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March 14, 2019

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

Re: Swap Execution Facilities and Trade Execution Requirement; Proposed Rule – RIN 3038-AE25, 83 Fed. Reg. 61946 (Nov. 30, 2018)

Dear Mr. Kirkpatrick:

Tradeweb Markets LLC ("**Tradeweb**") welcomes the opportunity to comment on the above proposal (the "**Proposal**") by the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") to amend its regulations governing swap execution facilities ("**SEFs**") and the trade execution requirement added to the Commodity Exchange Act ("**CEA**") by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").

Since 1998, Tradeweb has offered electronic trading systems for fixed income investors in the United States and abroad, and we have offered electronic trading systems for swaps since 2005. Commencing from when SEF registration was first required in 2013, Tradeweb has operated two registered SEFs: TW SEF LLC, a request-for-quote electronic platform which primarily facilitates dealer-to-customer swaps trades; and DW SEF LLC, a voice brokered and electronic central limit order book platform which primarily facilitates dealer-to-dealer swaps trades. As the only organization that operates SEFs serving the full spectrum of the market, Tradeweb is uniquely positioned to provide valuable perspective on the regulation of the SEF marketplace.

In our view, the Commission's existing SEF rules have generally helped to promote the Dodd-Frank Act's goals of increasing price transparency and reducing systemic risk, especially in the dealer-to-customer market. Although we support providing SEFs with more flexibility and improving the existing rules by moving towards a principles-based approach, we do not believe the Commission should overhaul the rules completely. A complete overhaul increases the risk of unintended, adverse impacts on the parts of the swap market that have benefitted from the existing rules. In particular, we are concerned that certain aspects of the Proposal, which seem designed to address the inter-dealer market, would result in undue disruption to the dealer-to-customer market. In addition, given the substantial resources spent by Tradeweb and the market

generally to comply with the existing rules, we would expect an overhaul to impose significant, additional costs, often without meaningful increases in market transparency, efficiency, or reduction of risk. The Commission should consider these costs when reviewing the overall scope of any final rules and instead take a more targeted and incremental approach to making changes.

I. Background – Success of the Existing Rules

In reviewing the last five years, we believe that the Commission’s existing SEF rules have largely succeeded. Although issues exist in certain areas of the rules and relatedly in segments of the market, the existing rules have generally resulted in more transparent, efficient, and regulated markets that have more dramatically reduced systemic risk across the derivatives markets. Some of the more notable improvements are as follows:

Mandatory SEF Trading. The mandatory trading requirement has led to a dramatic increase in the number of swaps executed on regulated venues— nearly 70% of U.S. Dollar interest rate swap trades are executed on SEFs compared to just 5% of such trades before the existing rules were implemented.¹ Tradeweb, which has offered electronic trading of swaps since 2005, has seen trading volumes achieve significant growth. During the earliest days of electronic trading of interest rate swaps in 2005-2009 Tradeweb observed an average daily volume (“*ADV*”) of approximately \$4 billion on its platform. Through the introduction and implementation of the reforms in the Dodd-Frank Act during 2010 and 2013, electronic trading of swaps increased to an *ADV* of nearly \$7 billion. Finally, since the beginning of 2014 when the first made available to trade (“*MAT*”) determinations took effect through today, trading on Tradeweb’s TW SEF has averaged an *ADV* of approximately \$40 billion.² Similarly, for credit default index swaps, Tradeweb has seen electronic trading increase from an *ADV* of approximately \$10 million in 2005 to nearly \$6 billion in 2018. This remarkable growth resulted from a combination of innovative product offerings that addressed the inefficiencies in the swaps market, changes in regulations for swap dealers, clearing mandates, and the introduction of SEFs to the market.

Pre-Trade Transparency. Today, SEFs make far more information available to customers than was previously available to them. There are now more instruments and more ways to see pricing (including different pricing for swaps cleared at different central counterparties) on electronic platforms than was the case before the SEF rules were implemented. For example, TW SEF provides customers with functionality that displays current indicative pricing for swaps. This information helps customers make more informed trading decisions.

Competitive Execution. Prior to the SEF rules, nearly all trades, even in more liquid swaps, were executed bilaterally with little competition among dealers. Today, there is

¹ <https://www.clarusft.com/what-traded-on-sef-in-2018>, Chris Barnes, February 12, 2019

² In 2018, the *ADV* on TW SEF was approximately \$86 billion.

competitive execution through requests for quote (“*RFQs*”) to a minimum of three dealers.³ Indeed, Tradeweb often observes customers sending RFQs to more than three dealers.⁴

Clearing Certainty. In the pre-SEF inter-dealer market, there was much less risk of clearing failures as swap counterparties generally were, or were affiliated with, clearing members of clearinghouses. These inter-dealer market transactions had a higher likelihood of being accepted by the clearinghouse and a dealer’s affiliated clearing member. However, for pre-SEF dealer-to-customer transactions, in the absence of central clearing for buy-side market participants, parties to a dealer-to-customer trade faced the risk that their trades could be rejected from clearing post-execution, which in turn required such dealers to enter into separate agreements providing remedies for failed executions. Now, straight-through processing rules require SEFs to complete a pre-trade credit check with futures commission merchants in order to guarantee execution and clearing. SEFs developed systems that integrated with credit hubs to allow futures commission merchants the ability to check each order prior to execution to ensure clearing certainty and provide all market participants with confidence while trading on SEFs.

