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March 13, 2019

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038-AE25: Swap Execution Facilities and Trade Execution Requirement

Dear Mr. Kirkpatrick:

Refinitiv US SEF LLC[1] ("**Refinitiv SEF**" or "**we**") welcomes the opportunity to submit its comments to the Commodity Futures Trading Commission (the "**Commission**") on the Commission's proposed rule "Swap Execution Facilities and Trade Execution Requirement" (the "**Proposed Rule**").[2] Refinitiv SEF commends the Commission for its thorough and thoughtful analysis of the existing rules applicable to swap execution facilities ("**SEFs**")[3] and for proposing rule revisions with the goal of "reducing unnecessary complexity, costs, and other burdens that impede SEF development, innovation, and growth."[4] To further this effort, Refinitiv SEF respectfully submits these comments for the Commission to consider.

As discussed further below, Refinitiv SEF:

- Supports the proposal to eliminate the made available to trade ("**MAT**") process, but believes that, in order to do so, the prescriptive trade execution methods for swaps that are required to be traded on SEFs also must be removed because requiring less liquid products to trade on SEFs via the currently-required execution methods would hamper the ability and willingness of market participants to trade those products;

[1] In October 2018, the Financial and Risk business of Thomson Reuters, of which TR SEF was a part, changed its name to Refinitiv in connection with a partial acquisition of the Financial and Risk business. As of February 28, 2019, TR SEF formally changed its name and is now doing business as Refinitiv SEF.

[2] Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946 (proposed Nov. 30, 2018) (to be codified at 17 C.F.R. pts. 9, 36, 37, 38, 39, and 43).

[3] Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (Jun. 4, 2013) (codified at 17 C.F.R. pt. 37) (the "**Current SEF Rule**"); Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33606 (Jun. 4, 2013) (codified at 17 C.F.R. pts. 37 & 38) (the "**MAT Final Rule**").

[4] Proposed Rule, 83 Fed. Reg. at 61946.

- Supports the proposal to codify footnote 88 of the preamble to the Current SEF Rule, which would require any facility that meets the statutory SEF definition to register as a SEF. We support this proposal because it both is consistent with the registration requirement contained in the Commodity Exchange Act ("**CEA**") and furthers the CEA goal of encouraging trading on SEFs;

- Requests that the final rule include more clarity on the requirements for the newly proposed "trade evidence record" to document swaps;

- Asks the Commission to provide a material compliance period for SEFs to adapt to the amended structure for block trades;

- Requests additional guidance regarding the new prohibition on pre-execution communications;

- Urges the Commission to reconsider the proposed changes to error trades, and revise the rules to be less burdensome on market participants;

- Supports the proposed changes to make the oversight and disciplinary regulations applicable to SEFs less prescriptive because certain of the existing requirements are not feasible;

- Requests clarification on certain practical aspects of the newly-proposed Form SEF;

- Requests additional guidance on the Commission's approach to demonstrating that a swap is not readily susceptible to manipulation;

- Supports the amendments to the financial resource requirements for SEFs, which are more narrowly tailored to address the concerns underlying those requirements for SEFs;

- Supports the proposed streamlining of the requirements for the annual Chief Compliance Officer ("**CCO**") report, but requests additional clarification on the new requirements; and

- Believes many of the proposed changes discussed herein will encourage more market participants to use SEFs (even when not required to do so) rather than single-dealer platforms, in keeping with the goals of the CEA.

We discuss each of these issues more fully below.

I. About Refinitiv SEF and Refinitiv

Refinitiv SEF is a wholly owned subsidiary of Refinitiv and is registered with the Commission as a SEF. It facilitates trading in foreign exchange ("**FX**") non-deliverable forwards ("**NDFs**") and FX options. Refinitiv SEF enables its participants to trade NDFs and FX options through its request-for-quote and request-for-stream systems, as well as an order book.

Participants benefit from Refinitiv SEF's complete end-to-end workflow solution, including straight-through processing and settlement.

As an FX-only SEF, Refinitiv SEF is a "**Permitted SEF**" in that it only facilitates the execution of "**Permitted Transactions**" that are not currently subject to a trade execution mandate or mandatory clearing. Refinitiv SEF does not facilitate the execution of any "**Required Transactions**" that are required to be cleared and traded on a SEF or a designated contract market.

