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March 15, 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)

Introduction

Chatham Hedge Advisors ("Chatham") appreciates the opportunity to submit these comments on the proposed revisions to the regulations of swap execution facilities ("SEFs") and the trade execution requirement ("Proposal**"**) published by the U.S. Commodity Futures Trading Commission ("CFTC" or "Commission") on November 30, 2018.[1]

Chatham Hedge Advisors is a wholly-owned subsidiary of Chatham Financial Corp., an employee-owned, global provider of derivatives, financial, and regulatory services. Our market-leading advisory practitioners provide trusted support in risk and debt management including interest rate, FX, commodity hedging, hedge accounting, regulatory compliance, capital advisory, and defeasance.

Chatham helps its clients arrange and execute 6,000 swaps per year.

A pioneer in developing intelligent tools to support our practitioners in critical risk management tasks, Chatham offers an advanced technology SaaS platform that supports our thriving risk management practice and is accessible to clients directly via ChathamDirect™. Our platform supports multiple asset classes with tools for quantitative analysis, sophisticated scenario modeling, accounting workflows, valuations, reporting, and regulatory compliance.

Chatham is registered with the National Futures Association ("NFA") and Commission as a Commodity Trading Advisor ("CTA") and is registered with the Securities and Exchange Commission as a Municipal Advisor.

The Proposed Rule

Developing rules to improve the integrity and transparency of the swaps marketplace while streamlining regulation is complicated by the diversity of products, strategies, and execution

[1] *Swap Execution Facilities and Trade Execution Requirement*; *Proposed Rule*, 83 Fed. Reg. 61946 (Nov. 30, 2918), *available at* https://www.cftc.gov/sites/default/files/2018-11/2018-24642a.pdf.

models that comprise the swaps ecosystem which end users rely on to manage risk. While a substantial part of the swaps market by notional and transactional volumes is relatively standardized and subject to mandatory execution and clearing requirements, the products used by commercial and financial end users to manage risk are among the most illiquid and customized of financial products.

Many end users rely on independent intermediaries ("IDPI") such as Chatham to help arrange and negotiate swaps. IDPIs may be registered as CTAs, Introducing Brokers ("IB"), or Futures Commission Merchants ("FCM") depending upon their type of activity. IDPIs play an essential role in helping end users manage risk: providing transparency into pricing, identifying efficient hedging structures, and accessing liquidity provided by dealers or exchanges.

Chatham recognizes and supports the Proposal's intent to bring more transactions onto SEFs, provide SEF market participants with flexibility on execution methods, and streamline compliance. These efforts could bolster innovation, liquidity, and transparency in the swaps markets.

The current Proposal, however, suffers from several shortcomings that could negatively impact the bespoke swaps market end users rely on that will be discussed below.

Intermediary Conflation

It is frequently noted that swaps products are different from futures products and therefore should not be subject to futures-style regulation. In fact, it is quite difficult, if not impossible, to draw a well-defined line between futures and swaps given the structure of U.S. law and regulation. In the U.S., a swap is essentially a derivative that is not traded on or subject to the rules of a Designated Contract Market and is not a forward contract. As the Intercontinental Exchange's ("ICE") virtually overnight transition of cleared energy swaps to cleared energy futures in 2012 highlighted, the line between futures and swaps is largely found in their regulatory treatment, not in their economics or function. In fact, in most parts of the world the futures/swaps distinction does not exist.

The use of the word "swap" to connotate an over-the-counter ("OTC") derivative was enshrined in Dodd-Frank. The effect of this is an erroneous conflation of standardized and genuinely bespoke derivatives within the term "swaps", which confuses discussions over the appropriate treatment of what are, in fact, very different types of markets.

A great deal of swaps activity has already been brought on exchange, is cleared, and is comprised of relatively standardized products. Much of the remaining off-SEF swaps activity likely reflects a high proportion of customized swaps tailored to the needs of commercial and financial end users such as Chatham's clients.

A core purpose of the Proposal is to bring more swaps activity onto SEFs. In evaluating the proposal, a central question is what is the benefit to the public of bringing particular swaps and/or business models into the SEF ecosystem? To do this, it is important to recognize that the Proposal, as currently drafted, seems to improperly intermingle several different models of swaps intermediation through the use of the term "swaps broking entity".

