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VIA ELECTRONIC SUBMISSION

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Response to Request for Comments on Post-Trade Name Give-Up on Swap Execution Facilities

Secretary Kirkpatrick:

On behalf of the eleven Federal Home Loan Banks (the "**FHLBanks**"), we appreciate the opportunity to respond to the Commodity Futures Trading Commission's (the "**Commission**" or "**CFTC**") request for comments on the practice of post-trade name give-up on swap execution facilities ("**SEFs**") (the "**Request for Comments**").[1] The FHLBanks believe that post-trade name give-up for swaps that are executed on a SEF's central limit order book ("**CLOB**") and are intended to be cleared is an unnecessary practice that runs counter to the statutory mandate that SEFs offer impartial access.[2] Accordingly, the FHLBanks respectfully request that the Commission prohibit name give-up for swaps that are executed on a SEF's CLOB and are intended to be cleared either as part of the implementation of its proposed rules to revamp the SEF regulatory regime[3] or via the issuance of interpretive guidance from CFTC staff.

I. The FHLBanks

The FHLBanks are government-sponsored enterprises ("**GSEs**") of the United States, organized under the authority of the Federal Home Loan Bank Act of 1932, as amended, and structured as cooperatives. Each FHLBank is independently chartered and managed, but the FHLBanks issue consolidated debt for which each FHLBank is jointly and severally liable. The FHLBanks serve the general public interest by providing liquidity to approximately 7,000 member financial institutions, including banks, thrifts, credit unions, insurance companies, and community development financial institutions. In doing so, the FHLBanks help increase the availability of credit for residential mortgages, community investments, and other services for housing and community development. Specifically, all of the FHLBanks provide readily available, low-cost sources of funds to their member financial institutions through loans referred to as "advances."

The FHLBanks, as end-users, enter into swap transactions with swap dealers to facilitate their business objective of safely and soundly providing liquidity to their member financial institutions and to manage and mitigate financial risk, primarily interest rate risk. As of September 30, 2018, the aggregate notional amount of interest rate swaps held by the FHLBanks collectively

[1] Post-Trade Name Give-Up on Swap Execution Facilities, 83 Fed. Reg. 61,571 (Nov. 30, 2018).
[2] The FHLBanks' comments in this letter focus on CLOBs since the alternative functionality of a SEF, i.e., the request for quote or "**RFQ**" system, necessarily involves the disclosure of the counterparties' identities.
[3] We are aware that, concurrently with its issuance of the Request for Comments, the CFTC issued a proposed rule that would significantly alter the SEF regulatory regime. *See* Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61,946 (Nov. 30, 2018).

was over $516 billion. At present, the FHLBanks are clearing a significant and growing percentage of their interest rate swap transactions.

II. FHLBank Comments

The FHLBanks commend the CFTC for its efforts to solicit input from market participants with respect to the practice of post-trade name give-up on SEFs where trades are anonymously executed (i.e., on a CLOB) and intended to be cleared. The FHLBanks believe that post-trade name give-up is unnecessary for such swaps and that the practice undermines the overall policy goal of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**")[4] of ensuring impartial access to SEFs. Accordingly, for the reasons set forth below, the FHLBanks respectfully request that the Commission prohibit post-trade name give up for swaps that are executed on a SEF that are intended to be cleared either as part of its rulemaking(s) to revamp the regulatory regime for SEFs or through the issuance of interpretive guidance from Commission staff.

A. Post-trade name give-up is unnecessary for swaps that are executed on a SEF that are intended to be cleared

As the Commission noted in its Request for Comments, the practice of post-trade name give-up originates from over-the-counter trading on anonymous, broker-matched, uncleared swaps markets, in which disclosure of counterparty information is utilized to generate and update trading records, calculate counterparty credit risk exposures, issue margin calls, and conduct other operational tasks that require the disclosure of counterparty identity. In such markets, the practice of post-trade name give-up is justified for operational and credit management purposes.

Title VII of the Dodd-Frank Act created a new regulatory regime for swaps. Pursuant to this new regime, as implemented by the Commission, swaps that are subject to mandatory clearing must be executed on a SEF, provided that a SEF has made the relevant type of swap available for trading. SEFs and clearinghouses are subject to straight-through processing requirements imposed by the Commission, and transactions on SEFs are subject to pre-execution credit checks (i.e., SEFs confirm that trades conform to risk-based limits established by the parties' clearing member(s) prior to execution). The practical effect of these requirements is a near instantaneous acceptance (or rejection) of a swap for clearing. SEF-executed swaps that are not accepted for clearing are deemed void *ab initio*. As to SEF-executed swaps that are accepted for clearing, when the swap is accepted the original transaction between the parties is replaced (through novation) by two mirror trades, with the clearinghouse taking the place of the counterparty to each original party. This process typically occurs within seconds. The practical effect of all of this is that the counterparties to a SEF-executed swap do not need to perform pre-trade credit checks, because this function is performed by the SEF and the relevant clearing member(s). Moreover, they do not need to calculate counterparty credit risk exposures or perform any other operational tasks that require the disclosure of a counterparty's identity, because their SEF-executed trades will be replaced by trades with the clearinghouse within moments after execution. For these reasons, post-trade name give-up is unnecessary for swaps executed on a SEF that are to be cleared.