II. Trade Execution Comments

The Commission's statutory mandate under the CEA with respect to SEFs is to promote trading on these regulated markets.[5] The Commission's current trade execution regulations have accomplished that goal in many respects, as SEFs are now an established part of the swap market on which market participants traded over $10 trillion in swaps every month last year.[6]

However, these regulations impose several burdensome and ill-suited requirements on SEFs that serve to hinder the development of SEF trading. The Proposed Rule would address many of these requirements and align the SEF rules more closely with the Commission's goal to improve the operation of swap markets, but there are still some areas in which the Proposed Rule could be refined to further benefit swap markets. We discuss several of these issues (and proposed solutions) below.

A. Refinitiv SEF Supports the Proposed Elimination of the MAT Process and Restrictive Methods of Execution on SEFs (*e.g.*, RFQ-to-3 and Order Book Requirements)

Currently, once the Commission determines that a swap is subject to mandatory clearing, any SEF that lists that swap can make a determination that it is "made available to trade." At that point, all market participants must trade such a swap on a SEF, using restrictive trade execution methods (*i.e.*, an order book or RFQ-to-3),[7] and must comply with various prescriptive requirements applicable to Required Transactions, such as the 15-second rule.

We support the Commission's proposal to eliminate the MAT process, and to remove the prescriptive and limiting execution methods for Required Transactions. Taking these steps together would help to achieve the goal, which we support, of increasing the number of trade execution mandates, increasing the number of products required to be traded on SEFs, and increasing the volume of SEF trading.

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[5] CEA § 5h(e), 7 U.S.C. § 7b-3(e) ("The goal of this section is to promote the trading of swaps on swap execution facilities and to promote pre-trade price transparency in the swaps market.").

[6] *See* FIA SEF Tracker, Volume per Month, *available at* https://fia.org/node/1834/.

[7] *See* 17 C.F.R. § 37.10.

i. The MAT Process Should Be Removed in a Manner that Protects Against a Single SEF Forcing Market Participants to Trade on that Platform

First, we believe the MAT process is an unworkable approach to implementing a trading mandate. We recognize that SEFs have an inherent conflict of interest in issuing MAT determinations because it benefits SEFs if a greater range of swaps must be executed on-SEF (even if the liquidity characteristics of such swaps make it impractical to do so). Eliminating the MAT process would remove this obstacle to trade execution mandates and result in more trading on SEFs with the consequent benefits of trading migrating to transparent and regulated markets.

Nevertheless, we understand that certain market participants still may be concerned that, if the MAT process were eliminated as proposed, a single SEF could theoretically list a product that is subject to mandatory clearing in order to force the market to use its platform to execute that product even though it has very limited trading volume (*e.g.*, a forward rate agreement interest rate swap with a bespoke tenor). We support the Commission taking appropriate steps to address these concerns in a final rule, such as by requiring two SEFs to list a given product before it can become subject to the trade execution requirement.

ii. The Requirement to Trade Required Transactions by Restrictive Trade Execution Methods Should Be Eliminated

Eliminating the MAT process, however, is necessary but not sufficient. By subjecting Required Transactions to restrictive trade execution requirements, the Commission has created an "unnecessary tension between the clearing mandate and trading requirements"[8] because swaps that are liquid enough to be cleared may have characteristics or market conventions that make it inappropriate to limit them to execution via an order book or RFQ-to-3.

For these reasons, many market participants have indicated that, while they are comfortable with expanded clearing mandates, they cannot support such an expansion because of the trade execution determinations that likely would follow[9] and the attendant trade execution methods for Required Transactions, which may not suit those products.[10] Chairman Giancarlo echoed these sentiments in his White Paper, where he referenced the debate over an NDF clearing mandate and indicated that the "ill-conceived SEF execution and MAT regime has complicated the ability to make additional clearing mandates."[11] In order to alleviate these

[8] J. Christopher Giancarlo, Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank at 30 (Jan. 29, 2015), http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf (hereinafter, the "**White Paper**").

[9] Refinitiv SEF urges the Commission to give due regard to international developments with respect to clearing and trade execution mandates to avoid unnecessary regulatory divergence between jurisdictions that can be disruptive to global markets.

[10] *See, e.g.*, comments of Stephen Berger, Citadel LLC, PUBLIC ROUNDTABLE: THE MADE AVAILABLE TO TRADE PROCESS (July 15, 2015) ("an adverse consequence of the current process is that the inability to control the MAT process creates this link between the clearing obligation, the trading obligation that some people are quite frightened of. And so that creates I think a negative force on the further expansion of central clearing which I think is something everyone around this table agrees has gone well and may even warrant further expansion.").

