U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of
Market Oversight

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Re: No-Action Position with Respect to the Swap Execution Facility Minimum Trading Functionality under Commission Regulation 37.3(a)(2)

The Division of Market Oversight ("**Division**") of the Commodity Futures Trading Commission ("**Commission**") is issuing this letter in response to a request dated June 30, 2025 from LSEG FX SEF, operated by Refinitiv US SEF LLC ("**LSEG SEF**"),[1] pursuant to Commission Regulation 140.99.[2]

LSEG SEF requested that the Division issue a no-action letter stating that the Division will not recommend that the Commission commence an enforcement action against a swap execution facility ("**SEF**") that does not satisfy the minimum trading functionality requirement set forth in Commission regulation 37.3(a)(2) by offering an order book as defined in Commission regulation 37.3(a)(3) (an "**Order Book**"), in connection with swap transactions executed on the SEF that are not subject to the trade execution requirement in Commodity Exchange Act ("**CEA**" or "**Act**") section 2(h)(8) ("**Permitted Transactions"**).[3]

I. Background

In 2013, the Commission issued final rules pursuant to section 5h of the CEA requiring entities that satisfy the definition of a SEF to register with the Commission,[4] and prescribing certain requirements for registered SEFs, including the minimum trading functionality requirement set forth in Commission regulation 37.3(a)(2) ("**Minimum Trading Functionality Requirement**").[5] Commission regulation 37.3(a)(2) states that "A swap execution facility shall,

[1] LSEG SEF, Request for Relief from Minimum Trading Functionality for Swap Execution Facilities (June 30, 2025) ("**LSEG SEF Request Letter**").
[2] 17 C.F.R. § 140.99.
[3] "Permitted transaction" is defined in Commission regulation 37.9(c)(1) as "any transaction not involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act." 17 C.F.R. § 37.9(c)(1). "Required transaction" is defined in Commission regulation 37.9(a)(1) as "any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act." 17 C.F.R. § 37.9(a)(1).
[4] A "swap execution facility" is defined in CEA section 1a(50) as a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (A) facilitates the execution of swaps between persons, and (B) is not a designated contract market. 7 U.S.C. § 1a(50).
[5] Core Principles and Other Requirements for Swap Execution Facilities; Final Rule, 78 FR 33476 (June 4, 2013) (the "**SEF Final Rules**").

at a minimum, offer an Order Book as defined in paragraph (a)(3) of this section."[6] Commission regulation 37.3(a)(3) defines an Order Book as:

> (i) An electronic trading facility, as that term is defined in section 1a(16) of the Act;[7]
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> (ii) A trading facility, as that term is defined in section 1a(51) of the Act;[8] or
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> (iii) A trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.[9]

In describing the purpose of the Minimum Trading Functionality Requirement, the Commission stated in the adopting release for the SEF Final Rules that "the Commission believes that an Order Book, as defined in final § 37.3(a)(3), is consistent with the SEF definition and promotes the goals provided in section 733 of the Dodd-Frank Act,"[10] and explained that those goals are to "promote the trading of swaps on [SEFs] and to promote pre-trade price transparency in the swaps market."[11] The Commission also stated that "[t]he order book requirement is designed to ensure a base level of pre-trade transparency to all market participants by providing for live executable bids and offers in Required Transactions."[12]

In 2018, the Commission proposed amendments to the Final SEF Rules, including amendments to eliminate the Minimum Trading Functionality Requirement.[13] The Commission noted in the proposing release that "market participants have rarely used Order Books to trade swaps on SEFs despite their availability for all swaps listed by SEFs," and that "other execution methods may be better suited to maximizing participation and concentrating liquidity formation on SEFs in episodically liquid swaps markets."[14] The Commission ultimately finalized certain aspects of the

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[6] 17 C.F.R. § 37.3(a)(2).
[7] An "electronic trading facility" is defined in CEA section 1a(16) as a trading facility that: (A) operates by means of an electronic or telecommunications network; and (B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility. 7 U.S.C. § 1a(16).
[8] Subject to specified exclusions, a "trading facility" is defined in CEA section 1a(51) as a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions: (i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or (ii) through the interaction of multiple bids or multiple offers within a system with a predetermined non-discretionary automated trade matching and execution algorithm. 7 U.S.C. § 1a(51).
[9] 17 C.F.R. § 37.3(a)(3).
[10] SEF Final Rules at 33484.
[11] *Id.* at 33484 *fn*.113.
[12] *Id.* at 33564.
[13] Swap Execution Facilities and Trade Execution Requirement; Proposed Rule, 83 FR 61946 (Nov. 30, 2018) ("**2018 SEF Proposal**").
[14] 2018 SEF Proposal at 61964.

