

## MARKET REGULATION ADVISORY NOTICE

March 20, 2020

### COVID-19 EMERGENCY NOTICE

Pursuant to TW SEF LLC (“TW SEF”) Rule 412 (Emergencies) of the TW SEF Swap Execution Facility Rules (the “TW SEF Rules”), TW SEF is providing notification to its Participants that it is taking certain time-limited emergency action related to COVID-19, commonly referred to as the Coronavirus (“COVID-19 Notice”), as discussed below. Terms not defined in this COVID-19 Notice are defined in the TW SEF Rules.

As discussed more fully below, TW SEF is notifying its Participants that where compliance with the TW SEF Rules is not possible due to COVID-19, such Participants should take reasonable and practical steps to comply with the TW SEF Rules and applicable CFTC Regulations. In addition, if compliance with the TW SEF Rules is not possible due to COVID-19 and a Participant is not able to take reasonable and practical steps to demonstrate compliance, the Participant should document any noncompliance and the reasons for such noncompliance. In all cases, a Participant should document alternative compliance or noncompliance with TW SEF Rules due to COVID-19. In addition, Participants are reminded to advise TW SEF of other areas where, due to COVID-19, compliance with the TW SEF Rules is not possible or practicable.

As discussed more fully below, this COVID-19 Notice should be read in conjunction with the No-Action Relief issued by the CFTC Division of Swap Dealer and Intermediary Oversight (“DSIO”) on March, 17, 2020, specifically, the relief related to CFTC regulations requiring recording of oral communications related to voice trading and other telephonic communications, as well as time-stamping requirements when Participants of TW SEF are located in remote, socially-distanced locations.<sup>1</sup>

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<sup>1</sup> See No-Action Positions for Certain Members of Designated Contract Markets and Swap Execution Facilities to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic, CFTC Letter No. 20-02 (March 17, 2020); No-Action Positions for Swap Dealers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic, CFTC Letter No. 20-06 (Mar. 17, 2020); No-Action Positions for Futures Commission Merchants and Introducing Brokers to Facilitate Physical Separation of Personnel in Response to the COVID-19 Pandemic, CFTC Letter No. 20-03, (Mar. 17, 2020). The foregoing letters are available at <https://www.cftc.gov/PressRoom/PressReleases/8132-20> and are collectively referred to as the “CFTC DSIO COVID-19 Relief.”

## BACKGROUND

As a result of the recent outbreak of COVID-19, commonly known as the Coronavirus, Participants have implemented alternative work arrangements, including the use of remote offices or telework arrangements. In addition, several states, including New Jersey and New York, have each declared a state of emergency. On March 13, 2020, the President declared a National Emergency. Due to the above, TW SEF understands from Participants that compliance with certain aspects of the TW SEF Rules related to recordkeeping requirements, and the requirements for the maintenance of a complete audit trail may not be possible.

Specifically, pursuant to Rule 309, Participants and EA Trading Customers are required to:

record conversations and retain copies of electronic communications between Officers, employees or agents of the Company, on one hand, and Participants, Authorized Users, Trading Customers and other Persons, on the other hand as required by Applicable Law, including CFTC Regulations 37.1001 (Recordkeeping), 1.31 and 1.35; provided that Participants or EA Trading Customers that are otherwise excluded or exempted from such recordkeeping obligations shall not be required to record or retain such communications under this Rule.

Rule 309, applies, in part, to the requirements of CFTC Regulation 1.35(a)(1)(i) and (iii), which relate to the maintenance of oral and written communications that lead to the execution of a transaction on TW SEF. Rule 309 applies to TW SEF, as well as, to Participants and EA Trading Customers. In addition, Rule 309, applies, in part, to CFTC Regulation 1.35(a)(2), which requires Participants and EA Trading Customers on TW SEF that are registered as a floor trader, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant to keep: (i) All transaction records; and (ii) All written pre-trade communications.

Rule 505 requires that Participants maintain an appropriate Audit Trail for a front-end interface connected to TW SEF. Specifically, Rule 505(b) requires Participants to:

maintain, or shall cause other third parties to whom they have provided connectivity to the SEF to maintain, Audit Trail data in the form and manner required by CFTC Regulations (including CFTC Regulation 37.205 (Audit Trail)) and in accordance with such additional requirements as may be established by the Company [which would include Rule 309].

## RULE 309 AND 505 RELIEF TO PARTICIPANTS AND EA TRADING CUSTOMERS

Under normal working conditions, TW SEF understands that Participants and EA Trading Customers record oral communications that lead to the execution of a transaction on TW SEF pursuant to Rule 309. In addition, TW SEF understands that Participants and EA Trading Customers on TW SEF that are registered as a floor trader, commodity pool operator, commodity trading advisor, swap dealer, or major swap participant keep: (i) All transaction

records; and (ii) All written pre-trade communications pursuant to Rule 309. To the extent Participants and EA Trading Customers are mandated to work remotely, they may not be able to fully comply with the CFTC's recordkeeping requirements and the requirements for the maintenance of a complete audit trail, as required by Rule 309. In order to provide reasonable efforts to demonstrate compliance, TW SEF recommends that Participants and EA Trading Customers record the trade-related details of any unrecorded conversation in a separate electronic communication as soon as practicable after the conversation. This record should include the date, time, identifying information of the persons participating, and subject matter of the communication as discussed in the CFTC DSIO COVID-19 Relief.<sup>2</sup> In addition, such record should be collected and maintained as set forth in the CFTC DSIO COVID-19 Relief. The aforementioned effort is a reasonable and practical step to demonstrate compliance with Rule 309.<sup>3</sup>

TW SEF also understands that front-end interfaces used by Participants to connect to TW SEF may have to be modified due to remote work conditions, thereby resulting in noncompliance with the complete audit trail requirements of Rule 505.