[11] *See* White Paper at 31. As Chairman Giancarlo has explained, "The current non-deliverable forward (NDF) clearing mandate debate highlights the tension between clearing and trading and the flawed swaps trading regime.

concerns, the restrictive trade execution limitations and overly prescriptive requirements applicable to Required Transactions should be removed.

We appreciate that the current SEF regime has increased competition and reduced prices for Required Transactions. However, it is not clear that these laudable effects are necessarily the result of the order book/RFQ-to-3 requirement, as opposed to simply being the result of the trade execution requirement in general. After all, before the trade execution mandate applied to interest rate swaps and credit default swaps, they could be traded completely bilaterally by all market participants. It is therefore to be expected that, as studies have found, more market participants would trade with multiple dealers after they were required to execute those products on electronic platforms with easy access to multiple dealers.

That said, we do not believe that eliminating the RFQ-to-3 requirement would eliminate the practice of sending RFQs to multiple liquidity providers when it makes commercial sense to do so. By requiring swaps to be traded on electronic platforms with easy access to multiple liquidity providers, it should be expected that market participants would take advantage of this ability even in the absence of a requirement to do so.

Finally, we note that the products that have demonstrated an increase in competition and reduced prices after becoming subject to mandatory trade execution were highly liquid swaps. Products subjected to a trade execution mandate going forward will, inherently, be less liquid. And it is by no means clear that the same results (*e.g.*, increased competition and lower prices) would be observed for less liquid products if they were required to be traded by an order book or RFQ-to-3, nor are we aware of studies that speak to these less liquid products. Rather, it appears to us that, as many market participants have noted, such requirements would be more likely to stifle liquidity in such products, which would complicate trading and potentially eliminate the ability of end-users to hedge their risks.

Therefore, if the Commission's goal is to promote trading on SEFs by bringing products other than the most liquid and highly-traded ones onto SEFs, then it should, as proposed, allow SEFs to offer flexible methods of execution for Required Transactions appropriate to the characteristics of these products.

iii. The Requirement for All SEFs to Maintain an Order Book Should Be Removed

We support the proposal to eliminate the requirement that all SEFs maintain an order book for their listed products. As we have previously commented,[12] market participants (and in particular, buy-side participants) do not generally use order books for episodically liquid products like FX NDFs. If a SEF lists products that trade efficiently on an order book, that SEF (or a competitor) will provide an order book for those products. However, the lack of liquidity on many SEF order books demonstrates the inefficiencies created by requiring all SEFs to incur the significant costs associated with developing and maintaining an order book.

At the October 9, 2014 CFTC Global Markets Advisory Committee meeting, participants noted that once NDFs are subject to the clearing mandate, the trade execution requirement is a practical certainty due to the SEF-controlled MAT process." *Id.*

[12] *See*, *e.g.*, Letter from Wayne Pestone, FX Alliance Inc. to David Stawick, CFTC at 4-7 (March 8, 2011).

The CEA does not require that SEFs have an order book. The CEA's defined term "trading facility"[13] generally refers to an order book, so if Congress had intended to require SEFs to offer an order book, it could have stated that SEFs "are" or must "have" trading facilities. Instead, Congress defined a SEF as "including" any trading facility. This indicates that a SEF can have an order book, but is not required to do so.

We therefore believe the Commission should remove the requirement for all SEFs to maintain an order book.

B. Refinitiv SEF Supports the Proposed Codification of Footnote 88

In footnote 88 of the preamble to the Current SEF Rule, the Commission stated that "a facility would be required to register as a SEF if it operates in a manner that meets the [CEA] SEF definition even though it only executes or trades swaps that are not subject to the trade execution mandate."[14] In this footnote, the Commission articulated its interpretation of the CEA that a platform that meets the definition of a SEF (*i.e.*, a multi-to-multi platform that facilitates the execution of swaps) is not excused from registering as such merely because it does not facilitate the execution of Required Transactions. The Commission explained that it believed this approach is consistent with the statutory SEF definition, the statutory SEF registration requirement, and the trade execution requirement, and promotes the statute's objectives regarding SEFs.[15] However, this interpretation was not codified in the existing SEF rules.

