

Pandemic-Related Relief Announced by U.S. Commodity Futures Trading Commission and National Futures Association

March 19, 2020

On March 17, 2020, Chairman Heath Tarbert of the U.S. Commodity Futures Trading Commission (CFTC) released a video statement identifying the CFTC's actions to address the COVID-19 pandemic.¹ Chairman Tarbert provided five key objectives: (i) monitoring derivatives markets and their participants; (ii) using the CFTC's regulatory framework to promote orderly and liquid markets; (iii) responding swiftly to changing conditions with practical, targeted relief; (iv) communicating consistently and transparently with all stakeholders; and (v) maintaining the CFTC's commitment to advancing strategic policy goals.

In the statement, Chairman Tarbert indicated that the CFTC will be taking nearly a dozen actions by the end of the week to provide flexibility to market participants. The first of these actions was taken on March 17 when the CFTC's Divisions of Swap Dealer and Intermediary Oversight (DSIO) and Market Oversight (DMO) released a series of no-action letters providing temporary, targeted relief to certain CFTC-registered entities and members of CFTC-regulated trading facilities.² The relief follows a series of COVID-19-related notices that the National Futures Association (NFA) sent to its members over the past few weeks, including relief of its own. Additional relief from both the CFTC and NFA may be forthcoming as they coordinate with market participants on issues raised and areas of concern.

Notably, the CFTC has not yet issued relief extending the deadlines for commodity pool operators (CPOs) to file annual audited financial statements or to furnish monthly or quarterly reports to pool participants, although the Investment Adviser Association (IAA) has reported that DSIO is considering such relief. On March 17, the IAA reported that it had been informed that firms seeking an extension to file pool financial statements with NFA on Form PFS must individually file extension requests using NFA's EasyFile system. NFA will be able to grant a CFTC Regulation 4.22(f) extension only if the firm files the request before the statement's due date; otherwise, the firm must obtain relief from the CFTC. Also, the CFTC has not issued any relief to CFTC Regulation 4.13(a)(3)-exempt CPOs whose funds may exceed the *de minimis* trading thresholds if they have to increase their use of futures or swaps for hedging purposes

¹ The statement is posted to the CFTC's dedicated COVID-19 page at <https://www.cftc.gov/coronavirus>.

² See CFTC Press Release 8132-20, CFTC Provides Relief to Market Participants in Response to COVID-19 (March 17, 2020), available at <https://www.cftc.gov/PressRoom/PressReleases/8132-20>, and CFTC Press Release 8133-20, CFTC Issues Second Wave of Relief to Market Participants in Response to COVID-19 (March 17, 2020), available at https://www.cftc.gov/PressRoom/PressReleases/8133-20?utm_source=govdelivery.

during this time of extreme market volatility, particularly if their net asset values have decreased substantially.

The CFTC is the primary regulator of the U.S. exchange-traded and over-the-counter derivatives markets, and NFA is the self-regulatory organization for the U.S. futures and swaps industry. A number of businesses and individuals trade in these markets and have complex and often time-sensitive obligations under CFTC and NFA rules. The volatility of these markets, the speed with which the facts on the ground are changing and the practical realities of social distancing may make compliance with many of these rules impractical or impossible. The CFTC and NFA have both indicated a desire to provide whatever relief is necessary to mitigate the damage caused by a situation that is beyond anyone's ability to control, and providing this relief will be important to ensure that market participants can continue to operate their businesses in this challenging environment.

The tables that follow summarize the CFTC's March 17 no-action letters as well as the recent NFA notices to members.

