March 2, 2020

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

Re: Post-Trade Name Give-Up on Swap Execution Facilities; Proposed Rule– RIN 3038-AE79, 84 Fed. Reg. 72262 (Dec. 31, 2019)

Dear Mr. Kirkpatrick:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] welcomes the opportunity to provide the Commodity Futures Trading Commission (the "**Commission**") with comments on the above proposed rule (the "**Proposal**") relating to post-trade name give-up ("**PTNGU**") on swap execution facilities ("**SEFs**"). Although the views among our swap dealer members on PTNGU are not uniform, a majority of those who have expressed a view urge the Commission not to adopt the Proposal. These members continue to believe that PTNGU is an important protocol within this well-functioning market and that its prohibition will impair participants' abilities to manage risk and provide liquidity. Additionally, these members do not believe there is evidence to support intervention by the Commission to prohibit PTNGU. Accordingly, in substantial part, we are restating our comments in our letter to the Commission, dated March 25, 2019[2].

We appreciate that the Commission has received a diverse range of views on this topic. While we do not believe there is evidence to support a prohibition of PTNGU, if the Commission does move ahead with a prohibition, we are in support of a measured approach to its implementation. In accordance with question 15 of the proposal, SIFMA agrees with the

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *See* SIFMA Letter, Post-Trade Name Give Up; Request for Comment 84 FR 3350 (March 25, 2019).

suggestion that at a minimum, any prohibition should exempt package trades that involve a non-swap instrument. Under the proposal, the non-swap leg of the trade would also be subject to the prohibition which may have several unintended consequences. In addition to our broader concerns with the prohibition, this segment of the market involves the use of infrastructure (such as securities settlement systems in the case of Treasury spreadover transactions). Complying with the prohibition would necessarily involve new costs and changes to how these trades are processed. In providing an exemption for packages, the Commission would provide itself with more time to analyze and understand the impact of a prohibition on the transaction as a whole, particularly in times of market stress.

INTRODUCTION

PTNGU developed organically in the swaps market as an effective protocol to promote liquidity provision to customers, as it allows dealers to evaluate and reduce hedging costs and to execute trades using workup trading protocols. Meanwhile, SEFs can, have, and do, offer anonymous central limit order books ("**CLOBs**") without PTNGU. Market participants are thus free to choose for themselves as to whether it is in their independent interests to transact anonymously with or without PTNGU.

Prohibiting PTNGU would narrow the options currently available to market participants trading in swaps, forcing them to choose between fully anonymous order books (without PTNGU) and fully disclosed request-for-quote methods of execution. The Dodd-Frank Act does not compel the Commission to engage in this picking and choosing among execution models, nor does it direct the Commission to drive the swaps market toward all-to-all anonymous trading. The Commission accordingly should not prohibit PTNGU nor any other market practice without deeply studying and strongly considering its impact on all market participants - especially considering that available evidence shows that the current market structure has, overall, benefitted market participants through tighter pricing and increasingly deep liquidity.[3]

DISCUSSION

Permitting Diverse Trading Models Supports the Commission's Goals

The Commission should aim to preserve the diversity of trading models, which supports the Commission's goal of promoting SEF trading across a diverse range of products. Fully anonymous trading models are most closely associated with markets catering to a model of agency liquidity providers and to products that are generally small in size, frequently traded, highly liquid, and standardized, such as futures contracts. Most swap markets, including those

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[3] *See, e.g.*, Lynn Riggs (CFTC), Esen Onur (CFTC), David Reiffen (CFTC) & Haoxiang Zhu (MIT, NBER, and CFTC), *Swap Trading after Dodd-Frank: Evidence from Index CDS* (Jan. 26, 2018) ("Riggs, Onur, Reiffen and Zhu") at p. 50 ("SEF-traded index CDS market seems to be working well after Dodd-Frank—dealers' response rates are high, the vast majority of customer orders result in trades, and customers' transaction costs are low"); and Pierre Collin-Dufresne, Benjamin Junge & Anders B. Trolle, *Market Structure and Transaction Costs of Index CDSs* (Sept. 12, 2017) ("Collin-Dufrense, Junge and Trolle") at p.38 ("D2C prices are typically better than the contemporaneous inside quotes on the main interdealer limit order book, indicating that clients who value immediacy could not get better execution by sending marketable orders to the interdealer market.").