Although the term is not defined in the Proposal, the concept is introduced at page 61957 of the Proposal:

> . . . . swaps broking entities, *i.e.*, interdealer brokers, most of whom are registered with the Commission as IBs and traditionally facilitate swaps trading in the over-the-counter (‘‘OTC’’) markets.[2]

The difficulty with the concept of swaps broking entities is that there is a range of intermediaries who facilitate the OTC swaps markets besides interdealer brokers ("IDB"), including CTAs, IBs, and FCMs. While the execution methods may appear superficially similar across all these entities, the underlying business models and market functions are quite different, and appropriate regulatory intervention must properly capture these distinctions in order to adequately address the different levels of risk associated with each execution method employed by each type of intermediary.

The Proposal targets IDBs, but this term is not defined. It appears to incorporate the following aspects:

1. IDBs are IBs housed within a SEF or in an owned or controlled affiliate of a SEF;
2. IDBs accept orders from customers and arrange trades that are intended to be finalized on SEFs;
3. IDBs solely or mostly facilitate trades between swaps dealers—thus the interdealer label; and
4. IDBs facilitate a process where more than one bid may interact with more than one offer.

IDPIs engage in activities that can overlap with criteria 2 and 3. They may facilitate or execute trades on SEFs, and they may have dealers as customers. At a higher level, they certainly engage in what would be considered "broking" activity. From our review of the Proposal, Chatham does not believe that the Commission intends to require all intermediaries who facilitate swaps transactions to register as SEFs, as we believe there are clear differences in the risks presented and the need for transparency across the various types of intermediaries. Chatham recommends that the ambiguity caused by the potential conflation of many different activities within the term "swaps broking entity" be clarified.

The clearest way to do this is through focusing on statutory criteria defining a SEF. The defining characteristic of the SEF definition is the requirement that a platform or system provides the potential for more than one bid for a swap to be matched with more than one offer for a swap.[3] A

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[2] *Id.*

[3] **7 USC § 1a(50) Swap execution facility** —
The term "swap execution facility" means 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.

platform or system that does not provide for this cannot be a SEF. A system or platform that does provide this is required to be registered as a SEF absent some other statutory or regulatory exemption allowing that platform or system to operate without registering as SEF.

In passing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), Congress sought to bring trading of more liquid, standardized swaps onto platforms or systems where they would benefit from increased transparency and competitive execution. In doing so, Congress removed the exemptions and exclusions that platforms such as Exempt Commercial Markets and Exempt Boards of Trade had relied on. Those exemptions and exclusions were created by the Commodity Futures Modernization Act of 2000 ("CFMA") for exempt and excluded commodities. The CFMA platform exemptions themselves represented a codification of platform exemptions recognized by the Commission through rules and interpretations in the 1990s.

In repealing the exemptions and exclusions, Congress also sought to limit the Commission's authority to exempt platforms and systems by circumscribing the Commission's authority under § 2(c) of the Commodity Exchange Act ("CEA"), limiting the CFTC's ability to exempt trading platforms administratively.

From the standpoint of drawing a line between brokers and SEFs, an important fact is that, while Congress did add the term "swaps" to the intermediary definitions for CTAs, IBs, and FCMs, Congress did not otherwise seek to impose additional regulations upon these entities. Therefore, Chatham believes the SEF definition must be read and interpreted narrowly so as not to impose regulatory burdens on IDpIs that go further than Congressional intent. In particular, we believe the more appropriate focus for the Proposal is on the interaction of bids and offers rather than brokers, since the interaction of bids and offers is the defining characteristic of a SEF.

The Proposal recognizes this in part by reaffirming the Commission's original determination in its 2013 rulemaking that single-dealer platforms are not in scope of the SEF definition because they operate on a one-to-many model where the dealer is the counterparty to every transaction.[4] Chatham believes this is the correct interpretation but recommends that the Commission recognize, more generally, that one-to-many execution models are beyond the scope of the SEF definition because they do not afford the possibility of more than one bid interacting with more than one offer.

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17 CFR § 1.3(rrrr) Swap execution facility —

This term means 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—

(1) Facilitates the execution of swaps between persons; and
(2) is not a designated contract market.

[4] 83 FR 61946 at 61956.

