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## By Electronic Mail

March 26, 2020

Joshua B. Sterling, Director  
Division of Swap Dealer and Intermediary Oversight  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20581

### Re: Request for No-Action Position – Commodity Exchange Act Section 4d(g)

Dear Mr. Sterling:

The Futures Industry Association (“**FIA**”)<sup>1</sup> on behalf of its member firms that are registered as futures commission merchants (“**FCMs**”), similarly situated FCMs that are not FIA member firms, and their respective affiliates that are located outside of the US, respectfully request the Division of Swap Dealer and Intermediary Oversight (“**Division**”) to confirm that it will not recommend that the Commodity Futures Trading Commission (“**Commission**”) initiate an enforcement action against such FCMs and their affiliates for apparent violation of Section 4d(g) of the Commodity Exchange Act (“**CEA**”) if, subject to the terms and conditions set forth herein, such affiliates accept orders from US persons for execution on US designated contract markets (“**DCMs**”) notwithstanding that such affiliates have not qualified for an exception from registration as an introducing broker in accordance with the provisions of Commission Rule 3.10(c)(4).

CEA Section 4d(g) provides that it is unlawful for any person to act in the capacity of an introducing broker, unless such person is registered as such with the Commission. An introducing broker is defined, in relevant part, to mean any person that, for compensation or profit, is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and does not accept any money, securities, or property to margin, guarantee, or secure any trade or contracts that result or

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<sup>1</sup> FIA is the leading global trade organization for the futures, options, and centrally cleared derivatives markets, with offices in London, Brussels, Singapore and Washington DC. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA’s core constituency consists of firms that operate as clearing members in global derivatives markets, including firms registered with the Commodity Futures Trading Commission as futures commission merchants.

may result therefrom.<sup>2</sup> Commission Rule 3.10(c)(4) provides an exemption from registration as an introducing broker for persons located outside of the US that satisfy the terms and conditions of the rule. Specifically, Commission Rule 3.10(c)(4) provides that a person located outside of the US may accept orders from persons located in the US for execution on US DCMs without being registered as an introducing broker, provided such person:

- (i) is exempt from registration as an FCM under Commission Rule 30.10;
- (ii) is affiliated with an FCM registered with the Commission in accordance with CEA Section 4d;
- (iii) introduces only institutional customers on a fully-disclosed basis to a registered FCM for the purpose of trading on any DCM;<sup>3</sup> and
- (iv) does not solicit any person located in the US for trading on a DCM, and does not handle the customer funds of any person located in the US for the purpose of trading on any DCM.

Further, such person's affiliated FCM must file with the National Futures Association ("NFA") an acknowledgement that the affiliated FCM will be jointly and severally liable for any violations of the CEA or the Commission's rules committed by such person in connection with those introducing activities.

As the Division has noted in adopting a number of recent no-action positions intended to facilitate physical separation of personnel employed by Commission registrants,<sup>4</sup> the COVID-19 pandemic has challenged FCMs and other registrants in timely meeting certain of their obligations under the CEA and Commission rules. In particular, disruptions in transportation and limited access to facilities and support staff may hamper efforts of registrants to meet their regulatory obligations. This is particularly the case in those States, including New York and Illinois, which have imposed "shelter-in-place" requirements. Although a limited number of associated persons ("APs") who accept orders from clients continue to work from their usual locations or from back-up facilities maintained by the FCM in accordance with their business continuity plans, a number of associated persons are increasingly being required to work from home.

Although not an immediate issue, certain FCMs believe that, in these circumstances, it may be more effective and more efficient at some point to service their clients from affiliates located in jurisdictions outside of the US. Such affiliates will be properly registered in the jurisdictions in which they are located. Moreover, such jurisdictions will have received a Commission order under Rule

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<sup>2</sup> CEA Section 1a(31); Commission Rule 1.3.

<sup>3</sup> Commission Rule 1.3 defines "institutional customer" to mean an "eligible contract participant" as defined in CEA Section 1a(18).

<sup>4</sup> See CFTC Letter No. 20-02, CFTC Letter No. 20-03, CFTC Letter No. 20-04, CFTC Letter No. 20-05, CFTC Letter No. 20-06. Each letter was issued on March 17, 2020.