CFTC No-Action Letters

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
1. Recordkeeping Relief			
20-02	<p>Relief from any requirement to time-stamp records pursuant to CFTC Regulation 1.35 if the personnel responsible for making such records are required to be absent from their normal business sites.</p> <p>Conditions:</p> <ul style="list-style-type: none"> • A record of the date and time (to the nearest minute) must otherwise be created and maintained pursuant to CFTC Regulation 1.35. • Member must comply with all applicable rules of any designated contract market (DCM) and/or swap execution facility (SEF) on which it has trading privileges. 	Members of a DCM or SEF that are not registered with the CFTC	June 30, 2020
20-03 20-04 20-05 20-06	<p>Relief from any requirement to time-stamp records if the personnel responsible for making such records are required by a written business continuity plan to be absent from their normal business sites.</p> <p>Condition:</p> <ul style="list-style-type: none"> • A record of the date and time (to the nearest minute) must otherwise be created and maintained pursuant to CFTC Regulations 1.35, 5.18, 23.202 or 155.3, as applicable. 	Futures commission merchants (FCMs), introducing brokers (IBs), retail foreign exchange dealers (RFEDs), floor brokers (FBs) and swap dealers (SDs)	June 30, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
20-03 20-04 20-05 20-06	<p>Relief from the requirement to make and keep records of oral communications if personnel who would normally be required to use a recorded line are required to be absent from their normal business sites due to a written business continuity plan.</p> <p>Conditions:</p> <ul style="list-style-type: none"> • A written record of the communication (including the date, time, identifying information of the participants and subject matter) must be maintained. • Affirmative steps must be taken to collect any written materials created pertaining to the content of the relevant oral communication and to maintain them pursuant to applicable CFTC books and records requirements. 	FCMs, IBs, RFEDs, FBs and SDs	June 30, 2020
20-07	<p>Relief from compliance with audit trail, monitoring and trade reconstruction requirements where noncompliance arises from a SEF's inability to record voice communications for trading personnel displaced from their normal business sites in connection with the SEF's COVID-19 pandemic response.</p> <p>Conditions:</p> <ul style="list-style-type: none"> • SEFs relying on the relief are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel working remotely. • Recording must continue at normal business sites. • Reasonable efforts must be made to create written or electronic records of unrecorded oral communications (including date, time, identifying information of the participants and subject matter). • Transaction records must be maintained regardless of the location of the voice trading personnel. • Orders entered into the SEF by voice trading personnel must be retained as usual. • Relief from monitoring requirements under CFTC Regulation 37.400(b) is limited to those situations where a SEF cannot conduct 	SEFs	June 30, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
	<p>real-time, in-person monitoring and cannot comprehensively and accurately reconstruct trading because the SEF lacks voice recordings.</p> <ul style="list-style-type: none"> All requirements to maintain records under CFTC Regulations 37.1000(a)(1) and 37.1001 continue to apply except for requirements related to maintaining a complete audit trail. 		
20-09	<p>Relief from the requirement to comply with audit trail and related requirements to the extent noncompliance is related to the displacement, in connection with the COVID-19 pandemic, of FCMs, IBs, RFEDs, FBs, SDs and unregistered members of DCMs (collectively, Affected Market Participants) from a DCM's trading floor and/or other designated premise from which customer orders may be placed.</p> <p>Conditions:</p> <ul style="list-style-type: none"> DCMs are expected to remain vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that the relief does not facilitate or allow Affected Market Participants to take advantage of market volatility to engage in improper trading. DCMs require Affected Market Participants to continue to conduct customer business in accordance with exchange rules applicable to trading conducted on the trading floor or in accordance with relief provided by CFTC No-Action Letters 20-02, 20-03, 20-04, 20-05 and 20-06 (described above). Customer orders entered by Affected Market Participants must be retained in the DCM system's normal electronic audit trail. All other exchange rules will continue to apply. 	DCMs	June 30, 2020
2. Reporting Requirements			
20-03 20-06	<p>Relief from any requirement to submit a chief compliance officer (CCO) annual report pursuant to CFTC Regulation 3.3.</p> <p>Conditions:</p>	FCMs and SDs	September 1, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
	<ul style="list-style-type: none"> The annual report must be required to be submitted before September 1, 2020. The report must be filed within 30 days of the original deadline under CFTC Regulation 3.3. 		
20-08	<p>Relief from the requirement to submit an annual compliance report (ACR) or a fourth-quarter financial report (4QR) within the CFTC's required 60-day period pursuant to CFTC Regulations 37.1501(f)(2) and 37.1306(d), respectively.</p> <p>Conditions:</p> <ul style="list-style-type: none"> ACR/4QR must be required to be submitted to the CFTC before September 1, 2020. ACR/4QR must be submitted no later than 120 days after the end of a SEF's fiscal year. 	SEFs	September 1, 2020
3. Location Requirements			
20-04	<p>Relief from any requirement to be physically located in any pit, ring, post or other place provided by a DCM pursuant to the definition of "floor broker" in CFTC Regulation 1.3 or to be registered as an IB because of a failure to be in such place, if the FB is required by a written business continuity plan of any DCM to be absent from such place.</p> <p>Condition:</p> <ul style="list-style-type: none"> The FB must comply with all applicable rules of any DCM on which it has trading privileges. 	FBs	June 30, 2020