Based on the foregoing, TW SEF is providing emergency relief from certain requirements of Rule 309 and 505, until the later of: June 30, 2020; such time as the New York and New Jersey states of emergency and the National Emergency are all lifted; or such other time TW SEF

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<sup>2</sup> CFTC Letter No. 20-02 provides relief to Participants that are not registered with the CFTC in any capacity from compliance with CFTC Regulation 1.35. Specifically, relief was provided from the "requirement to record the date and time by time-stamp or other timing device pursuant to Commission regulation 1.35 if the personnel responsible for making such record are required to be absent from their normal business site, *provided* that a record of the date and time, to the nearest minute, is otherwise created and maintained in accordance with Commission regulation 1.35." The relief in CFTC Letter No. 20-02 is referred to herein as the "Time-Stamp Relief."

CFTC Letter No. 20-06 provides relief to Participants that are registered with the CFTC as a Swap Dealer from CFTC Regulations 23.202 and 1.31. Specifically, CFTC Letter No. 20-06 provides the Time-Stamp Relief and relief from:

any requirement to make and keep records of oral communications pursuant to Commission regulation 23.202 if the personnel required to use recorded lines are required by the registrant's written business continuity plan to be absent from their normal business site, provided that: (A) a written record of the oral communication, including date, time, identifying information of the persons participating, and subject matter of the communication, is created and maintained as a written communication in accordance with Commission regulation 23.202; and (B) the registrant takes affirmative steps to collect any written materials created by any affected personnel pertaining to the content of the oral communication, including, without limitation, handwritten notes or other contemporaneous or subsequently created transcripts or summaries, and maintains them in its required books and records pursuant to Commission regulation 1.31.

The above relief in CFTC Letter No. 20-06 is referred to as the "Oral Communications Relief."

CFTC Letter No. 20-03 provides the Time-Stamp Relief and the Oral Communications Relief to Participants that are registered with the CFTC as Futures Commission Merchants and Introducing Brokers.

<sup>3</sup> At this time, TW SEF is not providing relief from Rule 610 (Supervision). Rule 610 provides that "[a] Participant or EA Trading Customer shall be responsible for establishing, maintaining and administering supervisory procedures that are reasonably designed to ensure that its Authorized Users comply with these Rules. A Participant or EA Trading Customer may be held accountable for the actions of its Authorized Users." Rule 610 permits a Participant to implement supervisory procedures that are reasonably designed to comply with the Rules, which would include the relief provided in this COVID-19 Notice.

determines as appropriate. TW SEF will provide a notice to Participants when this emergency relief is lifted in accordance with Rule 412(e)(iv).

The aforementioned relief should be read in conjunction with and is intended to be consistent with the relief provided by DSIO to certain Participants on TW SEF.

#### ADMINISTRATIVE ACTIONS TO IMPLEMENT THE ABOVE RELIEF

Pursuant to the TW SEF Rules, TW SEF has taken administrative action in order to implement the relief described above. Specifically, Rule 412(b) provides that:

In the event of an Emergency, the Chief Administrative Officer or any individual designated by the Chief Administrative Officer and approved by the Board may place into immediate effect a temporary emergency addition to these Rules which may provide for, or may authorize the Board or any committee thereof to undertake, actions necessary or appropriate to respond to the Emergency, including such actions as... (viii) modifying or suspending any provision of these Rules.

The relief described above has been reviewed and approved by the Board of TW SEF because, given the pandemic, the modification of the requirements of Rule 309 and Rule 505 are necessary and appropriate to respond to the pandemic (i.e., the Emergency). Further, the relief provided in this COVID-19 Notice will remain in effect until the later of: June 30, 2020; such time as the New York and New Jersey states of emergency and the National Emergency are all lifted; or such other time TW SEF determines as appropriate.

In addition this COVID-19 Notice satisfies the requirements of Rule 412(e)(ii), which provides that:

Whenever the Company takes action pursuant to this Rule 412 to respond to an Emergency it will, where practicable, ensure that prompt notice is given to Participants. Participants shall be responsible for informing their Trading Customers or Client Accounts, as applicable, of such notice. The Company shall not be responsible or liable for a Participant's failure to inform its Trading Customer or Client Account of such notice.

Finally, as required by Rule 412(e)(iii), TW SEF has notified the Commodity Futures Trading Commission ("CFTC") of this COVID-19 Notice. Specifically, TW SEF has notified the CFTC of its exercise of emergency action and provided an explanation of its decision-making process, the reasons for the use of its emergency authority, and how conflicts of interest were minimized in its decision-making process.

## CONTACT INFORMATION

If you have any questions regarding the above, please do not hesitate to contact TW SEF at [reg.compliance@tradeweb.com](mailto:reg.compliance@tradeweb.com). In addition, Participants are reminded to advise TW SEF of other areas where, due to COVID-19, compliance with the TW SEF Rules is not possible or practicable.