



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

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Division of  
Market Oversight

Vincent McGonagle  
Director

**Re: Extension of No-Action Positions from Sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act and from Commission Regulations 37.3(a)(2) and 37.9 for Swaps Executed as Part of Certain Package Transactions**

The Division of Market Oversight (“Division” or “DMO”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) is extending the remaining no-action positions,<sup>1</sup> as set forth in CFTC Letter No. 20-31, regarding requirements in sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act (“CEA” or “Act”) and regarding requirements in Commission regulations 37.3(a)(2) and 37.9 for swaps executed as part of certain package transactions.<sup>2</sup>

The Division is extending its no-action positions for those package transactions where at least one individual swap component is made available to trade (“MAT”) and therefore subject to the CEA section 2(h)(8) trade execution requirement, and all other components are contracts for the purchase or sale of a commodity for future delivery, i.e., futures contracts (“MAT/Futures Package Transactions”).

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<sup>1</sup> This letter responds to a request received from International Swaps and Derivatives Association (“ISDA”) that the Division extend the remaining no-action positions under CFTC Letter No. 20-31. *See* ISDA Letter, Re: Request for Relief from the Requirement to Execute Certain Package Transactions on a Swap Execution Facility Pursuant to CEA Section 2(h)(8), CEA Section 5(d)(9), and CFTC Rules 37.9 and 37.3(a)(2) (Oct. 3, 2022) (“ISDA Letter”).

<sup>2</sup> The Division previously took no-action positions regarding certain package transactions in CFTC Letter Nos. 14-12, 14-62, 14-137, 15-55, 16-76, 17-55, and 20-31. For purposes of the no-action positions taken in this letter, a “package transaction” is a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a swap that is made available to trade and therefore is subject to the CEA section 2(h)(8) trade execution requirement; and (4) where the execution of each component is contingent upon the execution of all other components.

## I. Extension of No-Action Positions

Since 2014, the Division has assessed how to enable SEFs and DCMs to facilitate trading of certain package transactions in a manner that balances the utility of package transactions against the policy goals of the trade execution requirement. As part of this work, in December 2020, the Commission adopted final rules which, among other things, codified the Division's no-action positions for a variety of package transactions.<sup>3</sup>

Despite the significant progress the Commission has made with respect to transitioning trading of swap components of package transactions on to SEFs,<sup>4</sup> ISDA notes that “challenges surrounding the execution of [MAT/Futures Package Transactions] on a SEF are still unresolved.”<sup>5</sup> ISDA represents that trading of swap components of MAT/Futures Package Transactions on a SEF in a manner that is fully compliant with the CEA and the Commission's regulations remains unfeasible and requests the no-action position be extended for the swap components of MAT/Futures Package Transactions until a “a viable resolution of this issue is reached.”<sup>6</sup> Therefore, the Division is extending the no-action positions provided in CFTC Letter No 20-31 for MAT/Futures Package Transactions to enable market participants to continue to execute these package transactions.<sup>7</sup> The extension of these time-limited no-action positions will enable the Division and the Commission to consider permanent solutions for swap components of MAT/Futures Package Transactions including, if appropriate, amendments to Commission regulations. These no-action positions shall commence on the date of issuance of this letter and expire at 11:59 pm (Eastern Time) on the earlier of: (i) November 15, 2025 or (ii) the applicable effective date or compliance date of a Commission action, including without limitation a rulemaking or order, that provides a permanent solution for the execution of the swap components of the package transactions covered by this letter.

The Division takes the following time-limited no-action positions:

### 1) No-Action Position regarding CEA section 2(h)(8)

As described in CFTC Letter No. 20-31, for MAT/Futures Package Transactions:

- a) The Division takes a time-limited no-action position regarding entities or counterparties executing the swap components of MAT/Futures Package Transactions that are subject to the requirements of CEA section 2(h)(8).

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<sup>3</sup> See Swap Execution Facility Requirements, 85 FR 82313 (Dec. 18, 2020) (“SEF Package Transactions Rules”).

<sup>4</sup> See SEF Package Transaction Rules at 82318 (The Commission agrees with commenter that “the transition of the swap components of package transactions from no-action relief to SEF trading has:(i) [i]mproved pricing and liquidity as SEFs offer access to more competitive and transparent trading with a greater number of liquidity providers; (ii) enhanced market stability and integrity given the monitoring and surveillance capabilities of SEFs; and (iii) reduced operational risk through the pre-trade credit check and straight-through processing requirements that are applicable to SEF trades.”).