2018 SEF Proposal,[15] but determined at the time not to finalize the elimination of the Minimum Trading Functionality Requirement.[16]

II. Requested No-Action Position

As noted above, the Commission has explained that the goals of the Minimum Trading Functionality Requirement are to promote the trading of swaps on SEFs and to promote pre-trade price transparency in the swaps market. LSEG SEF states that, while "well-intentioned,"[17] requiring SEFs to maintain an Order Book for Permitted Transactions "has neither increased trading on SEFs nor improved pre-trade price transparency, yet the requirement to offer and maintain an Order Book for all products listed on a SEF imposes significant costs on SEFs."[18] LSEG SEF states that this, in turn, "diverts resources that could be used for developing new technologies or methods of execution that participants will actually use, which would better achieve the Commission's stated goals of imposing the [Minimum Trading Functionality Requirement]."[19]

LSEG SEF notes that the Commission believed in 2013 that requiring a SEF to offer an Order Book for all products listed on the SEF "would have the tendency to shift liquidity from the over-the-counter bilateral markets onto SEFs,"[20] and that this belief was "based in part on experiences with the securities and futures markets, where 'order books attract participation from new and alternate sources of liquidity, including participants using automated trading strategies'."[21] However, LSEG SEF argues that during the several years since SEFs have been registered with the Commission, Order Books have not attracted liquidity onto SEFs, in part due to differences between the securities and futures markets and the swaps market.[22]

LSEG SEF states that "Order Books are seldom used, particularly for Permitted Transactions."[23] In this regard, LSEG SEF represents that "during the entire time that LSEG SEF's Order Book has been operational (*i.e.*, prior to obtaining temporary registration status in 2013), not a single trade has been executed on, nor any orders submitted to, LSEG SEF's Order Book."[24]

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[15] *See* Exemptions From Swap Trade Execution Requirement; Final Rule, 86 FR 8993 (Feb. 11, 2021); and Swap Execution Facilities; Final Rule, 86 FR 9224 (Feb. 11, 2021).
[16] *See* Swap Execution Facilities and Trade Execution Requirement; Proposed Rule; Partial Withdrawal, 86 FR 9304 (Feb. 12, 2021).
[17] LSEG SEF Request Letter at 2.
[18] *Id.* at 1.
[19] *Id*.
[20] *Id* at 2. *See also* SEF Final Rules at 33565 ("These provisions will facilitate the shifting of trading to the centralized SEF market structure from the bilateral OTC market structure. . . .").
[21] LSEG SEF Request Letter at 2, citing the SEF Final Rules at 33561.
[22] LSEG SEF Request Letter at 2, *fn.* 6.
[23] *Id*. LSEG SEF points, for example, to the 2018 SEF Proposal, which cited studies finding that "[d]epending on the product involved . . ., order book trading typically ranges between 'less than [one percent] to less than [three percent] of total [credit default swap] transactions' on SEFs, while order book trading constitutes between 'less than [one percent] to approximately [twenty percent] of total [interest rate swap] transactions.'" 2018 SEF Proposal at 61964. LSEG SEF further suggests that Order Book usage in other swap asset classes is likely even less due to the lower levels of liquidity in such asset other classes. LSEG SEF Request at 2.
[24] *Id*. at 2-3. LSEG SEF offers foreign exchange ("**FX**") non-deliverable forwards ("**NDFs**") and FX options for trading on its SEF. SEF transactions in FX NDFs and FX options are Permitted Transactions.