30.10, pursuant to which qualified firms may be exempt from registration as an FCM. However, we anticipate that not all such affiliates will have qualified for an exemption from registration as an FCM. Rather, certain affiliates, instead, have qualified for an exemption from registration as an introducing broker in accordance with Commission Rule 30.5 (each, a “**30.5 Firm**”).<sup>5</sup> As such, absent the relief requested here, these 30.5 Firms would be unable to take advantage of the exemption from registration provided by Commission Rule 3.10(c)(4).

In light of the above and in order to assure that all US FCMs are able to provide effective and efficient services to their clients during the COVID-19 pandemic, we respectfully request the Division to confirm that it will not recommend that the Commission initiate an action against certain 30.5 Firms for apparent violation of CEA Section 4d(g) if, subject to the terms and conditions set forth below, such 30.5 Firms accept orders from US persons for execution on US DCMs notwithstanding that such 30.5 Firms have not qualified for an exemption from registration as an introducing broker in accordance with the provisions of Commission Rule 3.10(c)(4).

We note that the registration of personnel of the 30.5 Firm (the “**Covered Personnel**”) as APs of their affiliated FCMs is not practicable in light of the exigency of the near-term need and the relatively brief period of assistance that is expected to be needed. We do not believe registration could be achieved quickly enough to provide the needed assistance and believe that such registration would be unreasonably burdensome given that Covered Personnel would only provide the assistance for a brief period during the dislocation caused by the COVID-19 pandemic. The relief from introducing broker registration sought by FIA would permit the Covered Personnel to assist with servicing US customers without registering as APs of the FCMs.

Unless extended by the Division, the relief requested herein would be time-limited and will expire on September 30, 2020 and would be subject to the following terms and conditions:

- (1) The 30.5 Firm is an affiliate of an FCM registered with the Commission;
- (2) The 30.5 Firm is appropriately licensed or registered in a jurisdiction for which the Commission has issued an exemptive order under Commission Rule 30.10;
- (3) The 30.5 Firm introduces on a fully-disclosed basis to FCMs registered with the Commission only institutional customers, as defined by Commission Rule 1.3, for the purpose of trading on a DCM;

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<sup>5</sup> Commission Rule 30.5 provides that a person acting in the capacity of an introducing broker with respect to foreign futures and foreign options customers, *i.e.*, a person that solicits or accepts orders for or involving any foreign futures contract or foreign options transaction, and that in connection therewith, does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, may be exempt from registration as an introducing broker, if such person files a Form 7-R with NFA and designates an agent for service of process in accordance with Rule 30.5(b).

- (4) The 30.5 Firm accepts, but does not solicit, orders from, and does not handle the customer funds of, any US person for trading on a DCM;
- (5) Subject to CFTC Letter No. 20-03, the 30.5 Firm creates and maintains the records required by Commission Rule 1.35 with respect to its brokerage activities with U.S. persons, and complies with Commission Rule 1.31 with respect thereto, including providing prompt access thereto to representatives of the Commission and the US Department of Justice upon request;
- (6) Each FCM with which the 30.5 Firm is affiliated files with NFA an acknowledgment that it will be jointly and severally liable for any violations of the CEA or Commission rules by the 30.5 Firm in connection with its activities involving US persons in which it engages in in reliance on this letter; and
- (7) The 30.5 Firm provides notice to the Division both before it begins to rely on the relief provided by this letter and, if it ceases to rely on this letter prior to September 30, 2020 (or any later date authorized by the Division), when it ceases to rely on this letter.

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Thank you for your consideration of this request. If you have any questions or require any additional information, please contact me at 202.772.3057 or [alurton@fia.org](mailto:alurton@fia.org).

I hereby certify that the material facts set forth in this letter are true and complete to the best of my knowledge.

Sincerely,



Allison P. Lurton  
General Counsel and Chief Legal Officer

cc: Division of Swap Dealer and Intermediary Oversight  
Frank N. Fisanich, Chief Counsel  
Andrew V. Chapin, Associate Chief Counsel