Post-Trade Transparency. For off-facility trades, the speed and accuracy of trade reporting varied among dealers. Now, with trading on SEFs, the SEF reports trades consistently and nearly instantaneously, providing consistent, complete, and immediate information about the market to swap data repositories.

Market Oversight. SEFs, as self-regulatory organizations, provide enhanced market oversight and institute trading standards that have led to better regulated and more professional markets.

In light of this success, the existing SEF rules are not in need of any comprehensive overhaul.

II. Discussion

The Proposal is extraordinarily comprehensive, touching on nearly every aspect of the Commission’s existing SEF rules. We are concerned that the breadth of these changes could undo, or at a minimum limit, the success of the existing rules. To avoid such unintended consequences, the Commission should rethink the Proposal to target specific problematic issues instead of making broad changes to aspects of the rules that are working well. Below we recommend which particular issues the Commission should target.

A. Made Available to Trade Process

Section 2(h)(8) of the CEA requires that any swap that is required to be cleared be executed on a designated contract market (“*DCM*”) or registered or exempt SEF unless no DCM or SEF makes the swap available to trade. Currently, DCMs and SEFs are responsible for

³ Tradeweb believes that requiring RFQ-to-three dealers for products subject to mandatory trading has been effective at increasing price competition and transparency. Accordingly, there would not be a meaningful benefit to modifying or eliminating that requirement from the existing rules. We can provide the Commission with statistics regarding RFQ execution on our platforms that would illustrate the benefits of this requirement.

⁴ See also 83 Fed. Reg. at 62061 (“[A]pproximately 45 percent of the RFQs were sent to three liquidity providers and the remaining 55 percent were sent to four or more. The mean number of RFQ recipients was 4.12.”).

determining which swaps are MAT. As the Proposal notes, only a limited range of swaps have become subject to the trade execution requirement under this approach, with no new MAT determinations taking place since 2014. Accordingly, the Proposal would eliminate the MAT determination process, instead subjecting all mandatorily cleared swaps that are listed by a DCM or SEF to the trade execution requirement (with certain limited exemptions).

We agree with the Commission that SEFs are ill-suited to identify the types of swaps that should be subject to the trade execution requirement. We also support the goal of migrating all mandatorily cleared swaps toward trading on DCMs and SEFs. Indeed, since the initial MAT determinations in 2014, Tradeweb has seen not only an increase in the trading of mandated swaps but also organic growth in the trading of non-mandated swaps. As customers have grown more comfortable with mandated trading on SEFs, electronic trading in many other non-mandated swaps on SEF has increased as well. Accordingly, we support the proposal to eliminate the existing MAT determination process for SEFs and DCMs.

We emphasize, however, that the Commission will need to take a measured approach to implementing such an expansion of the trade execution requirement. For example, in the inter-dealer market, SEFs already list for trading most if not all swaps subject to the mandatory clearing requirement. Trading in this segment of the market largely takes place through voice brokers or on electronic platforms, and therefore the expansion of the trade execution requirement would have limited impact on the inter-dealer market.

In contrast, the dealer-to-customer SEF market trades almost exclusively on electronic platforms. For a trading mandate to be successful, a critical mass of dealers and customers must code their systems to support trading that product on the SEF. The mere listing of a product on a SEF does not necessarily mean that there is sufficient liquidity for dealers and customers to trade that product on the SEF. Also, because today some customers may only trade on a single SEF, if that SEF does not list a product that becomes subject to mandatory trading, then those customers will need to sign up to and integrate with a new SEF that does list the product. These readiness issues will exist regardless of whether the Commission expands the permitted methods through which parties can execute on a SEF. Further, trading in the dealer-to-customer market continues to take place away from platforms for some types of mandatorily cleared products. Some mandatorily cleared products are not even listed on SEFs that cater to the dealer-to-customer market. To address these issues, the Commission should phase in the expansion of the trade execution requirement on a product-by-product basis (drawn from the mandatorily cleared products), based on an evaluation of readiness in that market (as distinct from the inter-dealer market). Tradeweb believes the Commission should make such determinations after receiving comments through the rulemaking process.

B. Pre-Execution Communications

Consistent with the goal of bringing more trading activity within the SEF framework, we support the CFTC assessing the manner in which pre-execution communications impact activity on SEFs, and we encourage price formation taking place on or within a SEF. However, the Proposal's broader expansion of the pre-execution communication prohibition would go too far. In particular, the Commission should not eliminate exceptions for block trades or communications permitted under SEF rules.

