



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

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Extension of No-Action Position Established in CFTC Staff Letter No. 22-03 with Respect to Compliance with the Block and Cap Amendments

This letter modifies CFTC Letter No. 23-15,¹ issued on October 18, 2023, by further extending the period of time during which the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“CFTC” or the “Commission”) will not recommend that the Commission commence an enforcement action against an entity for failure to comply with the “Block and Cap Amendments.”² Specifically, this letter extends the expiration date of that no-action position from July 1, 2024 to October 7, 2024.

CFTC Letter No. 23-15 responded to an August 1, 2023 request³ (the “Request”) from provisionally registered swap data repositories Chicago Mercantile Exchange Inc., ICE Trade Vault, LLC, DTCC Data Repository (US) LLC, and KOR Reporting Inc. (collectively, the “Swap Data Repositories” or “SDRs”), seeking an extension of a no-action position set out in CFTC Letter No. 22-03.⁴ CFTC Letter No. 22-03, in turn, set out a no-action position with respect to the Block and Cap Amendments published on November 20, 2020 and effective January 25, 2021.⁵

I. Background

In 2020, the Commission amended part 43 of its regulations, along with certain other regulations implementing the Commission’s swap data reporting framework.⁶ The amendments to part 43 included the Block and Cap Amendments, namely, amendments to Commission regulation 43.4(h) concerning post-initial cap sizes, and amendments to Commission regulation 43.6 concerning block trades and large notional off-facility swaps. The Commission set a May 25, 2023 compliance date for the Block and Cap Amendments.

¹ CFTC Letter No. 23-15 (Oct. 18, 2023), *available at* <https://www.cftc.gov/csl/23-15/download>.

² The “Block and Cap Amendments” consist of amendments to Commission regulations 43.4(h) (Post-initial cap sizes) and 43.6 (Block trades and large notional off-facility swaps) that were published on November 20, 2020 and effective January 25, 2021. *See* 17 C.F.R. §§ 43.4(h), 43.6; Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).

³ *See* Chicago Mercantile Exchange Inc., Ice Trade Vault, LLC, DTCC Data Repository (US) LLC, and KOR Reporting Inc., Letter Regarding Request for an Extension of No-Action Position Established in CFTC Staff Letter No. 22-03 with Respect to Compliance with the Block and Cap Amendments, Aug. 1, 2023.

⁴ CFTC Letter No. 22-03 (Jan. 31, 2022), *available at* <https://www.cftc.gov/csl/22-03/download>.

⁵ *See* 17 C.F.R. §§ 43.4(h), 43.6.

⁶ Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).

On January 31, 2022, the Commission’s Division of Data published CFTC Letter No. 22-03, which, among other things, stated that the Division of Data would not recommend that the Commission commence an enforcement action against an entity for failure to comply with the Block and Cap Amendments before December 4, 2023, provided that the entity complied with the Commission’s block trade and cap size requirements that were in effect on January 1, 2021.⁷ In CFTC Letter No. 22-03, the Division of Data described particular operational and technological issues which supported the no-action position taken therein, including with respect to the Block and Cap Amendments, and stated that the no-action position would ensure market participants had adequate time for testing and preparation to implement the Commission’s amended swap data reporting regulations, including the Block and Cap Amendments.

On April 19, 2023, Commission staff published updated post-initial block and cap sizes pursuant to Commission regulations 43.6(g) and 43.4(h), respectively, based on reliable SDR data for a one-year period predominantly falling within the 2022 calendar year (the “2023 Block and Cap Announcement”).⁸ CFTC Letter No. 22-03 contemplated that SDRs and market participants would be in compliance with these post-initial block and cap sizes by December 4, 2023.

On October 18, 2023, in response to the Request, the Division issued a no-action letter extending the no-action position taken in CFTC Letter No. 22-03 with respect to the Block and Cap Amendments. In doing so, the Division recognized that potential operational and technological challenges might arise from implementing the Block and Cap Amendments before implementation of Unique Product Identifiers (“UPI”), scheduled for January 29, 2024,⁹ and recognized the potential for duplicative efforts implementing the Block and Cap Amendments for both the pre- and post-UPI reporting regimes in quick succession. The Division stated that it believed that extending the no-action position taken in CFTC Letter No. 22-03 with respect to the Block and Cap Amendments until a time when the relevant UPI requirements have been implemented may increase efficiencies, reduce costs, and support consistent data quality.

On May 23, 2024, the Division of Data published post-initial block and cap sizes based on reliable SDR data for the 2023 calendar year (the “2024 Block and Cap Announcement”). The Commission’s Part 43 regulations require the Commission to update the post-initial cap sizes and minimum block sizes “[n]o less than once each calendar year.”¹⁰ The Commission’s Part 43 regulations specify that such block and cap sizes “shall be effective on the first day of the second month following the date of publication” “[u]nless otherwise indicated on the Commission’s website.”¹¹ The 2024 Block and Cap Announcement specified that those updated block and cap sizes shall be effective on October 7, 2024.