The role of independent intermediaries ("IDBI")

CTAs, IBs, and FCMs all play roles in facilitating swaps transactions between counterparties. In some instances, they may even intermediate a transaction between two dealers, making them an "interdealer broker" by the literal meaning of those words. As noted above, for the purposes of the Proposal, the Commission appears to use the term IDB to more specifically denote an entity that is owned or controlled by an entity that is a SEF or has a SEF within its corporate family, and we will use the term similarly.

For the purposes of this discussion, we will use the term IDPI to describe swaps intermediaries that are not owned or controlled by a SEF. As noted above, IDPIs can be CTAs, IBs, or FCMs. IDPIs can use execution methods such as voice, electronic, or hybrid auctions or one-to-many workup sessions, or they can facilitate trades directly between a client and a dealer. Facially, there are many similarities between IDPIs and IDBs. For the reasons discussed below, Chatham encourages the Commission to recognize that the type of client a broker serves is not material to determining whether a broker is a SEF, unless there are some attributes or characteristics of a client that serve to indicate that many-to-many bid/offer interaction may occur.

The swaps client of an IDPI is often a financial or commercial end user who is seeking to manage some type of risk associated with interest rates, FX, or commodities. In the case of financial end users, which can include dealers, the swaps IDPIs facilitate can be highly customized, large in notional, complex packages, or some other type of swap that is not subject to mandatory execution requirements. In the case of end users who can avail themselves of the various exceptions and exemptions to clearing and execution, the swaps an IDPI facilitates can also be relatively standard, vanilla swaps that could be cleared or traded on a SEF but for which the end user elects not to.

Whether clients are financial or non-financial end users, they typically use IDPIs for help and support with structuring, negotiating, documenting, and executing a transaction as well as finding counterparties. From a regulatory standpoint, the problem of focusing on swaps broking activities rather than the interaction of bids and offers is demonstrated by considering an intermediary that has many clients and helps those clients arrange swaps with multiple dealers.

Looked at from a high level, the intermediary could be seen as a platform or system that arranges many swaps and has more than one customer on the offering side and more than on dealer on the bidding side. However, such an interpretation would mean that any successful swaps intermediary with multiple clients would need to consider registration as a SEF. Not only is such a situation not what the Commission likely intends, but it would run counter to the SEF definition's focus on the many-to-many interaction of bids and offers.

One-to-Many vs. Many-to-Many

Dodd-Frank repealed most of the exclusions and exemptions that allowed the platform trading of derivatives without registration. In their place, Congress implemented a new definition of a SEF and a registration requirement for any facility meeting that definition.[5]

CFTC rule 37.3 requires registration if "more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system."[6] In order for more than one market participant to execute or trade swaps with more than one other market participant, there must be the potential for there to be:

(1) At least two offers and two bids for a swap, and
(2) the potential for those offers and bids to be matched through the system or platform.

These are the critical criteria for distinguishing a SEF, not the makeup of its clientele. Though the Proposal seeks to capture IDBs, the Proposal's amendments to 37.3 do not materially alter the requirement for the potential to exist for at least two offers to be matched with at least two bids.[7] The facts and circumstances of an IDB's operations may be material to determining whether a platform or system affords the potential for more than one bid to be matched with more than one offer. However, the fact that such platform or system may be an IB or work mostly or solely with dealers is not, in itself, material to determine whether the definition of a SEF is met.

Chatham recommends that the Commission consider reorienting the Proposal to focus more on a platform or system's potential to facilitate the matching of more than one bid and more than one

[5] **Commodity Exchange Act SEC. 5h. (7 U.S.C. 7b–3) SWAP EXECUTION FACILITIES.**

(a) REGISTRATION.—

(1) IN GENERAL.—No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

[6] **17 C.F.R. § 37.3. Requirements and procedures for registration.**

(a) Requirements for registration. (1) Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market under part 38 of this chapter.

[7] **Proposed § 37.3 Requirements and procedures for registration.** [Redline to current language]

(a) **Requirements for registration.** ~~**(1)**~~ Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade ~~swaps~~ any swap, regardless of whether such swap is subject to the trade execution requirement under section 2(h)(8) of the Act as set forth in § 36.1 of this chapter, with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market under part 38 of this chapter.

offer. Such a focus provides a clearer framework for market participants to understand the line between intermediaries and SEFs and orient their operations and compliance appropriately.