Eliminating these exceptions would disrupt established trading practices in the dealer-to-customer market. Transactions in the dealer-to-customer market, as compared to the inter-dealer market, are more likely to be large, bespoke, negotiated over a period of time, or associated with particular operating needs or other non-swap activity. Pre-execution communications for these transactions is not only common but necessary. Further, the use of voice brokers is not as common in the dealer-to-customer market.

The Proposal appears to contemplate that market participants could continue to engage in pre-execution communications as long as the communications occur on a SEF, through SEF-operated telephone conference lines, proprietary instant messaging or email systems, or similar bilateral communication systems. However, SEFs would face a number of practical challenges in creating such communication systems. Few, if any, SEFs currently offer these functionalities, and the costs of building them (or integrating them with a SEF) could be substantial. For example, SEFs that operate electronic RFQ systems cannot easily modify those systems to support customized RFQs for all these swaps and their negotiation paradigms (including negotiation time period and the different types of terms to be negotiated). On the other hand, encouraging more use of telephone or chat functionalities would be a step backwards relative to the progress the dealer-to-customer market has made in automating trade processes, resulting in increased risk of human error and slower, uncertain trade processing.

Dealers and customers, in turn, would face significant costs and challenges in complying with an expanded pre-execution communication prohibition. These costs and challenges would include identifying the scope of communications subject to the prohibition, switching their telephone and chat providers to SEF systems in order to conduct such communications, and incorporating such telephone and chat systems into existing recordkeeping and supervision systems.

C. Codification of No-Action Relief and Staff Guidance

1. Straight-Through Processing

The Proposal would replace the current “prompt and efficient” standard applicable to SEFs for the processing of swap transactions with a “prompt, efficient, and accurate” standard, which would eliminate the fixed timing requirements currently applicable to swap processing and routing under applicable staff guidance. This guidance has resulted in highly efficient automated processing systems with increasingly faster processing times, usually within seconds in the dealer-to-customer market. The proposed change would be a step in the wrong direction, as it would delay further progress towards increased automation in the inter-dealer market and threaten to undo the progress made in the dealer-to-customer market.

2. Block Trades and Error Trades

The Proposal would codify existing no-action relief by eliminating the requirement that a block trade “occur away” from a SEF and permitting a SEF to adopt its own rules with respect to error trades. We support codifying this relief, which alleviates the burdens of meeting overly prescriptive requirements, and would provide SEFs with flexibility in developing error trade

policies specific to each SEFs' marketplace. We support such flexibility to allow SEFs to adopt clear policies and procedures tailored to their platforms.

3. Package Trades

The Proposal would provide an exemption from the trade execution requirement for swap transactions that are executed as a component of a "package transaction" that includes a component that is a new issuance bond, and it would provide an exception from pre-execution communication restrictions for other types of package transactions. We support these aspects of the Proposal. However, the Proposal does not codify (or otherwise extend) existing Commission no-action relief for package transactions involving futures contracts.⁵ This is concerning because the rules of the Chicago Mercantile Exchange ("*CME*") and the Intercontinental Exchange ("*ICE*") do not allow a SEF-executed swap to be a related component of an "exchange for related position."⁶ As a result, a failure to retain relief for futures-related package transactions would make those transactions impossible to execute. The Commission should either codify that relief, require CME and ICE to amend their rules, or both.

4. Confirmations for Swaps Executed on SEFs

The Proposal would simplify the swap transaction documentation requirements for uncleared swaps by solely requiring a SEF to memorialize the terms of an uncleared swap transaction with a "trade evidence record" instead of a full confirmation, with the terms of such a trade evidence record superseding solely any *conflicting* term in any previous agreement relating to the relevant swap transaction.⁷ The Proposal also would require that confirmation of a swap transaction take place "as soon as technologically practicable" after the execution of the swap transaction on the SEF, instead of the current requirement that the confirmation take place at the same time as execution. We support these changes, which would eliminate unnecessary documentation and operational burdens on SEFs.

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⁵ See CFTC Letter No. 17-55, Re: Extension of No Action Relief from Sections 2(h)(8) and 5(d)(9) of the Commodity Exchange Act and from Commission Regulations 37.3(a)(2) and 37.9 for Swaps Executed as Part of Certain Package Transaction (Oct. 31, 2017).

⁶ See ICE Futures Rule 4.06, CME Rule 538, and related FAQs.

⁷ In response to a request for comment on this issue, we would not support treating a trade evidence record as a confirmation that would legally supersede any previous agreement as opposed to superseding only conflicting terms in prior agreements. The concept of a trade evidence record specifically alleviates the issue that SEFs have faced in having to incorporate idiosyncratic terms into confirmations, and granting the trade evidence record the same status as a confirmation would reintroduce this problem for uncleared swaps.

If you have any questions concerning our comments, please feel free to contact the undersigned. Tradeweb welcomes the opportunity to discuss these issues further with the Commission and its staff.

Respectfully submitted,

Lee Olesky
CEO

A handwritten signature in black ink, appearing to read 'Lee Olesky', written in a cursive style.