⁷ See CFTC Staff Letter No. 22-03 (Jan. 31, 2022), *available at* <https://www.cftc.gov/cs/22-03/download>.

⁸ CFTC Press Release No. 8691-23 (Apr. 19, 2023), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8691-23>.

⁹ See CFTC Press Release No. 8659-23 (Feb. 16, 2023), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8659-23>; *see also* Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting, 88 Fed. Reg. 11790, 11793 (Feb. 24, 2023).

¹⁰ 17 C.F.R. §§ 43.4(h)(2)(i), 43.6(g)(1).

¹¹ 17 C.F.R. §§ 43.4(h)(10), 43.6(g)(6).

II. The Previously Requested No-Action Position and Discussion

In the Request, the SDRs sought a further extension of the no-action position concerning the Block and Cap Amendments set out in CFTC Letter No. 22-03, until no sooner than January 29, 2024.¹² The SDRs cited several operational and technological issues, including (1) technical complexity categorizing certain swaps in the credit asset class into the post-initial swap categories enumerated in Commission regulations 43.6(c)(2) prior to UPI implementation due to a lack of standardization in product fields; (2) operational inefficiencies resulting from building and implementing in short succession capping systems designed for the pre- and post-UPI implementation periods; and (3) difficulty of testing and development during the short turnaround time between implementing the Block and Cap Amendments for the pre- and post-UPI implementation periods at end-of-year and during holidays.¹³

Following the 2024 Block and Cap Announcement, the Division believes that an additional extension of the no-action position concerning the Block and Cap Amendments would benefit the SDRs. The Division understands that the SDRs have been building and testing systems to implement the block and cap sizes set forth in the 2023 Block and Cap Announcement by July 1, 2024. The 2024 Block and Cap Announcement includes block and cap sizes that in some cases vary from the block and cap sizes contained in the 2023 Block and Cap Announcement, as those updated block and cap sizes are derived from data from a more recent year. Division staff understands that SDRs may need additional time to perform additional development and testing to implement the updated block and cap sizes contained in the 2024 Block and Cap Announcement by October 7, 2024.¹⁴ To avoid operational inefficiencies and duplicative efforts in developing and testing two sets of block and cap sizes in relatively short succession, the Division is extending the no-action position as explained below.

III. No-Action Position

Based on the representations in the Request and the recent publication of the 2024 Block and Cap Announcement, the Division believes that a modification to CFTC Letter No. 23-15 to further extend the no-action position taken with respect to the Block and Cap Amendments in CFTC Letter No. 22-03 is warranted. Specifically, the Division will not recommend that the Commission commence an enforcement action against an entity for failure to comply with the Block and Cap Amendments before October 7, 2024, provided that the entity complies with the Commission's block trade and cap size requirements that were in effect on January 1, 2021. The Division believes that its extended no-action position would provide a reasonable period of time to make the operational changes necessary to implement the Block and Cap Amendments

¹² Request at 5, n.22 (noting also that the SDRs would not object to a delay of the effective date of new block thresholds and cap sizes until December 4, 2024).

¹³ See Request at 4-5; CFTC Letter No. 23-15 at 2-3.

¹⁴ As discussed, regulations 43.4(h)(10) and 43.6(g)(6) require by default that the SDRs implement regular annual updates to block and cap sizes by the first day of the second month following the date of publication. See 17 C.F.R. §§ 43.4(h)(10), 43.6(g)(6). In this case, Division staff understands that the initial implementation of an SDR's block and cap systems may require additional building and testing beyond what may in the future be required to merely update the block and cap sizes. For future updates to block and cap sizes, Division staff expect that, unless otherwise indicated on the Commission website, updated block and cap sizes will be implemented on the "first day of the second month" as set out in Part 43.

following the 2024 Block and Cap Announcement on May 23, 2024. The Division also believes that its extended no-action position may avoid inefficiencies resulting from implementing two sets of block and cap sizes—those set out in the 2023 Block and Cap Announcement and in the 2024 Block and Cap Announcement—in relatively quick succession and in connection with an initial implementation of the post-initial block and cap requirements.

This letter, and the no-action position taken herein, represent the views of the Division only, and do not necessarily represent the position or views of the Commission or of any other office or division of the Commission. The no-action position taken herein does not bind the Commission or Commission staff outside of the Division, nor does it excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in Commission regulations. Further, this letter and the no-action position taken herein are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances may render the no-action position taken in this letter void. As with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action position taken herein, in its discretion.

If you have any questions concerning this correspondence, please contact Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov, Chase Lindsey, Assistant Chief Counsel, Division of Market Oversight, at (202) 740-4833 or clindsey@cftc.gov, or Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov.

Sincerely,

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