The Proposed Rule would codify the existing approach to the SEF registration requirement as articulated in footnote 88. Specifically, the Proposed Rule would amend § 37.3(a)(1) to state that a facility that meets the statutory SEF definition must register as a SEF without regard to whether the swaps that it lists for trading are subject to the trade execution requirement.[16]

Refinitiv SEF supports the proposed amendment to § 37.3(a)(1) to codify the Commission's existing approach to the SEF registration requirement for the following reasons:

i. Registration of Permitted SEFs is Required by the CEA

Section 5h(a)(1) of the CEA, which establishes the registration requirement for SEFs, unequivocally states: "No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility . . . ."[17] The statutory registration

[13] "Trading facility" is defined as a ". . . 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 pre-determined non-discretionary automated trade matching and execution algorithm." CEA § 1(a)(51), 7 U.S.C. § 1a(51).

[14] Current SEF Rule, 78 Fed. Reg. at 33481 n.88.

[15] *Id.* at 33481–82.

[16] Proposed Rule, 83 Fed. Reg. at 61956.

[17] CEA § 5h(a)(1), 7 U.S.C. § 7b-3(a)(1). Section 1a(50) of the CEA, in turn, defines a "swap execution facility" 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,

requirement for SEFs, by its own terms, is not limited to platforms that facilitate the execution of Required Transactions. It applies to platforms that facilitate the execution of *all* swaps, without regard to whether the swaps it lists are subject to the trade execution requirement.[18] Footnote 88 correctly construes the CEA's SEF registration requirement, and codifying this approach would be appropriate and consistent with this statutory requirement.

ii. Codifying Footnote 88 Would Further the Purposes Stated in the CEA

Refinitiv SEF, like other Permitted SEFs, is a robust, transparent marketplace. It is exactly the type of marketplace intended by the CEA, which, as noted above, has as one of its goals the migration of the bilateral swaps market to SEFs.[19] In addition, Permitted SEFs have followed the rules established by the Commission, incurring significant costs to register as required by the Commission in order to participate in these markets. Removing footnote 88 now would create an unequal playing field and undermine the stated purpose of the CEA "to promote . . . *fair competition* among boards of trade, *other markets*, and market participants."[20]

iii. Permitted SEFs are Working

Refinitiv SEF has a diverse and large pool of participants that have voluntarily chosen to trade on a Permitted SEF in order to obtain the benefits of competition on a multilateral trading platform. Refinitiv SEF has had a notional trading volume of over $20 billion every month during the past year (with a peak of over $50 billion in October 2018), with average daily volume in excess of $1 billion during that same period.[21] However, it is unlikely that market participants would continue to voluntarily trade on Permitted SEFs to the same extent if they could access the same products and providers through another multilateral trading platform that is not registered as a SEF and thus does not carry with it the requirements that accompany trading on a regulated platform. As explained above, this would be inconsistent with the goal of the CEA to promote trading on SEFs. SEFs, as regulated platforms, benefit the swaps market by facilitating swaps trading on robust, transparent, and well-governed platforms that are required to ensure fair, open, and orderly markets.

We also note that, while some have claimed that footnote 88 prevents market participants from trading swap and non-swap products in a single portfolio, Refinitiv SEF participants are able to seamlessly trade swap and non-swap products together through one cohesive system. Specifically, once members of Refinitiv's non-SEF platform (FXall) provide appropriate

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including any trading facility, that – (A) facilitates the execution of swaps between persons; and (B) is not a designated contract market." (Emphasis added.)

[18] Swaps that are not subject to the trade execution requirement are not required to be traded on a SEF. The CEA acknowledges this by stating: "For all swaps that are not required to be executed through a swap execution facility . . . such trades may be executed through any other available means of interstate commerce." CEA § 5h(d)(2), 7 U.S.C. § 7b-3(d)(2). However, this provision does not mean that multilateral trading platforms meeting the definition of a SEF need not register as such; it simply acknowledges that Permitted Transactions may be executed off of SEFs entirely (*i.e.*, bilaterally or on single-dealer platforms).

[19] CEA § 5h(e), 7 U.S.C. § 7b-3(e).

[20] CEA § 3(b), 7 U.S.C. § 5(b) (emphasis added).

[21] *See* FIA SEF Tracker, Volume by SEF, *available at* https://fia.org/node/1834/.

documents to onboard onto the SEF, they can trade NDFs, FX options, FX forwards, FX swaps and FX spot transactions through the same electronic system and as part of a single portfolio.

