



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5430
Facsimile: (202) 418-5547

Division of Clearing and Risk

May 17, 2023

Staff Advisory Relating to Prime Brokerage Arrangements and Derivatives Clearing Organization Registration

The Division of Clearing and Risk (“DCR”) of the Commodity Futures Trading Commission (“Commission”) is issuing this advisory (“Advisory”) regarding derivatives transactions executed through market structures commonly described as prime brokerage arrangements, which in certain cases may require derivatives clearing organization (“DCO”) registration of the intermediary with the Commission. DCR encourages entities using these structures, or proposing to use these structures, to examine the specific nature of their activities for the potential need to register, and to contact DCR staff to discuss any questions or issues that arise.

DCR staff have recently encountered potential DCO registration issues involving prime brokerage arrangements used by swap execution facilities (“SEF”) or those seeking to register as SEFs, particularly through the use of market structures that require the use of a single prime broker to provide centralized credit substitution to all SEF participants. The statutory definition of a DCO is contained in section 1a(15) of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 1a(15). Although the statutory definition of DCO includes a three-part analysis for determining whether a particular entity is included within the definition, DCR’s experience to date has focused on subparagraph (A)(i) of the definition, covering an entity, facility, system, or organization “that, with respect to an agreement, contract, or transaction . . . enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the [DCO] for the credit of the parties.” CEA Section 1a(15)(A)(i), 7 U.S.C. § 1a(15)(A)(i). In applying this definition, DCR staff will look to the substance of the relevant arrangement, based on the relevant facts and circumstances of an entity’s operations, rather than only its form.

While DCR staff does not believe that all prime brokerage arrangements will meet the definition of a DCO, DCR has recently informed several SEFs and SEF applicants that proposed market structures requiring use of a single prime broker that is a centralized credit intermediary would be required to register as a DCO. To ensure compliance with applicable statutes and regulations

regarding DCO registration, DCR strongly encourages any entity that has or is considering similar market structures to contact DCR.

This Advisory is intended to remind the affected parties of their obligations under the CEA and Commission regulations. It is not intended to create any enforceable rights or any new binding registration rules or regulations, or to amend existing rules or regulations. This Advisory represents only the views of DCR staff and does not necessarily represent the views of the Commission or of any other Division or Office of the Commission. If you have any questions regarding this matter, please contact Tad Polley, Associate Director (tpolley@cftc.gov, (312) 596-0551), or Joe Opron, Special Counsel (jopron@cftc.gov, (312) 596-0653).