

## CFTC

### **CFTC Extends Previously Granted No-Action Relief for Swap Dealers Complying With EU Requirements**

On April 18, the Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) issued No-Action Letter 17-22, which extends relief previously granted under CFTC No-Action Letter 17-05. CFTC No-Action Letter 17-05 allowed certain swap dealers to substitute compliance with the non-centrally cleared OTC derivative margin requirements applicable in the European Union (the "EU Rules") for compliance with certain of the CFTC's uncleared swap margin requirements in cross-border transactions with counterparties subject to the EU Rules. The overall CFTC framework for substituted compliance is conditioned in the case of each other jurisdiction on a determination by the CFTC that the rules of the other jurisdiction are "comparable" to the relevant CFTC rules. The effect of the relief was to suspend that condition for the EU. The no-action relief only applied to swap dealers that do not have a prudential regulator (i.e., non-bank swap dealers).

The no-action relief provided pursuant to CFTC No-Action Letter 17-05 is effective until (and excluding) May 8. As the CFTC continues to analyze whether a comparability determination with respect to the EU Rules is appropriate, DSIO is extending the previously granted relief through (and excluding) November 7.

The CFTC's No-Action letter is available [here](#).

### **CFTC Seeks Comment on CME Petition for Order Permitting Commingling of Funds**

The Chicago Mercantile Exchange, Inc. (CME) has submitted to the Commodity Futures Trading Commission a petition for an order pursuant to Section 4d of the Commodity Exchange Act (CEA) whereby CME and its clearing members that are registered futures commission merchants would be permitted to hold, in accounts segregated in accordance with Section 4d of the CEA, Dubai Mercantile Exchange-listed positions and funds related to products in the energy sector. If granted, the order would expand a previous order pertaining to a more limited number of Dubai Mercantile Exchange energy products. Comments should be submitted electronically to the CFTC on or before April 28.

The CME's petition is available [here](#).

### **CFTC Grants Registration to NEX SEF Limited**

On April 20, the Commodity Futures Trading Commission announced that it had issued an Order of Registration to NEX SEF Limited (NEX) whereby NEX was granted registration status with the CFTC as a swap execution facility (SEF). In granting NEX's application, the CFTC determined that NEX demonstrated compliance with the Commodity Exchange Act and CFTC regulations applicable to SEFs. NEX is incorporated in the United Kingdom. There are now 24 SEFs registered with the CFTC.

The CFTC's registration order is available [here](#).

## DERIVATIVES

See “CFTC Extends Previously Granted No-Action Relief for Swap Dealers Complying With EU Requirements” and “CFTC Grants Registration to NEX SEF Limited” in the CFTC section.

## BREXIT/UK DEVELOPMENTS

### UK Prime Minister Announces Snap General Election

On April 18, UK Prime Minister Theresa May announced her intention for a general election to be held on June 8. The announcement came three weeks after the March 29 submission by the United Kingdom of the “Article 50” notice to begin exit negotiations from the European Union (for further information see the *Corporate & Financial Weekly Digest* edition of [March 31, 2017](#)).

Under the UK Fixed Term Parliaments Act, a general election is held every fifth year after the previous election. This would have resulted in the next election taking place in 2020, one year after the March 2019 deadline for Brexit negotiations to have concluded. In order to bring the election forward to June 2017, a two-thirds vote of the House of Commons is required to assent to the new timetable. This vote was passed on April 19, with 522 Members of Parliament (MPs) voting for, and 13 MPs voting against, the motion.

One of the key reasons cited by Mrs. May for the snap election is a desire to strengthen the UK’s hand in negotiations with the European Union. An increase in the Conservative Party’s working majority in the House of Commons (currently 17 MPs) would give Mrs. May greater authority to pursue a Brexit agreement.

### FCA Explores Meaning of “Durable Medium” on Website

On April 7, the UK Financial Conduct Authority (FCA) updated part of its website on the meaning of “durable medium,” aiming to clarify the meaning and intention of the phrase as well as to explain its origin in EU law.

Various EU regulatory provisions require that a firm must provide certain information to a client in writing, either on paper or in another “durable medium.” Many recordkeeping requirements, including under the revised Markets in Financial Instruments Directive (MiFID II), also require firms to store information in a durable medium. Citing the lack of clarity on how innovative and new forms of media could meet the durable medium standard, the FCA states that it will update its handbook definition of the term.

A durable medium must:

- allow information to be addressed personally to the recipient;
- enable the recipient to store information in a way that is accessible for future reference and for a period of time adequate for the purposes of the information (storability); and
- allow the unchanged reproduction of the information stored (reproduction).

The FCA’s website explores how each of these criteria can be applied to mobile and tablet apps, video, interactive and secure websites, emails, PDFs and CD-ROMs and floppy-disks.

The FCA goes on to lay out principles of EU case law which may aid firms in considering whether an unconsidered medium will meet the criteria for a durable medium. Factors drawn from the cases which may help firms include the following:

- a principal factor underlying the notion of a durable medium is to enhance consumer protection;
- in the context of new technologies, a substitute for paper form may be regarded as meeting the requirements of consumer protection so long as it fulfils the same functions as paper form;
- the instrument must allow the recipient to store the information, which, when stored, must be accessible for as long as it is relevant to the recipient in order to protect his or her interests stemming from their relationship with the provider of the information; and

- there may be several technical methods available for guaranteeing unchanged reproduction. It is for the firm in each case to ensure that the method of electronic communication employed permits this kind of reproduction.

The website is available [here](#).

For additional coverage on financial and regulatory news, visit [Bridging the Week](#), authored by Katten's [Gary DeWaal](#).

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 \* Click [here](#) to access the *Corporate & Financial Weekly Digest* archive.

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