In sum, codifying footnote 88 by requiring any facility that meets the statutory SEF definition to register as a SEF would further the CEA registration requirement. This codification also would further the goals of the CEA by encouraging swaps trading to take place on registered SEFs and promoting fair competition among markets. Finally, it would make SEF trading more efficient and less costly, while preserving an important aspect of the Current SEF Rule that is working well. The Commission, therefore, should codify footnote 88 in the final rule.

C. The Commission Should Clarify the Amended Requirements for Confirmations

The Commission's rules currently require SEFs to issue a written confirmation that includes all of the terms of the transaction, including relationship terms contained in underlying documentation between the counterparties.[22] Further, a footnote in the preamble to the Current SEF Rule effectively requires SEFs to create a library of the agreements between SEF participants in order to meet this standard[23] (although the Commission staff has granted no-action relief from this requirement).[24] Chairman Giancarlo has succinctly summarized the deficiencies in the current confirmation requirement as follows:

> It is practicably impossible for a SEF to collect and track changes to every agreement between participants, and to have to "glean" any information from these agreements for confirmation and reporting purposes. If there is a concern that master or other agreements may be used to change the economic terms of a transaction entered into on a SEF, then SEF-issued confirmations could be structured to supersede the terms of any agreement between the counterparties that contradict transaction-specific economic terms in the confirmation.[25]

The Proposed Rule addresses these issues by proposing several substantial changes to the requirements for SEF confirmations. These changes include eliminating the library requirement for all swaps, and revising the confirmation requirements for uncleared swaps.[26] We support the elimination of the library requirement, which will codify the long-standing no-action relief granted by Commission staff on this issue. We also support the simplified "trade evidence record" requirement for uncleared swaps, but believe that this requirement should be clarified in the final rule.

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[22] 17 C.F.R. § 37.6(b).

[23] Current SEF Rule, 78 Fed. Reg. at 33491 n.195.

[24] CFTC Letter No. 17-17, Re: Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 24, 2017) (extending no-action relief until the effective date of any changes in the regulation); CFTC Letter No. 16-25 (Mar. 14, 2016) (extending no-action relief until the earlier of March 31, 2017 or the effective date of any changes in the regulation); CFTC Letter No. 15-25 (Apr. 22, 2015) (extending no-action relief until March 31, 2016); CFTC Letter No. 14-108 (Aug. 18, 2014) (granting no-action relief until September 30, 2015).

[25] *See* White Paper at 68 (internal citation to CFTC Letter No. 14-108 omitted).

[26] Proposed Rule, 83 Fed. Reg. at 61973.

As proposed, "trade evidence record" is defined as "a legally binding written documentation . . . that memorializes the terms of a swap transaction agreed upon by the counterparties and legally supersedes any conflicting term in any previous agreement . . . that relates to the swap transaction between the counterparties."[27] The Proposed Rule does not specify the particular information that must be included in the trade evidence record, although "[t]he Commission anticipates that these terms would include, at a minimum, the 'economic terms' that are agreed upon between the counterparties to a specific SEF transaction, *e.g.*, trade date, notional amount, settlement date, and price."[28]

Refinitiv SEF appreciates this clarification in the preamble, but as currently drafted, the rule text requires the trade evidence record to include all "terms of a swap," which could still be interpreted to include the relationship terms set forth in an ISDA or other master agreement. Accordingly, we believe the Commission should clarify in the rule text that the terms that must be included in the trade evidence record: (1) do not include relationship terms; and (2) are limited to the economic terms of the swap and any additional terms that the SEF, in the exercise of its reasonable discretion, determines to be necessary.

D. The Commission Should Provide a Material Compliance Period for SEFs to Adopt the Amendments to the Block Trade Requirements

A block trade is defined under the Commission's rules as "a publicly reportable swap transaction that: (1) Involves a swap that is listed on a registered [SEF] or [DCM]; (2) *Occurs away* from the registered [SEF's] or [DCM's] trading system or platform and is executed pursuant to the registered [SEF's] or [DCM's] rules and procedures; (3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) Is reported subject to the rules and procedures of the registered [SEF] or [DCM] . . . ."[29] The Proposed Rule would revise this definition to eliminate the "occurs away" requirement (the implementation of which has been delayed for certain swaps pursuant to staff no-action relief),[30] and would "require that to the extent counterparties seek to execute any swap that has a notional or principal amount at or above the appropriate minimum block trade size applicable to such swap on a SEF, they must do so on a SEF's trading system or platform."[31]

We support this change in approach to block trades because it would further the statutory goal of increasing the liquidity of swaps executed on SEFs. However, we note that SEFs will need to change their systems in order to accommodate the differences in workflows between off-SEF block trades (where the SEF is merely responsible for post-trade reporting and processing)

[27] *Id.* at 62096.

