

MEMO# 32940

November 24, 2020

CFTC Adopts Amendments to SEF Regulations for Package Transactions and Error Trades

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November 24, 2020 TO: Derivatives Markets Advisory Committee RE: CFTC Adopts Amendments to SEF Regulations for Package Transactions and Error Trades

On November 18, the Commodity Futures Trading Commission (CFTC or “Commission”) approved a final rule to amend certain requirements related to swap execution facilities (SEFs) that would permit market participants to use flexible execution methods to execute component swaps of certain package transactions and transactions to resolve swap error trades.^[1] The rule codifies existing no-action letters issued by the Division of Market Oversight (DMO) and will be effective 60 days after publication in the Federal Register.

Package Transactions

For certain categories of package transactions,^[2] the final rules would provide market participants with the flexibility to execute a component swap that is a “Required Transaction” through any SEF execution method offered for “Permitted Transactions.”^[3] The rules codify the majority of relief that is provided in CFTC No-Action Letter No. 20-31.^[4] Further, the rule establishes an exemption from the trade execution requirement altogether for a swap that is executed as a component of a package transaction that includes a component that is a new issuance bond. The CFTC stated that execution flexibility on SEFs is appropriate for these package transaction types based on their complex and bespoke nature.

Error Trades

The final rule enables SEFs to permit market participants to execute swaps transactions to correct operational or clerical errors using execution methods other than those required by CFTC requirements for Required Transactions. The CFTC adopted the rule, which codifies the intent of CFTC No-Action Letter Nos. 17-27^[5] and 20-01,^[6] largely as proposed.

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endnotes

[1] Swap Execution Facility Requirements (Nov. 18, 2020), *available at* <https://www.cftc.gov/media/5276/votingdraft111820b/download>. We previously notified you of the CFTC's proposed rule. See ICI Memorandum No. 32222 (Feb. 20, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32222.

[2] These categories include package transactions, subject to certain exceptions, in which (i) at least one of the component swaps is exclusively subject to the CFTC's jurisdiction, but is otherwise not subject to the CFTC clearing requirement under CEA section 2(h)(1)(A) ("MAT/Non-MAT Uncleared"); (ii) at least one of the components is not a swap ("MAT/Non-Swap Instrument"); and (iii) at least one of the components is a swap over which the CFTC does not have exclusive jurisdiction, e.g., a mixed swap ("MAT/Non-Exclusive CFTC Swap").

[3] Regulation 37.9(a)(2) otherwise requires component swaps that are Required Transactions to be executed through a SEF's order book or request-for-quote (RFQ) system.

[4] CFTC Letter No. 20-31 (Oct. 9, 2020), *available at* <https://www.cftc.gov/csl/20-31/download>. The final rule, however, does not codify the relief provided to package transactions in which all other components are futures contracts ("MAT/Futures"). The relief for component swaps in this category is currently set to expire on November 15, 2022.

[5] CFTC Letter No. 17-27 (May 30, 2017), *available at* <https://www.cftc.gov/csl/17-27/download>.

[6] CFTC Letter No. 20-01 (Jan. 8, 2020), *available at* <https://www.cftc.gov/csl/20-01/download>.