U.S. COMMODITY FUTURES TRADING COMMISSION
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Market Participants Division

Joshua B. Sterling
Director

Re: Revised Extension to UK Entities of Regulatory Relief Previously Granted to European Union Entities in CFTC No-Action Letters: 12-70 and 13-45

I. Introduction

This letter revises the extension to United Kingdom ("**UK**") entities of existing regulatory relief provided pursuant to CFTC No-Action Letter 19-09.[1] That letter referenced existing regulatory relief provided to certain European Union ("**EU**") entities by staff of the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") and was provided in accordance with the Joint Statement by UK and US Authorities on Continuity of Derivatives Trading and Clearing Post-Brexit of February 25, 2019.[2]

The Market Participants Division ("**MPD**") is issuing this letter to permit certain UK entities to rely on the longstanding relief provided to certain EU entities in the following letters (collectively, the "**Existing Relief**"), subject to the conditions and circumstances described therein:

1. Letter 12-70: Relief for Certain Swap Dealers, De Minimis Dealers, Agent Affiliates, and Associated Persons from Registration as an Introducing Broker under Section 4d or a Commodity Trading Advisor under Section 4m of the Commodity Exchange Act, and Interpretation that Certain Employees of De Minimis Dealers are not an Introducing Broker as defined in Section 1a(31) of the Commodity Exchange Act;[3] and

2. Letter 13-45: No-Action Relief for Registered Swap Dealers and Major Swap Participants from Certain Requirements under Subpart I of Part 23 of

[1] CFTC No-Action Letter No. 19-09 (April 5, 2019), available at https://www.cftc.gov/csl/19-09/download.

[2] Available at https://www.cftc.gov/PressRoom/PressReleases/7876-19. Pursuant to the Joint Statement, the Commission committed to extending existing regulatory relief granted by the CFTC to EU firms, including UK firms, to UK firms at the point of the UK's withdrawal from the EU.

[3] CFTC No-Action Letter No. 12-70 (December 31, 2012), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/12-70.pdf.

Commission Regulations in Connection with Uncleared Swaps Subject to Risk Mitigation Techniques under EMIR;[4]

This letter will supersede Letter 19-09, and the relief provided by this letter will become effective as of the Brexit Transition Period Expiration Date defined below.[5] No person may rely on Letter 19-09 after the Brexit Transition Period Expiration Date. As of the date of this letter, the Divisions anticipate that the Brexit Transition Period Expiration Date will be December 31, 2020.

II. Background

In June 2016, the people of the UK voted by referendum to leave the EU. On March 29, 2017, the UK submitted notification of its intention to withdraw from the EU at the conclusion of a two year period pursuant to Article 50 of the Treaty on European Union.[6]

On October 19, 2019, the UK and the EU entered into the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the "**Withdrawal Agreement**"). Pursuant to the Withdrawal Agreement, the UK left the EU as of the end of January 31, 2020 and entered into a transition period set to expire on December 31, 2020 (as such

[4] CFTC No-Action Letter No. 13-45 (July 11, 2013), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/13-45.pdf.

[5] Among other revisions, this letter does not include relief granted under CFTC No-Action Letter Nos. 17-64, 17-66, and 17-67. Letter 17-64, which provided relief from certain requirements of Part 45 and Part 46 of the Commission's regulations for certain swap dealers and major swap participants established under the laws of Australia, Canada, the EU, Japan or Switzerland, was recently extended by Letter 20-37, which expanded the scope of the letter to include swap dealers and major swap participants established under the laws of the UK. *See* Letter 20-37, Extension of Time-Limited No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan, Switzerland or the United Kingdom, (Nov. 18, 2020), *available at:* https://www.cftc.gov/csl/20-37/download. Letter 17-66 related to certain provisions of the outward-facing swaps condition in the inter-affiliate exemption from the clearing requirement and expired on August 21, 2020, which was the effective date of the Commission's amendments to Commission regulation 50.52. *See* Exemption from the Swap Clearing Requirement for Certain Affiliated Entities – Alternative Compliance Frameworks for Anti-Evasionary Measures (July 22, 2020), 85 FR 44170. Because those amendments to Commission regulation 50.52, including adding the UK to the list of jurisdictions under Commission regulation 50.52(b)(4)(ii) and (iii), are now effective and address the UK's withdrawal from the EU, this staff no-action letter does not need to include Letter 17-66. Letter 17-67 provided relief from the trade execution requirement for eligible affiliate counterparties. The relief provided in Letter 17-67 is expected to be extended by the Division of Market Oversight under a separate letter. As a result of the changes to Commission regulation 50.52, as discussed above, the relief provided in the expected letter will be applicable to firms within the UK.

[6] *See* Article 50 of the Treaty on European Union, *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M050&from=EN.

date may be modified or extended from time to time, the "**Brexit Transition Period Expiration Date**").

Pursuant to the Withdrawal Agreement, the UK has ceased to be a member of the EU, although during the transition period EU law and EU regulatory, budgetary, supervisory, judiciary, and enforcement instruments and structures have continued to apply in the UK as if it were a member of the EU.

To prepare for the expiration of the transition period, the UK government has taken actions to provide regulatory certainty, including passing the European Union (Withdrawal) Act 2018 ("**EU(W)A**"), which, at the expiration of the transition period, will transpose relevant EU law and regulations into UK law and regulations, and grant existing authority vested in certain EU institutions to the Financial Conduct Authority, the Bank of England including the Prudential Regulation Authority, and Her Majesty's Treasury. Commission staff has been engaged with staff of the relevant UK authorities to learn about the regulatory and supervisory framework that will apply in the UK upon the expiration of the transition period.

The foregoing actions by the UK government aim to preserve the regulatory status quo for UK entities benefitting from the Existing Relief in all material respects. Accordingly, MPD is providing no-action relief to UK entities that are relying, or may hereafter seek to rely, on the Existing Relief.

III. Staff Position

Based upon the facts described above, upon the Brexit Transition Period Expiration Date, MPD will, subject to all of the conditions contained therein and to the respective expiration dates thereof, if any, consider the Existing Relief to apply to or reference:

(A) The UK in the same manner that it applies to or references the EU;

(B) UK entities in the same manner that it applies to or references EU entities;

(C) UK financial regulatory bodies in the same manner that it applies to or references EU financial regulatory bodies; and

(D) UK laws and regulations transposed pursuant to the EU(W)A in the same manner that it applies to or references the corresponding EU laws and regulations, as applicable.

This letter, and the positions taken herein, represent the views of MPD only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief provided in this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to MPD.

Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void.

Staff of MPD will monitor regulatory developments in the UK to determine whether the Existing Relief may require reconsideration with respect to UK entities. Further, a withdrawal of any relief under CFTC No-Action Letters 12-70 or 13-45, will necessarily result in a withdrawal of the corresponding relief provided herein.

Finally, as with all staff letters, MPD retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in their discretion.

If you have any questions concerning this correspondence, please contact Frank Fisanich, Chief Counsel, MPD, at (202) 418-5949 or ffisanich@cftc.gov.

Sincerely,

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Joshua B. Sterling
Director
Market Participants Division

cc: Regina Thoele, Compliance
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