[28] *Id.* at 61973.

[29] 17 C.F.R. § 43.2 (emphasis added).

[30] CFTC Letter No. 17-60, Re: Extension of No-Action Relief for Swap Execution Facilities from Certain "Block Trade" Requirements in Commission Regulation 43.2 (Nov. 14, 2017) (extending no-action relief until November 15, 2020); CFTC Letter No. 16-74 (Oct. 7, 2016) (extending no-action relief until November 15, 2017); CFTC Letter No. 15-60 (Nov. 2, 2015) (extending no-action relief until November 15, 2016); CFTC Letter No. 14-118 (Sept. 19, 2014) (granting no-action relief until December 15, 2015).

[31] Proposed Rule, 83 Fed. Reg. at 62043.

and on-SEF execution. Since the Proposed Rule would prohibit market participants from using SEFs for block trades unless they are executed on a SEF's platform, it would cause market disruption if SEFs are not ready to accommodate block trading on the compliance date when blocks must be executed on-SEF. Therefore, we request that the Commission provide a compliance period of six months (after the final rule is published in the Federal Register) before the proposed new definition of a block trade takes effect.

E. The Commission Should Provide Additional Guidance Regarding the Prohibitions on Pre-Execution Communications and Pre-Arranged Trading

The Proposed Rule would prohibit pre-execution communications for Required Transactions, but not Permitted Transactions.[32] It states that prohibiting pre-execution communications for "swaps not subject to the trade execution requirement would not be practical, given that counterparties do not have to execute these swaps on a SEF." We agree. However, we note that proposed Regulation 37.203 also prohibits pre-arranged trading, and request that the Commission clarify that pre-execution communications that would be allowed for Permitted Transactions would not violate the prohibition on pre-arranged trading, either.

F. The Proposed Changes to Error Trades Should Be Revised to be Less Burdensome on Market Participants

The Commission's current rules do not explicitly require SEFs to adopt a policy regarding error trades. We believe most SEFs, like Refinitiv SEF, have adopted such policies, and we further believe that the "baseline" procedures with respect to error trades set out in Proposed Rule 37.203(e)(2) are consistent with existing industry practice.

Proposed Rule 37.203(e)(3), however, would require SEFs to notify all market participants of certain details of each error trade. Notifying Refinitiv SEF participants of error trades would often be disruptive to our market, though, because Refinitiv SEF does not broadcast executed trade information of every SEF trade to all its participants. As a result, Refinitiv SEF participants would not have access to the erroneous trade data in the first place (other than by reviewing real-time reporting data from a swap data repository). Therefore, we request that the Commission state in the regulatory text that SEFs may determine whether or not to notify market participants of each error trade depending on whether or not such notification is appropriate. Such a permissive, non-prescriptive rule would be consistent with the overall objective of the Proposed Rule to allow SEFs to tailor their rules to the circumstances of their particular markets and operations.

III. Oversight and Enforcement Comments

The Proposed Rule would make a number of changes to the requirements regarding a SEF's rule enforcement program to "enable a SEF to establish a rule enforcement program that is best suited to its trading systems and platforms, as well as its market participants, while still ensuring the ability to fulfill its self-regulatory obligations."[33] Refinitiv SEF supports this

[32] *Id.* at 61986–88.

[33] *See id.* at 61999.

initiative, as we believe that many aspects of the rule enforcement requirements in the Commission's current rules are either unclear or not feasible for SEFs. Below, we identify certain aspects of the Proposed Rule of which we are particularly supportive, and also identify certain additional changes in this area for the Commission's consideration in formulating a final rule:

- *Automated Trade Surveillance System Requirements*: Refinitiv SEF supports the proposal to make the requirements regarding an automated trade surveillance system more principles-based. In particular, we agree with the Commission that a "SEF's automated trade surveillance system cannot perform all of the enumerated capabilities under the existing rule, such as computing trade gains, losses, and swap equivalent positions."[34]

- *Supervision of Regulatory Service Providers*: Refinitiv SEF supports the proposal to provide more flexibility to SEFs in determining how to supervise their regulatory service provider(s). We believe SEFs can work with their regulatory service providers to assure that core principles are satisfied based on their own particular trading protocols and operations, and do not require prescriptive, one-size-fits-all requirements to do so. Moreover, Refinitiv SEF supports the proposed changes to permit regulatory service providers to make certain substantive decisions. Currently, SEFs and their regulatory service providers must draw arbitrary lines between what a regulatory service provider can and cannot do, and SEF rulebooks are more complicated as a result of these distinctions. We agree that it would be much more efficient if SEFs and their regulatory service providers were permitted to decide on a case-by-case basis how to handle a given decision and action.