NFA Notices to Members

NFA Notice	Date of Notice	Description of Notice/Relief	Affected Persons
Notice I-20-10: Information on Coronavirus/COVID-19	March 4, 2020	Statement that the NFA is working with CFTC staff regarding issues raised in connection with the COVID-19 pandemic, including the possible need for regulatory relief, and that the NFA and CFTC staff intend to take a practical approach in this regard to give members appropriate flexibility. NFA also encouraged members to review their business continuity plans, to identify key relationships that will be necessary to maintain business until normal operations have resumed and to keep NFA informed of particular concerns or needs for regulatory relief.	All NFA members
Notice I-20-12: Coronavirus Update—NFA Branch Office Requirements	March 13, 2020	<p>Statement that the NFA will not pursue a disciplinary action against a member that permits its associated persons (APs) to temporarily work from locations not listed as a branch office and without a branch manager.</p> <p>Conditions:</p> <ul style="list-style-type: none"> • Member must implement alternative supervisory procedures to adequately supervise APs and meet the member's recordkeeping requirements. • Supervisory procedures must be documented. • APs are expected to return to the member's main office or listed branch location once the firm is no longer operating under contingencies pursuant to its business continuity plan. 	FCMs, RFEDs, IB, CPOs and commodity trading advisors
Notice I-20-13: Coronavirus (COVID-19) Update—Regulatory Relief	March 18, 2020	Relief for FCMs and IBs that are in compliance with the CFTC's applicable no-action relief (described above) from the following requirements: (i) the requirements of NFA Compliance Rule 2-10 relating to compliance with the applicable recordkeeping requirements in CFTC Regulation 1.35, including those relating to timestamping and recording oral communications; (ii) the requirements of NFA Compliance Rule 2-26 relating to compliance by FCMs with the timestamp recordkeeping requirements of CFTC Regulation 155.3; and (iii) the requirement for FCMs to provide NFA with a copy of their CCO annual reports in accordance with CFTC Regulation 3.3.	FCMs and IBs
		Relief for SDs that are in compliance with the CFTC's applicable no-action relief (described above) from the following requirements: (i) the requirements of NFA Compliance Rule 2-49 relating to compliance with the recordkeeping	SDs

NFA Notice	Date of Notice	Description of Notice/Relief	Affected Persons
		<p>requirements of CFTC Regulation 23.202, including those relating to timestamping and recording oral communications, and (ii) the requirement for SDs to provide NFA with a copy of their CCO annual reports.</p> <p>Relief for foreign-exchange dealer members (FDMs) that are in compliance with the CFTC’s applicable no-action relief (described above) from the following requirements: (i) the requirements of Compliance Rule 2-10 relating to compliance by FDMs with the applicable recordkeeping requirements in CFTC Regulation 1.35, including those relating to timestamping and recording oral communications, and (ii) the requirements of NFA Compliance Rule 2-36 relating to compliance by FDMs with the timestamp recordkeeping requirements of CFTC Regulation 5.18.</p> <p>30-day extension to prepare a CCO annual report in compliance with CFTC Regulation 3.3 within 60 days of the FDM’s fiscal year end (applicable only to those FDMs with CCO annual reports due between March 31, 2020 and September 1, 2020).</p>	FDMs

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