whose products are subject to the trade execution requirement, do not exhibit these characteristics. Instead, they are based on liquidity providers trading as principal. In this regard, we agree with former Chairman Giancarlo that "liquidity in the swaps market is fundamentally different than liquidity in futures and equities markets"[4] and makes use of execution methods that "[differ] markedly from the generally all-to-all market structure of the U.S. futures markets . . . ."[5] Given these differences, not every product can be, nor should be, traded fully anonymously. Attempting to force a market structure on a group of products and/or participants by fiat may be detrimental to pricing and liquidity.

In other products where traditionally over-the-counter markets have evolved to include fully anonymous trading models (*e.g.*, Treasuries, foreign exchange), such evolution occurred naturally, without regulatory intervention. SEFs are permitted to offer such models and, as for-profit entities, they are incentivized to develop and offer any permissible trading models that meet their participants' demands. In fact, some SEFs currently offer fully anonymous order books without PTNGU, but participation in these order books has been very limited.[6] These preferences from market participants should be evidence that fully anonymous trading models are currently undesirable for swaps, at least for a substantial cross-segment of market participants.

Prohibiting PTNGU would also risk diminishing the liquidity available on those CLOBs where robust activity exists today – those that offer PTNGU. These SEFs have attracted liquidity from dealer participants who use these platforms as a means to hedge their client activity. These participants may be unwilling or unable to continue to do so without PTNGU, as fully anonymous environments present conditions under which, as the CFTC[7] and academic research[8] has noted, can lead to adverse selection for dealers.

PTNGU Supports Principal Liquidity Provision in Swaps

Anonymous order books with PTNGU attract liquidity by satisfying the needs for principal liquidity providers to have an outlet where they can stream and view available liquidity without attribution while also remaining informed about their counterparties with whom they have executed trades. This method of execution allows dealers to assess over time and across liquidity pools how their liquidity and capital are being allocated amongst their client and dealer relationships and, therefore, to more accurately price the liquidity provided to their clients.

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4 J. Christopher Giancarlo, *Pro-Reform Reconsideration of the CFTC's Swaps Trading Rules: Return to Dodd-Frank* (Jan. 29, 2015) at p.9.

5 *Id.* at p. 15.

6 *See* Riggs, Onur, Reiffen and Zhu, *supra* note 3, at p. 2 ("We find that the CLOB mechanism has very low trading activity on both SEFs [Bloomberg SEF and Tradeweb SEF] in our sample.").

7 *See* Post-Trade Name Give Up on [SEF]; Request for Comment, 83 Fed. Reg. (Nov. 30, 2018) at 61572 referencing Tom Osborn, *How to game a Sef: Banks fear arrival of arbitrageurs,* Risk.net (Mar. 19, 2014).

8 *See* Lee, T. and Wang, C., *Why Trade Over-the-Counter? When Investors Want Price Discrimination* (May 21, 2019 working paper) at 11.

Subjecting all participants and/or liquidity pools to uniform trading requirements (such as banning PTNGU in all instances) therefore may not result in the aggregation of dispersed liquidity or attract new liquidity. In fact, it may result in the reduction of aggregate liquidity and efficiency as participants (*e.g.,* dealers) may be discouraged from trading on anonymous SEFs without PTNGU.