- *Audit Trail Requirements*: Refinitiv SEF supports the proposed amendments to the audit trail requirements applicable to SEFs for the reasons stated in the Proposed Rule. In particular, Refinitiv SEF believes the current requirement to capture data regarding all indications of interest and requests for quotes is unduly burdensome and requires a massive amount of storage space. Additionally, Refinitiv SEF supports the elimination of the requirement to be able to track an order through fill, allocation or other disposition, because SEFs generally do not have access to most post-execution information. Finally, Refinitiv SEF supports the elimination of the requirement that SEFs annually review whether all of their participants are complying with the SEF's recordkeeping requirements, because it is not feasible or practical for SEFs to do so. These prescriptive and onerous requirements are not necessary for SEFs to satisfy the standards set out in the core principles of the CEA

- *Disciplinary Procedures*: Refinitiv SEF supports the proposed amendments regarding disciplinary procedures. As noted in the Proposed Rule,[35] the current

[34] *Id.* at 61999.

[35] *See id.* at 62008.

requirements regarding disciplinary procedures are based in large part on the Commission's regulations applicable to futures trading on designated contract markets ("**DCMs**"), but the enforcement priorities and concerns for many SEFs are likely to differ significantly from that model (where all trading is done via order book, and in significant volumes). Refinitiv SEF therefore particularly supports the proposed amendments to eliminate the requirement to conduct disciplinary proceedings through formal disciplinary panels, and the prescriptive requirements regarding how disciplinary hearings and decisions must be handled. However, Refinitiv SEF requests that the Commission provide further guidance and explanation as to its expectations for SEFs that conduct disciplinary procedures through their compliance departments. For example, in these circumstances, must the details of a SEF's disciplinary procedures be set forth in its rulebook, and must a SEF provide a right to appeal a disciplinary decision?

- *Warning Letters*: Refinitiv SEF supports the proposal to allow SEFs to issue more than one warning letter in a 12-month time period for certain minor infractions. However, the Proposed Rule limits this expansion of the permissible use of warning letters to "minor recordkeeping or reporting infractions." SEFs do not typically impose reporting requirements on SEF participants, but often do require their participants to notify the SEF of certain events (*e.g.*, regarding canceled or amended trades). Therefore, Refinitiv SEF believes it would be more appropriate to allow SEFs to issue more than one warning letter for minor "notification infractions."

- *Monitoring of Trading and Trade Practices*: Refinitiv SEF, like other SEFs, has a robust trade surveillance program. However, we agree with the Commission that the current requirements regarding market monitoring impose impractical burdens on SEFs, particularly those that require monitoring of activities outside of the SEF's own market. Refinitiv SEF therefore supports the proposed amendment providing that SEFs would only be required to monitor activity beyond their own markets "as necessary" to detect and prevent market distortions and trade practice violations.

IV. Changes to Form SEF

The Proposed Rule would make a number of significant changes to Form SEF. We agree with the Commission's comments[36] that the current form requests certain unnecessary information and is unclear in certain ways.

We request, though, that the Commission confirm in rule text that the adoption of a revised Form SEF does not trigger a requirement for all currently registered SEFs to complete and file the new Form SEF with the Commission. In addition, we ask that the Commission clarify the following questions with respect to the proposed new Form SEF in order to avoid a similar lack of clarity:

[36] *See id.* at 61965.

- If a currently registered SEF needs to update a Form SEF exhibit due to a material change to the information in that exhibit, should the SEF do so under the old or new Form SEF? If currently registered SEFs would be required to use the new Form SEF, how should they do so for exhibits that request different information, or that have been combined with other exhibits?

- If a SEF applicant is in the process of applying to become a SEF, and has made substantial progress in preparing its application at the time the Commission finalizes its changes to Form SEF, would the Commission permit the applicant to file its application using the current Form SEF?

