

MEMO# 32159

January 17, 2020

CFTC Proposes Prohibition on Post-Trade Name Give-Up: Member Call on January 28

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January 17, 2020 TO: Derivatives Markets Advisory Committee RE: CFTC Proposes Prohibition on Post-Trade Name Give-Up: Member Call on January 28

In December, the Commodity Futures Trading Commission (CFTC or "Commission") approved a proposed rule ("Proposed Rule") to prohibit the direct or indirect disclosure of a swap counterparty's identity for swaps executed anonymously on a swap execution facility (SEF), provided that the swaps are intended to be cleared.^[1] Comments on the Proposed Rule, which is summarized below, are due to the CFTC on March 2.

ICI plans to submit comments on the Proposed Rule. We will hold a call with members and our outside counsel, Rachel Reicher of Skadden Arps, on Tuesday, January 28, from 2-3 pm ET, to discuss the Proposed Rule and potential comments. We will send you an Outlook invitation for the call that includes dial-in information. If you have questions, please contact Monique Curtis at monique.curtis@ici.org

Background

Today, through a practice called "post-trade name give-up," some SEFs and third-party service providers disclose the identity of each swap counterparty to the other counterparty after a trade has been matched anonymously on the SEF. In November 2018, the CFTC requested public comment on the practice of post-trade name give-up on SEFs for swaps that are executed anonymously on the SEF and are intended to be cleared. ICI filed a comment letter in January 2019 urging the Commission to abolish this harmful practice.^[2]

The CFTC explains in the Proposing Release that the majority of commenters on the CFTC's 2018 request for comment opposed the practice of post-trade name give-up, although some commenters representing swap dealers supported the practice and expressed concern about the effects of a prohibition.

Proposed Rule

The Proposed Rule would prohibit post-trade name give-up for swaps that are anonymously executed on a SEF and are intended to be cleared. Specifically, Proposed Rule 37.9(d)(1) would prohibit a SEF from, directly or indirectly, disclosing the identity of a counterparty to

a swap that is anonymously executed and intended to be cleared. The Proposed Rule clarifies that this prohibition would cover and preclude such disclosure by a SEF's third-party service provider.

Additionally, Proposed Rule 37.9(d)(2) would require each SEF to establish and enforce rules that prohibit any person from directly or indirectly disclosing the identity of a counterparty to such a swap. The Proposed Rule clarifies that this prohibition would cover and preclude such disclosure by the SEF's third-party service provider.

Proposed Rule 37.9(d)(3) specifies that the proposed prohibitions would not apply "with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap" (i.e., SEF trading systems and platforms that are not anonymous before or during execution).

The CFTC believes that the Proposed Rule would advance the statutory objectives of promoting swaps trading and competition on SEFs, and would advance the Congressional objectives underlying the prohibition against swap data repositories disclosing the identities of cleared swap counterparties. The Commission also observes that the current practice of post-trade name give-up may undermine the impartial access requirement applicable to SEFs, by resulting in discrimination against certain market participants. The Commission asserts that "with respect to operational, credit and settlement and legal issues in particular—there is generally no imperative for post-trade name give-up if a swap is executed on a SEF and submitted to a [derivatives clearing organization] for clearing."

The CFTC requests comment on the necessity and scope of an exception to the Proposed Rule for package transactions or other swaps, as well as on a number of additional questions that are listed in the attached appendix (and annotated with some thoughts for your consideration). We look forward to your feedback on these questions, and any other issues, on our upcoming member call.

Appendix

1. Does post-trade name give-up undermine the Commission's stated goals of impartial access to (i) ensure market participants can compete on a level playing field, and (ii) allow additional liquidity providers to participate on SEFs? Please explain why or why not, and include any supporting data.

It would be helpful to include in ICI's letter any experiences of members supporting the notion that the practice of post-trade give up has reduced liquidity, inhibited their ability to execute trades on a SEF, resulted in information leakage, and/or reduced their use of SEFs.

2. Should the Commission narrow the scope of the proposed prohibition on post-trade name give-up to apply only to swaps that are required to be cleared under section 2(h)(1) of the Act, or alternatively, only to swaps that are subject to the trade execution requirement under section 2(h)(8) of the Act? Why or why not?