<sup>5</sup> ISDA Letter at 2.

<sup>6</sup> *Id.* at 3 and 4.

<sup>7</sup> Appendix A is a summary of the no-action positions taken in this letter.

- b) The Division will not recommend that the Commission take enforcement action against any entity or counterparty that executes the swap components of a MAT/Futures Package Transaction without complying with CEA section 2(h)(8), if such swaps are executed before or at the expiration of the no-action position.

**2) No-Action Position regarding Commission Regulations 37.3(a)(2) and 37.9 and CEA Section 5(d)(9)**

As described in CFTC Letter No. 20-31, for MAT/Futures Package Transactions:

- a) The Division takes a time-limited no-action position regarding SEFs and DCMs, with respect to the swap components of MAT/Futures Package Transactions for which they facilitate trading, that are subject to the requirements of Commission regulations 37.3(a)(2)<sup>8</sup> and 37.9, and CEA section 5(d)(9). During this period of time, SEFs and DCMs may provide a trading system, facility, or platform that facilitates trading of swap components through methods of execution that do not comply with the required methods of execution in Commission regulation 37.9 or CEA section 5(d)(9), respectively,<sup>9</sup> and entities or counterparties may execute such swap components through any method of execution offered on a SEF or DCM pursuant to no-action position stated herein.
- b) The Division will not recommend that the Commission take enforcement action against any SEF or DCM that facilitates trading in swap components of MAT/Futures Package Transactions without complying with Commission regulations 37.3(a)(2) or 37.9, or CEA section 5(d)(9), respectively, if such swaps are executed before or at the expiration of the no-action position.

**II. Conclusion**

This letter, and the positions taken herein, represent the views of DMO only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The no-action positions taken in this letter do not excuse persons relying on them from compliance with any other applicable requirements contained in the CEA or in Commission regulations. Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to DMO. Any different, changed, or omitted material facts or circumstances might render the no-action positions taken in this letter void.

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<sup>8</sup> The Division notes that to the extent that such swap components are not executed as part of a package transaction qualifying for the no-action positions herein, Commission regulation 37.3(a)(2) requires SEFs to offer Order Book functionality as a method of execution for such transactions.

<sup>9</sup> The Division expects that SEFs and DCMs will continue to implement and enforce rules that will allow them to verify that only eligible swap components are executed in reliance on the no-action positions taken in this letter.

Finally, as with all staff letters, the DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action positions taken herein, in its discretion.

If you have any questions concerning this correspondence, please contact Roger Smith, Associate Chief Counsel, DMO, at (202) 418-5344 or RSmith@CFTC.gov.

Sincerely,

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Vincent McGonagle  
Director  
Division of Market Oversight

**APPENDIX A: SUMMARY OF PACKAGE TRANSACTION NO-ACTION POSITIONS**

This appendix reflects a summary of the no-action positions that the Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) is taking herein; this summary is intended to be used for reference only and does not represent any no-action position regarding the Commodity Exchange Act (“CEA”) or the Commission’s regulations.

Package Transaction Category	No-Action Positions
<p><b>MAT/Futures:</b> At least one individual swap component is subject to the trade execution requirement and all other components are contracts for the purchase or sale of a commodity for future delivery, <u>i.e.</u>, futures contracts. This category may include:</p> <ul style="list-style-type: none"> <li>• MAT swap v. Treasury futures</li> <li>• MAT swap v. Eurodollar futures</li> </ul>	<p>No-Action position regarding CEA section 2(h)(8) for MAT/Futures Package Transactions. Under this no-action position, the swap components subject to the trade execution requirement are not required to be executed on a SEF or DCM.</p> <p>No-action position regarding Commission regulation 37.9 and CEA section 5(d)(9) for MAT/Futures Package Transactions. Under this no-action position, a SEF or DCM may offer any method of execution for the swap components.</p> <p>No-action position regarding Commission regulation 37.3(a)(2) for MAT/Futures Package Transactions. Under this no-action position, a SEF may not offer an Order Book as a minimum trading functionality for the swap components.</p>