concerns regarding Tassat's novel product and workflow.⁵⁹

C. The Requested Relief Furthers the Public Interest

The Request Letter asserts having new entrants in this marketplace is in the public interest, and dormancy is not intended to act as a barrier to such entry.⁶⁰ Tassat states, given the costs it incurred in obtaining the transferred SEF registration and in preparing to launch a new physically deliverable Bitcoin swap contract, allowing Tassat to operate and launch its previously certified product, while it pursues the reinstatement of its dormant SEF registration, is in the public interest as it encourages both innovation and new market entrants.⁶¹ In contrast, Tassat notes a delay caused by the reinstatement of Tassat's registration would, absent relief, act to discourage innovation and create an additional barrier to a new entrant successfully bringing an innovative product to the market.⁶² Tassat further states it intends to offer a bitcoin swap contract different from products offered by other SEFs and DCMs.⁶³ Tassat further states there are market participants currently interested in onboarding on Tassat, and eager to trade this product which specifically targets institutional market participants.⁶⁴

III. Relief Provided

DMO has determined it is appropriate to grant Tassat's request for time-limited relief from Commission Regulation 37.3(d), subject to certain conditions. DMO believes such relief is

⁵⁶ 7 U.S.C. § 5(b).

⁵⁷ Request Letter at 4.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

appropriate considering Tassat's facts and the unique circumstances surrounding its attempt to launch its certified product, as explained below.

Since late 2017, Tassat, along with trueEX worked to create and certify a Bitcoin swap contract. The parties cooperated with DMO, DCR, and DSIO staff to undertake an enhanced review of the contract. As part of the review, Tassat consistently expended time and resources to meet with Commissioners and Commission staff, and to prepare and submit various materials and information in response to Commission staff inquiries about the proposed contract. Tassat's cooperation with staff's enhanced review of the contract enabled staff to conduct the review in a manner consistent with industry practice, Staff Advisory 18-14, and the Act's purposes, including deterring and preventing manipulation or any other disruptions to market integrity, while also promoting responsible innovation, as set forth in CEA Section 3.⁶⁵

In addition, as noted above, from the time the registration was transferred to Tassat and continuing to date, Tassat has been active both in terms of preparing to launch its product and in complying with all regulatory requirements. It is noteworthy Tassat had less than 12 months to launch its product. Finally, internal and external factors prevented Tassat from earlier launching of its product, particularly as a result of the Covid 19 pandemic hampering Tassat's ability to obtain the appropriate agreements with third parties.

In light of the unique circumstances facing Tassat, and its representations in the Request Letter, the Division believes time-limited relief is warranted, notwithstanding Tassat's dormancy status. Based on Tassat's representations made in the Request Letter and DMO's records, Tassat has, with the exception of a lack of trading on its platform, maintained an active SEF in compliance with all regulatory requirements since the transfer of registration in November 2019. This is reflected by Tassat's submission of modifications to its rulebook to show necessary changes to its business and incorporate contract specifications; Tassat's continuous updates to DMO staff on planned changes to its systems; Tassat's timely quarterly financial filings, and its compliance with all capital and liquid asset requirements; Tassat's annual compliance report filings, including one recently for the period ending June 30, 2020; and Tassat's responses to Commission staff inquiries related to pandemic preparedness in February 2020, and the DMO resilience survey in June 2020. Tassat provided a response at all times indicating it was working toward an imminent launch date.

Accordingly, the Division will not recommend the Commission commence an enforcement action against Tassat for failing to reinstate its SEF registration pursuant to Commission Regulation 37.3(d), prior to Tassat listing and launching its certified Bitcoin swap product, or against any Tassat participant who trades the contract upon such listing on Tassat's platform; provided, however:

(1) Tassat shall file an application for reinstatement in accordance with Commission Regulation 37.3(d), no later than one month from the date of this letter;

⁶⁵ See 7 U.S.C. § 5(b).

(2) Tassat shall not list the contract for trading until Tassat files its application for reinstatement in accordance with Commission Regulation 37.3(d), and until it has re-certified its bitcoin product for trading; and

(3) Until Tassat's request for reinstatement of its SEF registration is granted, Tassat shall not certify or list for trading any product other than the previously certified Bitcoin swap contract.

For the avoidance of doubt, if Tassat fails to meet any of the conditions above or to comply with the CEA or applicable Commission regulations while this letter is in effect, DMO will immediately exercise its retained authority described in Section IV, below, to terminate this letter and the relief provided herein.⁶⁶

This letter will be effective on the date that it is issued, and shall remain in effect until the earlier of (1) the date 12 months after the date on which this letter is issued, or (2) the date on which the Commission issues an order approving or denying Tassat's application for reinstatement of its registration as a SEF.

IV. Conclusion

The no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder. This letter and the position taken herein represent the views of DMO only, and do not necessarily represent the views of the Commission or of any other division or office of the Commission. Further, this letter, and the relief contained herein, is based upon the representations made to DMO by Tassat. Any different, changed, or omitted material facts or circumstances may render this letter void. Finally, as with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein in its discretion.

⁶⁶ Also, for avoidance of doubt during the period of this letter, any market participant that trades or participates on Tassat must continue to comply with the CEA and applicable Commission regulations applicable to trading on a SEF.

If you have any questions regarding this staff no-action letter, please contact Nancy Markowitz, Deputy Director, at nmarkowitz@cftc.gov, (202) 418-5453.

Sincerely,

Dorothy DeWitt
Director
Division of Market Oversight