Swaps Markets Core Function is to Facilitate Risk Management and Price Discovery

Though trading has evolved over the decades, derivatives markets exist for the primary purpose of allowing end users to manage risk and facilitate price discovery. Dodd-Frank's provisions on SEFs reflected a continuation of the general approach applied to the regulation of DCMs in the U.S. Those regulations focus on the competitive execution of trades in a centralized trading environment, where the public can benefit from increased transparency into and safeguards around the trading of financial and non-financial commodities.

In order for a market to benefit from centralized execution where market participants can meet each other at arm's length, a product must be standardized enough that it can be traded and offset, and there must be sufficient liquidity to trade that product. Many swaps executed through intermediaries may be complex, multi-leg (a package), large in notional, or customized to fit hedging needs of an end user. While there could be several dealers willing to sell these swaps, there is, effectively, only one possible buyer and, thus, only one potential offer.

In these situations, intermediaries can advise end users on structuring and negotiating the swap. Typically, a "bid package" will be created that the intermediary transmits to various dealers selected by the end user or recommended by the intermediary with the end user's assent. In these activities, the intermediary functions essentially as a "buyer's agent". This is a different function than that provided by a SEF.

If more than one potential dealer is involved, the end user will often be matched with a dealer or dealers through a voice, electronic, or hybrid auction facilitated by the intermediary. Importantly, the end user's interest is not aggregated with the interests of other end users, each auction is a custom, unique incidence of a market tailored to the needs of the end user. Essentially, it is a custom, discrete, one-to-many market created for just that transaction. Liquidity is one-sided.

In fact, as the intermediary has a contractual relationship and duty to maintain confidentiality, the end user, absent some explicit agreement between the intermediary and end user, the intermediary cannot disclose the end user's interest to any parties other than those selected by the end user. These types of transactions represent an end-user-to-dealer ("E2D") model that is integral to the management of risk in today's markets. End users need access to trusted intermediaries in order to help structure and negotiate transactions with dealers. Conflating the line between IDBIs and SEFs would undermine the risk management options for end users.

So that both financial and non-financial end users can continue to take advantage of E2D execution models, Chatham therefore recommends that the Commission clarify that the rules are not intended to capture intermediaries that do not operate a platform or system where more than one offer can be matched with more than one bid.

Prohibition against Pre-Execution Communications

Chatham believes there are other, more targeted methods to protect competitive execution than a prohibition on pre-trade communications for transactions subject to the mandatory execution

requirement. In many cases, financial end users may utilize IDPIs to help negotiate a trade that is later submitted to a SEF in E2D workflows. Not being able to take advantage of independent advisors and brokers could severely limit competition and transparency for many market participants who current rely on them. A ban on pre-trade communications would limit financial end users subject to the mandatory trade execution requirement to only using brokers housed within a SEF.

If the Commission allows more execution methods and increases the scope of transactions subject to mandatory trade execution, limiting market participants' access to independent intermediaries would deleteriously impact market participants' ability to manage risk. Off-SEF pre-execution communications involving independent intermediaries are already subject to CFTC and NFA oversight because the advisory activity must be conducted by registered Associated Persons ("APs") and is subject to the CFTC's and NFA's regulations regarding intermediaries.

The proposed ban on pre-execution communications raises concerns regarding the privacy and confidentiality of commercially sensitive communications. Even if SEFs could theoretically offer comprehensive and flexible modes through which participants could conduct pre-execution communications, sensitive information that extends beyond the specifics of the trade in question is often communicated alongside communications about the swaps trade. Having that information captured on for-profit, third-party platforms creates a range of privacy and confidentiality concerns, including the potential for conflict of law privacy requirements in non-U.S. jurisdictions. Additionally, it is unclear who owns the information that is exchanged on a SEF. Development of appropriate data-use policies and protections would be necessary, and ongoing monitoring would be needed, adding further costs to implementation without commensurate regulatory benefit.[8]

Advisory and trading discussions and communications between clients and intermediaries have always been an essential part of derivatives markets. Dodd-Frank did not seek to impose additional requirements upon intermediaries unless they fell within the scope of the SEF definition. Chatham does not believe it is the intent of the Commission to require IDPIs to register as SEFs if they intermediate swaps executions subject to the mandatory trade execution obligation. Yet, the confusion caused by the Proposal's focus on "swap broking" activities raises the question of where the line is between brokers and SEFs. Accordingly, we believe the Commission should drop its proposed ban on pre-execution communications or at least clarify that it is not intended to ban communications between clients and their intermediaries.

