



**U.S. COMMODITY FUTURES TRADING
COMMISSION**

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Division of
Market Oversight

Dorothy DeWitt
Director

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 swap execution facilities (“SEFs”), dated November 10, 2020, to the Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”)¹ to extend the no-action relief previously provided by the Division 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).² This letter also responds to the SEFs’ request to extend no-action relief from the timing requirement for a SEF to file its fourth-quarter financial report with the Commission, as set forth in Commission regulation 37.1306(d).³ The Division previously provided no-action relief from the above listed timing requirements in CFTC Letter No. 17-61, dated November 20, 2017.

I. Background

Section 5h(f)(15)(D) of the Commodity Exchange Act (“Act”) requires the CCO of a SEF to prepare and sign an ACR annually.⁴ The SEF CCO must submit the ACR concurrently with the filing of the SEF’s fourth-quarter financial report.⁵ Pursuant to its statutory authority, the Commission promulgated

¹ Letter submitted by Martin Oakley, at 360 Trading Networks, Inc., requesting an extension of the no-action relief granted in CFTC Letter 17-61, on behalf of multiple SEFs: 360 Trading Networks, Inc., MarketAxess SEF Corporation, tpSEF, Inc. and Tradition SEF, Inc. (the “SEF Letter”).

² 17 C.F.R. § 37.1501(f)(2).

³ 17 C.F.R. § 37.1306(d).

⁴ 7 U.S.C. 7b-3(f)(15)(D)(i).

⁵ 7 U.S.C. 7b-3(f)(15)(D)(ii)(I).

regulation 37.1501(e)-(f) which, among other things, requires a SEF CCO to prepare and sign an ACR.⁶ The ACR must (i) cover the time period from the end of the period covered by a previously-filed ACR and (ii) contain at a minimum the information enumerated in Commission regulation 37.1501(e)(1)-(6).⁷ 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 SEF's fiscal-year end,⁸ and file the ACR concurrently with the SEF's fourth-quarter financial report.⁹ Pursuant to Commission regulation 37.1306(d), a SEF must file the fourth-quarter financial report with the Commission no later than 60 calendar days after the SEF's fiscal-year end.¹⁰

II. Requested Extension of No-Action Relief

For the reasons summarized below, the SEF Letter requests an extension to current no-action relief permitting a SEF CCO to: (i) 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 (ii) concurrently submit the fourth-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 the renewed request for an additional 30 days to file both the ACR and the fourth-quarter financial report with the Commission, the SEF Letter raises, among other things, time and resource constraints in gathering information from numerous sources and completing multiple year-end reports. Specifically, the SEF Letter states, "the requested relief is more efficient for SEFs and reduces the impact on shared resources between financial and compliance departments from the simultaneous submission of both reports." In particular, the SEF Letter states that the ACR: "requires a more extensive year-end information-gathering process than a financial report... [and] an extension is needed not only to address the difficulties in building the framework for preparing the ACR for submission but also to conduct the substantive review... to create an in-depth, substantial discussion on the state of the compliance program with the approval of the SEF's senior management and board of directors."

The SEF Letter further recognizes the preparation of the financial reports and the ACR may differ in substance and process, potentially involving distinct groups within a SEF, and that the reports may serve different purposes. Nevertheless, the same SEF staff is typically involved in producing both reports, and no-action relief would enable such staff to plan and execute the reports more effectively and efficiently. Additionally, the SEF Letter points out that other divisions within the Commission permit entities they oversee to submit CCO Annual Compliance Reports and financial reports 90 days after the fiscal-year end.

⁶ 17 C.F.R. § 37.1501(e)-(f).

⁷ Commission regulation 37.1501(e) provides the information that the ACR must contain.
17 C.F.R. § 37.1501(e)(1)-(6).

⁸ 17 C.F.R. § 37.1501(f)(2).

⁹ *Id.*

¹⁰ 17 C.F.R. § 37.1306(d).

The Division acknowledges that other Commission regulations currently require CCOs of Derivatives Clearing Organizations,¹¹ swap dealers, major swap participants, and futures commission merchants¹² to file ACRs not later than 90 days after the fiscal-year end.¹³ The Division, recognizing the amount of time and resources a CCO must dedicate to the preparation of the ACR, concludes an additional 30 days is warranted to enable the SEF CCO to devote sufficient time and resources to the creation of a comprehensive ACR. Further, the Division, recognizing the resource constraints on SEFs in preparing multiple year-end reports, concludes an additional 30 days is warranted to prepare and file concurrently the fourth-quarter financial report and the ACR.

III. Extension of No-Action Relief for SEFs

The Division has reviewed the SEF Letter's request and determined extending 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 no later than 90 days after the SEF's fiscal-year end.

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 SEF's fiscal-year end.

This no-action relief shall commence on the date of issuance of this letter and expire on 11:59 pm (Eastern Time) November 30, 2021 or the applicable effective date or compliance date of a Commission action, including without limitation, a rulemaking or order providing a permanent extension for SEFs to submit their ACRs and fourth-quarter financial reports.

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.

¹¹ 17 C.F.R. § 39.10(c)(4)(ii).

¹² 17 C.F.R. § 3.3(f)(2)(i).

¹³ Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; 83 FR 43510 (finalized August 27, 2018). See also 17 C.F.R. 3.3(f)(1)(ii).

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or nmarkowitz@cftc.gov, Jasmine Lee, Special Counsel, Division of Market Oversight, at (202) 418-5226 or jlee@cftc.gov, or Roger Smith, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5344 or rsmith@cftc.gov.

Sincerely,

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Director
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