B. Post-trade name give-up undermines the Dodd–Frank Act's goal of ensuring impartial access to SEFs

Final rules issued by the CFTC implementing Section 733 of the Dodd-Frank Act require impartial (i.e., fair, unbiased and unprejudiced) access to registered SEFs for standardized, liquid, and cleared swaps.[5] Practically, what this means is that an eligible contract participant should have the ability to trade on any registered SEF. Although buy-side participants have access to all registered SEFs in theory, the practice of post-trade name give-up deters buy-side firms from

[4] Pub.L. 111–203, H.R. 4173.
[5] Core Principles and Other Requirements for SEFs, 78 FR 33476, 33508 (June 4, 2013).

accessing SEFs that engage in such practice. A key reason for this is that post-trade name give-up results in what some members of the buy-side have deemed "information leakage," i.e., the idea that disclosure of a party's identity in connection with a trade can have the effect of disclosing, among other things, that party's trading intentions, strategy, or positions.[6] Such disclosure is particularly problematic for end-users like the FHLBanks who use swaps to hedge their business exposure.[7]

The result of this has been the development of a two-tiered SEF market, with the first tier being dealer-to-dealer or interdealer-broker run SEFs ("**Interdealer SEFs**"), many of which employ post-trade name give-up for their CLOBs (either directly or through the use of third-party middleware that is the means by which the executed transaction is routed to a clearinghouse), and a second tier dealer to customer SEF market ("**Dealer to Customer SEFs**"), which offers fully anonymous CLOBs to prevent the disclosure of sensitive trading information. Although fully anonymous CLOBs are provided by Dealer to Customer SEFs, Interdealer SEFs and Dealer to Customer SEFs are not equivalent trading platforms. The majority of liquidity on Dealer to Customer SEFs exist in RFQ systems and, as a result, most trading on Dealer to Customer SEFs takes place via RFQ systems, whereas on Interdealer SEFs, the majority of liquidity exists in CLOBs.

The "two-tier swaps market structure [of Interdealer SEFs and Dealer to Customer SEFs] perpetuates traditional dealers' control of liquidity and entrenches their role as exclusive 'price makers.'"[8] It is the FHLBanks' view that the Dodd-Frank Act contemplated all-to-all SEFs rather than the two-tier market structure that exists today. Post-trade name give-up is an impediment to such an all-to-all structure that the Commission should remove. Removing post-trade name give-up will be a step toward allowing for competitive, un-fragmented markets to develop, in which there are more participants in CLOBs and, therefore deeper pools of liquidity and better pricing.

C. Commission action is necessary

Among the questions raised in the Request for Comments were whether the Commission should intervene to prohibit or otherwise set limitations with respect to post-trade name give-up and whether post-trade name give-up should be subject to customer choice or SEF choice. Generally, the FHLBanks support appropriately tailored regulation of the swaps market, including affording market participants flexibility to adopt approaches that are best suited to their business needs. However, on the issue of post-trade name give-up, the FHLBanks believe that the Commission should adopt an express prohibition, either as part of the Commission's implementation of its proposed rules to revamp the SEF regulatory regime[9] or as interpretive guidance from the Commission's staff. As to the latter approach, we note that the issuance of regulatory guidance in respect of swaps traded on SEFs is not without precedent. In 2013, CFTC staff, as part of broader guidance on straight-through processing, mandated that SEFs have rules

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[6] *See* Comments of Michael O'Brien of Eaton Vance Management at the Commission's April 2, 2015 Market Risk Advisory Committee, beginning at page 141 of the transcript for such meeting, *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@aboutcftc/documents/file/mrac_040215_transcript.pdf.

[7] Certain market participants have argued that the practice of post-trade name give-up allows buy-side firms to submit low, anonymous bids to CLOBs with the intention of decreasing prices of swaps, while subsequently sending RFQs to multiple dealers concerning the same swaps to benefit from such lower prices. Most buy-side market participants would not engage in this behavior, in large part because they are constrained (either by policy or regulation) to solely engaging in derivatives that hedge or mitigate commercial risk. Moreover, any such activity would create reputational risk for the relevant entity. Last, intentional manipulation of the market is prohibited by the Commodity Exchange Act and Commission regulations.

[8] Managed Funds Association, POSITION PAPER: WHY ELIMINATING POST-TRADE NAME DISCLOSURE WILL IMPROVE THE SWAPS MARKET, March 31, 2015.

[9] *See* note 3 above.

stating that swaps that are executed on a SEF that are not accepted for clearing are void *ab initio*.[10]

Commission action is necessary to ensure consistency across all platforms. Affording market participants flexibility to determine whether or not post-trade name give-up is appropriate would, in effect, be a ratification of the current status quo, i.e., the two-tier swaps market. We believe this runs counter to the Dodd-Frank Act's intent.

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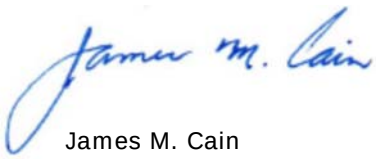
We appreciate the opportunity to comment and your consideration thereof. Please contact Jamie Cain at (202) 383-0133 or james.cain@sutherland.com, or Ray Ramirez at (202) 383-0868 or ray.ramirez@sutherland.com, with any questions you may have.

Respectfully submitted,



James M. Cain
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cc: FHLBank Presidents
FHLBank General Counsels

[10] *See Staff Guidance on Swaps Straight-Through Processing*, September 26, 2013, *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/stpguidance.pdf.