Further, LSEG SEF argues that "the past 12 years' of experience has shown that the [Minimum Trading Functionality Requirement] makes SEF trading *less* efficient, thus disincentivizing SEF trading."[25] LSEG SEF states that, while the costs to offer and maintain an Order Book vary, creating an Order Book typically requires a significant outlay of resources, both in terms of financial cost and staff hours.[26] LSEG SEF additionally states that it expends significant resources each year to maintain its Order Book.[27] Moreover, LSEG SEF represents that "SEFs must periodically upgrade the systems and hardware necessary to run an Order Book," which is also costly.[28] As such, LSEG SEF submits that "the requirement to offer and maintain a seldom (if ever) used Order Book requires SEF participants to effectively pay for systems that they will rarely, if ever, use and restricts SEFs' ability to develop new offerings that would attract additional participants and actually encourage more trading on SEFs."[29]

LSEG SEF argues that "the CEA … does not require SEFs to offer or maintain an Order Book."[30] LSEG SEF states that while the definition of a "SEF" references the term "trading facility,"[31] which is generally understood to be an order book,[32] "the SEF definition states only that a SEF *includes* a trading facility that facilitates the execution of swaps and is not a designated contract market[,]" thus indicating "that a SEF *can* have an Order Book but [is] not required to do so."[33]

Overall, LSEG SEF argues that "the [Minimum Trading Functionality Requirement] does not result in greater transparency and has not contributed to shifting swaps-market liquidity onto SEFs."[34] Instead, LSEG SEF believes that the Minimum Trading Functionality Requirement "imposes significant costs on SEFs that divert time and resources away from efforts that could be much more effective at accomplishing those goals."[35]

III. No-Action Position

Based on the foregoing – including the Commission's observation in the 2018 SEF Proposal to eliminate the Minimum Trading Functionality Requirement that "market participants have rarely used Order Books to trade swaps on SEFs despite their availability for all swaps listed by SEFs,"[36] and that "other execution methods may be better suited to maximizing participation and concentrating liquidity formation on SEFs in episodically liquid swaps markets"[37] – and the representations of LSEG SEF, the Division believes that a reconsideration should be undertaken

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[25] *Id*. at 3.
[26] *Id.*
[27] *Id*.
[28] *Id*.
[29] *Id*.
[30] *Id* at 3-4.
[31] *See* note 4, *supra*.
[32] *See* note 8, *supra.*
[33] LSEG SEF Request Letter at 4.
[34] *Id*.
[35] *Id*.
[36] 2018 SEF Proposal at 61964. *See also* note 23, *supra*.
[37] *Id*. Further, the 2018 SEF Proposal notes that the Commission in the SEF Final Rules "acknowledged that the Order Book functionality does not have the requisite flexibility to serve as the ideal method of execution for a variety of swaps, in particular those that feature lower levels of liquidity." *Id.* (citing to SEF Final Rules at 33564-65).

of the usefulness and effectiveness of the Minimum Trading Functionality Requirement in connection with Permitted Transactions,[38] and thus believes that a no-action position is warranted until such time that such reconsideration is completed. Accordingly, the Division will not recommend that the Commission commence an enforcement action against a SEF for failure to satisfy the Minimum Trading Functionality Requirement in connection with Permitted Transactions. This no-action position will continue until the adoption of a Commission action addressing the Minimum Trading Functionality Requirement in connection with Permitted Transactions.

IV. Conclusion

This letter, and the positions taken herein, represent only the views of the Division, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. This letter and the no-action positions taken herein are not binding on the Commission or other Commission staff. The positions provided in this letter do not excuse persons relying on it from compliance with any other applicable requirements contained in the Act, Commission regulations, or any other applicable laws (*i.e.*, securities laws). Further, this letter, and the positions taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed, or omitted material facts or circumstances might render this letter void. Finally, as with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the positions herein, in its discretion.

If you have any questions concerning this correspondence, please contact Roger Smith, Division of Market Oversight, at (202) 418-5344 or rsmith@cftc.gov, or Nora Flood, Division of Market Oversight, at (202) 418-6059 or nflood@cftc.gov.

Sincerely,

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[38] Such as consideration of LSEG SEF's argument that Minimum Trading Functionality Requirement for Permitted Transactions should be eliminated. *See* LSEG Request Letter at 4 ("[e]liminating the [Minimum Trading Functionality Requirement] for Permitted Transactions would therefore create efficiencies in SEF trading and functionality without detriment to swap market participants or the Commission").