It would be helpful for members to convey why this prohibition should also cover swaps that they are electing to clear and/or are electing to trade on a SEF. We could explain in the letter that including in the rule's prohibition swaps that are electively traded on a SEF, or cleared, would promote liquidity on SEFs and also promote the Congressional goal of clearing.

3. How, if at all, would a prohibition on post-trade name give-up affect pre-trade price transparency on a SEF operating an anonymous central limit order book?
4. How would the proposed prohibition on post-trade name give-up affect existing liquidity on SEFs? How would the proposed prohibition affect liquidity on central limit order books? Would the proposed prohibition indirectly affect liquidity on name-disclosed request for quote systems? If so, how? In particular, please provide substantiating data, statistics, and any other quantifiable information related to any such comments.

It would be helpful for members to provide information regarding which methods of execution they use on SEFs today and their experiences with the practice of post-trade name give up for each method of execution.

5. Please explain the nature of any potential new liquidity on SEFs that may result from the proposed prohibition. For example, would liquidity increase due to a greater number of market participants trading and/or would liquidity increase due to additional market makers competing on affected SEFs?
6. How, if at all, would the proposed prohibition on post-trade name give-up affect trading protocols such as auctions, portfolio compression, and/or workup sessions?
7. Is trading on a SEF platform with post-trade name give-up for anonymously executed, intended-to-be-cleared swaps preferable to a fully-disclosed platform for a swap dealer's capital allocation purposes? If so, why?
8. Please describe how post-trade name give-up currently helps swap dealers make markets in swaps, if at all.
9. If the Commission were to prohibit post-trade name give-up as proposed in this notice, then how might that affect the prices that swap dealers quote to buy-side participants on SEFs operating name-disclosed, request for quote platforms?
10. How does the price for a given swap listed on a SEF operating an anonymous central limit order book compare to the price for an equivalent swap listed on a SEF operating a name-disclosed request for quote system? How does the practice of post-trade name give-up relate to any such difference in price?
11. Are there certain cleared swap classes for which post-trade name give-up serves a particularly important role for swap dealers for market-making or hedging purposes that would be adversely affected by a prohibition?
12. How many and what types of additional liquidity providers (e.g., funds, proprietary trading firms, high-frequency traders) might join affected SEFs if post-trade name give-up were prohibited? Would these new participants be particularly interested in trading certain kinds of swap transactions (e.g., spread trades)? Would these new participants be floor traders, swap dealers, or another type of entity?
13. What other effects would a prohibition on post-trade name give-up have on the swap market?
14. Should the Commission provide an exception to the prohibition on post-trade name give-up for swaps that are components of package transactions involving an uncleared swap? To what extent are such package transactions anonymously traded, given the involvement of an uncleared swap at the outset?

It would be helpful for those members who use package transactions to describe how they currently are traded, and if members believe an exception to the prohibition on post-trade name give-up would be inappropriate or unnecessary for package transactions.

15. If the Commission provides an exception with respect to package transactions, should it include an exception for package transactions involving any non-swap instrument, including Treasury securities? Should such an exception apply to the swap components if such non-swap instrument components are also executed anonymously and intended to be cleared?
16. Excluding swaps that are components of certain package transactions, what, if any, operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for a swap that is intended to be cleared?
17. Are there any alternatives to the proposed prohibition on name give-up that would better achieve the regulatory objectives stated above? For example, could these objectives be better accomplished through additional guidance or enforcement activity to address applications of post-trade name give-up that are inconsistent with the impartial access requirement?

Please confirm whether members believe that the certainty of a formal rule that has gone through the notice and comment process is the appropriate mechanism to achieve the CFTC's regulatory goals and protect against this practice.

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endnotes

[1] *Post-Trade Name Give-Up on Swap Execution Facilities*, 84 Fed. Reg. 72262, available at <https://www.cftc.gov/sites/default/files/2019/12/2019-27895a.pdf> ("Proposing Release"). Chairman Tarbert and Commissioners Behnam and Berkovitz issued a strongly-worded joint statement supporting the Proposed Rule. See <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertbehnamberkovitzjointstatemen t121819>.

[2] See Letter to Mr. Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, from Susan Olson, General Counsel, Investment Company Institute (Jan. 29, 2019), available at <https://www.ici.org/pdf/31584a.pdf>.