Expanded Trade Execution Requirement

For swaps to benefit from centralized execution on a SEF, they need to be standardized and liquid enough to be efficiently traded in a centralized marketplace. There are bespoke swaps that can potentially be cleared but may not be appropriate for mandatory trade execution because they

[8] In this regard, Commissioner Stump recently announced a data protection initiative that seeks to review the CFTC regulatory requirements against the sensitivity of the data and potential for unauthorized access. *See* Statement of CFTC Commissioner Dawn D. Stump on Data Protection Initiative (Mar. 1, 2019), *available at* https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement030119.

are large in size or there is little liquidity because of their custom nature. If adopted as proposed, the trade execution requirement could be triggered for any product that is subject to the clearing requirement when any single SEF offered or "listed" that product for trading on its platform without any check to ensure that the listed product is, in fact, suitable for SEF trading.

Chatham recommends that the Commission recognize that certain swaps executed by financial end users for hedging purposes rather than market-making purposes are better executed through intermediaries rather than on a centralized platform because of their custom, tailored, or complex nature. Even a swaps dealer, for instance, active in the interdealer swaps market may seek to engage in a custom swap to hedge some particular exposure through an intermediary that cannot be effectively executed on a centralized platform.

SEF Trading Protocols

We agree with the Commission that there may be ways to increase liquidity on SEFs through allowing increased flexibility in execution methods. We support the Commission's decision to revise existing trading protocols to provide more flexibility and accommodate a more diverse range of swaps contracts. We note, however, that new trading protocols may increase the cost and complexity of compliance with SEF rules, and market participants will need time to adapt to these new methods—thus SEFs should provide ample time to SEF users to transition to new execution methods.

The current no-action relief[9] allows market participants to negotiate blocks bilaterally with their counterparties, and then submit the block trade to a SEF for execution (via RFQ-to-1 or other SEF functionality). Due to their large size, block trades often expose dealers to more risk because large trades may need to be hedged via multiple transactions. Dealers need to be able to pre-arrange trades to minimize information leakage and price slippage during execution and hedging. The ability to execute blocks on-SEF after bilateral pre-arrangement should, therefore, be retained as it enhances clients' ability to meet their risk management needs.

SEF Registration and Cross-Border Impact

The expansion of products subject to the trade execution requirement along with the proposed changes to pre-trade transparency and impartial access could exacerbate existing challenges in cross-border trading. The Proposal creates the potential for products subject to the U.S.'s trade

[9] 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), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/17-60.pdf; CFTC Letter No. 16–74, Re: Extension of No-Action Relief for Swap Execution Facilities from Certain "Block Trade" Requirements in Commission Regulation 43.2 (Oct. 7, 2016), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/16-74.pdf; CFTC Letter No. 15–60, Re: Extension of No-Action Relief for Swap Execution Facilities from Certain "Block Trade" Requirements in Commission Regulation 43.2 (Nov. 2, 2015), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/15-60.pdf; CFTC Letter No. 14–118, No-Action Relief for Swap Execution Facilities from Certain "Block Trade" Requirements in Commission Regulation 43.2 (Sept. 19, 2014), *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-118.pdf.

execution requirement to diverge materially from that of other major non-U.S. jurisdictions which largely followed the U.S. approach in making products subject to mandatory trading. A risk could result from this that existing equivalency determinations by foreign governments would be reevaluated and possibly withdrawn or altered. Chatham recommends that the Commission work with their foreign partners to ensure that existing equivalency determinations are not undermined.

Impartial Access

Chatham believes that permitting barriers to access creates an uneven playing field. Access to SEFs should remain open to all participants who satisfy impartial and non-discriminatory standards. Under Section 5h(f)(2)(B) of the CEA, each SEF is required to establish the "means to provide market participants with impartial access to the market."