Relatedly, restricting the ability of dealers to determine for themselves how to manage their risk and taking action that might reduce liquidity in pools where they are comfortable trading that risk may reduce the availability of the principal liquidity they provide to the market and thereby increase the likelihood of volatility and market illiquidity during volatility events. While all market participant types and forms of liquidity provision should be encouraged so as to maximize liquidity (buy-side and sell-side, agent liquidity providers and principal liquidity providers), the presence of dealers able to take on risk as principal with strong capital support and willingness to remain engaged in the market during periods of volatility in support of their clients is critical to stemming prolonged market volatility and ensuring systemic stability.

Wider overall spreads or less dependable liquidity on markets that have traditionally served as a risk outlet among dealers is likely to worsen pricing that dealers can offer to clients. In its 2018 proposed rule regarding SEF trading, the Commission recognized that "dealers base their prices on the cost of hedging those trades in the [D2D] markets."[9] Supporting the removal of PTNGU could result in a severe disruption of both the liquidity-creation process and the allocation of such liquidity to dealer's clients which would certainly have a negative effect on the market.

<u>The Current Market Structure Benefits Market Participants</u>

As noted above, available evidence supports the view that the current market structure, including SEFs that tend to attract distinct D2D and D2C activity, has, overall, benefitted market participants through tighter pricing and increasingly deep liquidity.[10] Nonetheless, some have argued that PTNGU inappropriately encourages bifurcation in the market between D2D and D2C SEFs.

The implication of this argument is that a "bifurcated market" is detrimental—when in fact it is central to supporting less liquid, principal-based markets with diverse products like those under consideration here. Unlike other financial products, swaps are not standardized widgets that dealers must source in bulk so that they can be traded at mark-ups to end clients. Dealers provide liquidity to clients in size and with immediacy and then hedge residual risks of that liquidity provision over time by taking liquidity in the PTNGU CLOBs. The relatively worse pricing on PTNGU order books[11] and lack of trading in fully anonymous order books[12] underscores the point: dealers are incentivized and able to provide their best pricing to clients

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9 *See* [SEFs] and Trade Execution Requirement; Proposed Rule, 83 Fed. Reg. (Nov. 30, 2018) at 61995

10 *See* note 2, *supra*.

11 *See* Collin-Dufrense, Junge and Trolle, *supra* note 3.

12 *See* Riggs, Onur, Reiffen and Zhu, *supra* note 3.

with whom they have a relationship, and dealers do not have relationships with anonymous parties on order books.

Indeed, the Commission has recognized the different and important functions of RFQ SEFs and PTNGU CLOB SEFs, with RFQ SEFs heavily favored by "corporate end-users and other buy-side participants [to] manage risk positions that are unique to their particular circumstances [and where] swap dealers provide liquidity to the participants within this segment for a fee […] that reflects the risks incurred by dealers from the episodic or relative lack of liquidity in the swaps market for many specific swaps."[13] On the other hand, PTNGU CLOB SEFs are primarily used by dealers to "offset positions established through the dealer-to-client market segment by hedging their swaps inventories on a portfolio basis […]."[14]

We also note that the Dodd-Frank Act did not identify nor direct the elimination of the ability for similarly situated market participants from trading with one another. Nor did it direct the elimination of PTNGU, which existed at that time the Dodd-Frank Act was enacted.

PTNGU Does Not Result In Inappropriate Information Leakage Nor Does It Undermine The Privacy Obligations of Swap Data Repositories

Some have argued that PTNGU may deter buy-side participation on SEFs where it is utilized due to the prospect of "information leakage", whereby disclosing the identity of a market participant could potentially expose the participant's trading intentions, strategies, positions, or other sensitive information to competitors or dealers. However, information leakage occurs when a participant's activity is revealed without their knowledge or consent. For example, were a participant's trades revealed when executed in an anonymous order book without PTNGU, that would indeed constitute information leakage and present an issue worthy of regulatory action. There are no impediments, nor should there be, to market participants (buy- and sell-side) from trading, should they choose, today in anonymous order books that do not provide PTNGU.

