March 2, 2020

Secretary of the Commission
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 (RIN 3038-AE79); Request for Comment

The Coalition for Derivatives End-Users (the "Coalition") appreciates the opportunity to comment on the U.S. Commodity Futures Trading Commission's ("CFTC" or the "Commission") proposed rule regarding Post-Trade Name Give-Up on Swap Execution Facilities (the "Proposed Rule").[1] While the Coalition appreciates the hard work the CFTC has invested in this proposal, we ask the Commission to consider carefully the effects that implementation of the Proposed Rule might have on commercial end-users' ability to hedge or mitigate their risks in the non-cleared over-the-counter ("OTC") derivatives markets. The Coalition represents end-user companies that employ derivatives primarily to manage risks. Hundreds of companies have been active in the Coalition on both legislative and regulatory matters and our message is straightforward: financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on derivatives end-users, who are the engines of the economy.

The use of derivatives to hedge commercial risk benefits the global economy by allowing a range of businesses—from manufacturing to healthcare to agriculture to energy to technology—to improve their planning and forecasting and offer more stable prices to consumers and a more stable contribution to economic growth. Currently, bank dealers serve as critical counterparties to commercial end-users by not only facilitating end-user non-cleared OTC derivatives transactions, but also underwriting corporate debt and equity securities and providing the liquidity required by end-users to invest in their businesses, create jobs and generate economic growth. In turn, dealer counterparties themselves employ risk management practices and often times offset and hedge these transactions by trading swaps on swaps execution facilities ("SEFs"). The current market practices of end-users and the subsequent offsets by our bank dealer counterparties have generally led to a liquid and efficient marketplace in which end-user businesses can manage their commercial risks.

We have heard from bank swap dealers that the Proposed Rule would result in less liquidity and worse pricing on SEFs, which in turn may increase costs for derivatives end-user hedging transactions in the non-cleared OTC derivatives markets. Conversely, we have heard from other market participants that, under the Proposed Rule, liquidity would increase and result in better pricing on SEFs, which in turn may drive down costs for derivatives end-users in the non-cleared OTC derivatives markets. While

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[1] Proposed Rule, Post-Trade Name Give-Up on Swap Execution Facilities, 84 Fed. Reg. 72262 (Dec. 31, 2019), *available at* https://www.federalregister.gov/documents/2019/12/31/2019-27895/post-trade-name-give-up-on-swap-execution-facilities.

we appreciate both perspectives, the Coalition lacks the empirical data and institutional knowledge to reach a firm conclusion as to the effects of the Proposed Rule on the ability of end-users to access efficient and economical markets to hedge their commercial risks.

We have reviewed the Proposed Rule for additional insight as to the impacts on commercial end-users. The Proposed Rule, however, does not include empirical data or projections that consider the potential direct and indirect effects that it may have on commercial end-users' ability to hedge commercial risks in the non-cleared OTC derivatives markets. Further, we are concerned about how market structure changes contemplated under the Proposed Rule would affect costs and liquidity for commercial end-users as a result the Proposed Rule itself, as well as potential secondary effects as a result of the Proposed Rule's interactions with other market changes such as the expected 2021 transition from LIBOR.[2] While we are sympathetic to the Commission's point that it does not have quantitative data on the actual impacts of the Proposed Rule on commercial end-users, we believe that the CFTC is in the best position to objectively gather and analyze available quantitative and qualitative data and request that it estimate and discuss these costs and potential effects on commercial end-users. The Proposed Rule draws the "preliminary" conclusion that it will not increase costs for end-users.[3] While we appreciate the optimism and hope it is well-founded, we are concerned by the lack of data and modeling and cannot adequately understand the proposal—or take a position on it—unless and until the CFTC provides more of an impact analysis relative to end-users.

As we have commented in the past, the commercial end-user community is sensitive to the regulatory requirements faced by its counterparties as resulting costs are often passed-through to end-users and less liquid and efficient markets may result for end-users' hedging needs. This sensitivity is particularly relevant in light of the current economic environment, as significant changes to the markets increase the potential for greater market volatility and costs for commercial end-users. Therefore, given the uncertainty of the potential impacts of the Proposed Rule, lack of available data on the matter and, more generally, proposed structural changes to the markets in addition to the Proposed Rule, we would respectfully request that the CFTC discuss in detail the potential effects that the Proposed Rule, if implemented, would have on commercial end-users' access to liquidity in the non-cleared OTC derivatives markets, including with respect to liquidity from those counterparties that are part of their banking group, as well as any potential cost impacts on commercial end-users that participate in those markets.

Throughout the legislative and regulatory process surrounding derivatives regulations, the Coalition has supported efforts to avoid needless costs for end-users, increase transparency in the derivatives markets and enhance financial stability for the U.S. economy through thoughtful new regulation. We thank you for your consideration of the impacts of the Proposed Rule on Coalition

[2] For example, given that the LIBOR transition will lead to significant changes to the derivatives markets and the financial markets generally, and many products that are traded on SEFs are interest rate swaps that reference LIBOR, commercial end-users are fearful that multiple structural changes may further dampen liquidity and pricing for commercial end-users.

[3] In the only discussion on such potential costs, as raised by SIFMA, the CFTC notes that "it is not, at this time, convinced that prohibiting post-trade name give up would increase the costs of trading swaps for end users and other swap dealer clients. The Commission preliminarily believes that negative pricing effects on SEFs would be unlikely to result, as competition from new market participants and incumbent liquidity providers that continue to provide liquidity should offset this possibility." Proposed Rule at 72269.

members. Please feel free to contact Michael Bopp at 202-955-8286 or at mbopp@gibsondunn.com if you have any questions or would like to discuss.

Sincerely,

The Coalition for Derivatives End-Users