The Commission's Proposal backs away from this, and raises the risk that participation on some SEFs could be restricted to the largest dealers. By potentially restricting market participant's access to the dealer-to-dealer market, non-dealer market participants will not have access to the prices in the dealer-to-dealer market and will not be able to compete with the dealers who are participants. A lack of competition could ultimately result in higher prices for end users. including our clients. Permitting SEFs to operate in this manner is inconsistent with the CEA's impartial access requirement noted above.

Instead of permitting SEFs to restrict access to some market participants, Chatham recommends codifying the current impartial access guidance, which allows a SEF to restrict access based on a disciplinary history or financial or operational soundness, if objective pre-established criteria are used. It does not allow a SEF to restrict access based on the type of market participants. The current approach is designed to establish a level playing field among market participants and ensure SEF membership requirements are truly "fair, unbiased, and unprejudiced."

Multilateral Matching Platform

One objective of the Proposal is to facilitate more trading on SEFs. Chatham believes there is the potential to do this through recognizing a new variant of SEF, the Multilateral Matching Platform ("MMP"). It would be a form of SEF that provides matching services for end-user swaps clients and utilizes connections to third-party SEFs for execution and post-trade processing.

Because the MMP would rely on the third-party SEF's architecture for some elements of the trade process, the MMP should be able to rely on the SEF partner for substituted compliance where appropriate. Such substituted compliance could include system safeguards, trade processing, financial integrity of transactions, ability to obtain information, and record keeping and reporting, for example.

This would allow entities to create new forums for matching participants while leveraging existing SEF infrastructure and creating synergies between market participants. The concept is not to provide relief from regulatory requirements, but to allow an MMP to demonstrate compliance where it relies upon an appropriately regulated third party.

Chatham believes that MMPs could bring new participants and products to the swaps market. By allowing MMPs to partner with existing SEFs to use their infrastructure and control frameworks, the market achieves lower barriers to entry for new market participants which is likely to result in increase in swaps market liquidity and an expansion of the swaps markets overall.

Chatham believes that recognition of the SEF-MMP model would provide flexibility for new models of execution while maintaining all of the safeguards applicable to SEF trading. Therefore, Chatham recommends the Commission consider it as a way of facilitating more SEF activity.

Data Reporting

Chatham notes that several CFTC rules require the reporting of transaction, settlement, and other data related to trades by DCMs, SEFs, and Swap Data Repositories ("SDR"). For the public's benefit, we believe that Parts 16, 43, and 49 of the Commission's rules implementing public reporting requirements should be updated to reflect today's electronic marketplaces. Currently, public access to data required to reported by DCMs, SEFs, and SDRs is often restricted through:

1) inappropriate attempts to enforce intellectual property, copyright, or other rights that should not exist for data required to be made public by regulation,
2) failure to provide data required to be made public in formats that are readily machine readable,
3) changing the format of files to prevent the public from "scraping" data that is make publicly available, and
4) placing restrictions on obtaining data required to be made public by regulation through requiring registration, captchas, or acceptance of inappropriate license terms or user agreements.

In our view, Congress has required data to be made public so that the public has access to the increased transparency and price discovery such data provides. When the reporting rules were created, the main avenue of distribution of derivative prices was through commodity reporters located in the trading pits of the exchanges. Today, DCMs, SEFs, and SDRs have effectively total control of how they publish data that they are required to make public by regulation. Data sales have become an increasing focus of exchanges looking to increase their profitability.

To provide the transparency envisioned under Dodd-Frank, the CFTC should update its regulations regarding data that is required to be made public by DCMs, SEFs, or SDRs. Specifically, such regulations should require that:

1) Required data is available at no charge after a delay of 30 minutes, or a reasonable commercial charge if the Commission determines that is appropriate;
2) Required data is provided in an electronic format that is readily machine readable as specified by the Commission;
3) Access to required data is not conditioned on acceptance of use or reuse restrictions; and
4) There is a readily available explanation of the data structure and format so that the public can understand the data structure and nomenclature.

Conclusion

We appreciate the opportunity to submit our comments in response to the Proposal. We commend the Commission for its efforts to foster trading on SEFs while continuing to be committed to improving transparency and look forward to working with the Commission as it proceeds to finalize the Proposal. If we can provide any further information, please contact Eric Juzenas, Director, Global Regulatory Policy, 484.731.0061 or ejuzenas@chathamfinancial.com.