However, participants in anonymous order books with PTNGU understand the rules of those order books up front and, specifically, it is understood that their identity will be revealed to their counterparty. They choose to trade with that knowledge and, in fact, value this feature. Simply because participants in these pools prefer to submit their prices into the order book anonymously, this should not be misinterpreted to imply that their preference or intent is to have their identity kept from the counterparty with whom a trade is consummated.

The Proposal also argues that banning PTNGU would advance the congressional objectives to require a swap data repository (SDR) to maintain the privacy of any and all swap transaction information that it receives from a swap dealer, counterparty, or any other registered entity.[15] It does not stand to reason that the choice by two counterparties' to disclose their identities to one another post-trade undermines the SDR's privacy obligations whereas doing so pre-trade, as occurs when transacting via RFQ, does not. Additionally, CEA

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13 *See* note 9, supra.

14 *Id.*

15 *See* Proposal at 72266

Section 21(c)(6) narrowly and intentionally applies its privacy requirements to SDRs. Had Congress intended these same or similar requirements to extent to SEFs, it would have done so.

PTNGU Is Not Solely Justified by Credit Risk Considerations

Some have argued that PTNGU was solely motivated by a need for counterparties to know their credit exposure and to book their trades before clearing was required. However, those were not the sole motivations. Knowing one's counterparty to a completed trade was and remains an attractive attribute of order books with PTNGU, for the reasons stated earlier.

Further, even in connection with cleared swaps, there are frequently operational, credit/settlement, and legal considerations that necessitate PTNGU. For example, certain package transactions involving securities (such as U.S. Treasury swap spreads) or non-cleared swaps typically necessitate PTNGU to address the risks associated with the non-cleared legs of those transactions.[16] In addition, PTNGU helps enable parties to address operational errors and resulting risks.

Banning PTNGU would have unknown consequences in package transactions

We have additional concerns in relation to a large portion of the market in which a trade is agreed as part of a package. In accordance with question 15 of the proposal, SIFMA agrees with the suggestion that at a minimum, any prohibition should exempt package trades that involve a non-swap instrument. Such transactions involve the use of infrastructure outside of the usual swap flow, even where the trade may be executed anonymously through the SEF. Compliance with a prohibition on name give up would require that SEFs set themselves up in a manner that also addresses the post trade elements of these other legs.

For example, in spreadover transactions involving a Treasury security, the settlement of the security involves non-swap infrastructure. Effecting a prohibition on PTNGU would require a change in the operational flow not only for the swap but for the security and we are concerned that the changes necessary for this infrastructure have not been considered in the cost/benefit analysis, and have not been analyzed enough to consider unintended consequences . In addition, the security settles on a different time period (i.e., usually the next day) as compared to the cleared swap (i.e., almost immediately).

In providing an exemption for packages, the Commission would provide itself with more time to analyze and understand the impact of a prohibition on the transaction as a whole, particularly in times of market stress where understanding our counterparties may be essential in the remediation of issues and in managing risk.

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[16] Although fully anonymous trading takes places between members of the Fixed Income Clearing Corporation ("**FICC**"), requiring such trading to take place in transactions involving one or both parties who are not FICC members would necessitate intermediation by a clearing broker-dealer and present material systemic risk to that broker-dealer.

As the foregoing illustrates, intervening to prohibit PTNGU would raise serious concerns for many market participants, accordingly we urge the Commission not to adopt the Proposal.

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

Sincerely,

Kenneth E. Bentsen, Jr.
President & CEO
SIFMA

cc: Heath P. Tarbert, Chairman
Brian D. Quintenz, Commissioner
Rostin Behnam, Commissioner
Dawn DeBerry Stump, Commissioner
Dan M. Berkovitz, Commissioner

Dorothy D. DeWitt, Director, Division of Market Oversight
Alexandros Stamoulis, Special Counsel, Division of Market Oversight

U.S. Commodity Futures Trading Commission