V. Additional Comments

In addition to the points raised above, Refinitiv SEF also submits the following comments regarding certain other, discrete issues raised in the Proposed Rule:

- *Readily Susceptible to Manipulation Guidance*: The Commission's current guidance to SEFs regarding how to demonstrate that a swap is not readily susceptible to manipulation largely references the Commission's DCM regulations. Refinitiv SEF supports the issuance of guidance on this subject specifically applicable to, and tailored to, SEFs (and swaps in general). However, we note that, in discussing the standards for a swap's cash settlement calculation, the Proposed Rule assumes that such calculations would be based off of either a SEF-generated reference price or a reference price created by an "independent, private-sector third party."[37] Yet, the swaps that Refinitiv SEF lists generally settle by reference to exchange rates set by the central banks of various countries. We therefore request that the Commission clarify that the two examples of sources for reference prices discussed in the guidance are not intended to be exhaustive, or broaden the list to include reference prices based on exchange rates set by central banks.

- *Financial Resources*: Because SEFs do not hold customer money and are not involved in the settlement process for the swaps they list, Refinitiv SEF believes that the goal underlying any financial resource requirements for SEFs should be focused on preventing market disruptions caused by a SEF rapidly becoming insolvent. Refinitiv SEF believes that the proposed amendments to SEF financial resource requirements achieve that goal in an appropriately tailored way. In particular, Refinitiv SEF supports the proposed focus of the liquid financial resource requirement on the costs to unwind the SEF in an orderly manner. We also welcome the recognition in the Proposed Rule that, in many cases, individuals who work for SEFs are: (1) not necessary to enable the SEF to comply with the core principles, and thus the costs associated with these personnel could be excluded in calculating projected operating costs; and (2) shared with an

[37] *See id.* at 62136.

affiliated entity, and thus expenses associated with these personnel can be pro-rated.[38]

- *Chief Compliance Officer Requirements*: Currently, the CCO for each SEF is required to prepare, every year, a lengthy report with detailed information regarding (among other things) the SEF's written policies and procedures and compliance program. We believe these reports are unduly burdensome to prepare in comparison to the regulatory benefit of much of the information required to be provided, and therefore support the proposed amendments to the requirements regarding the CCO annual report. Moreover, we note that these proposed amendments would more closely harmonize the requirements for a SEF's annual CCO report with those for a swap dealer's or futures commission merchant's annual CCO report.[39] In particular, we support the proposal to eliminate the requirement that CCOs include in their annual reports a chart identifying a specific policy or procedure reasonably designed to ensure compliance with each individual regulation and sub-paragraph of a regulation. We believe the proposed requirements regarding CCO reports would ensure that a proper compliance review is undertaken on an annual basis without the unnecessary costs incurred in connection with producing such a chart.

- *Single-Dealer Platforms*: The Proposed Rule would not change the Commission's determination in the Current SEF Rule that single-dealer platforms are not required to register as SEFs because they do not appear to satisfy the "multiple-to-multiple" element of the SEF definition. Consistent with our prior comments, we do not take a position on this question. However, we note that, because they are not required to register as SEFs, single-dealer platforms are able to provide much of the same functionality as SEFs (other than access to multiple liquidity providers) in an unregulated environment, which attracts certain market participants away from SEFs. This is particularly the case for Permitted SEFs, because all market participants can choose to trade the products listed by such SEFs on a single-dealer platform. Therefore, in addition to the particular merits of the proposals as discussed above, Refinitiv SEF supports the overarching intent underlying the SEF Proposal to provide a more principles-based regulatory regime for SEFs, and to remove the unnecessary burdens currently imposed on SEFs. Doing so will further the Commission's dual statutory mandates under the CEA to promote both: (1) the trading of swaps on SEFs; and (2) fair competition among markets.[40]

[38] *See id.* at 62028.

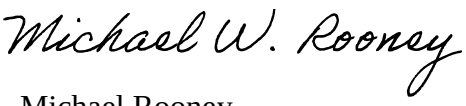
[39] *See* 17 C.F.R. § 3.3(e).

[40] CEA § 5h(e), 7 U.S.C. § 7b-3(e) and CEA § 3(b), 7 U.S.C. § 5(b).

VI. Conclusion

Refinitiv SEF appreciates the opportunity to provide the Commission and Staff with its perspective on the foregoing matters. If you have any questions regarding our comments, please contact the undersigned at (646) 223-7397.

Respectfully submitted,



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