

MEMO# 32898

November 5, 2020

CFTC Staff Issues FAQs on Post-Trade Name Give-Up

[32898]

November 5, 2020 TO: Derivatives Markets Advisory Committee RE: CFTC Staff Issues FAQs on Post-Trade Name Give-Up

On June 25, 2020, the Commodity Futures Trading Commission (CFTC or “Commission”) adopted a final rule, Regulation 37.9(d), that prohibits post-trade name give-up for swaps that are executed anonymously on a swap execution facility (SEF) and are intended to be cleared.^[1] For swaps that are subject to the trade execution requirement (MAT swaps),^[2] SEFs were required to comply with the final rule by November 1, 2020. For swaps not subject to the trade execution requirement (non-MAT swaps), SEFs must comply with the final rule by July 5, 2021. The staff of the Commission’s Division of Market Oversight (DMO) recently issued several Frequently Asked Questions (FAQs) addressing compliance with the final rule.^[3]

The FAQs clarify that:

- Regulation 37.9(d) prohibits a SEF from directly or indirectly disclosing the identity of a counterparty to a swap that is subject to the prohibition on post-trade name give-up. For package transactions involving both a MAT and a non-MAT swap that is intended to be cleared, if disclosing the identity of the counterparty of the non-MAT swap would indirectly disclose the identity of a counterparty of the MAT swap, a SEF may not engage in post-trade name give-up with respect to either transaction as of November 1, 2020.
- Where a participant has entered into a package transaction with two different counterparties, one involving a MAT swap, and the other involving a non-MAT swap that is intended to be cleared, post-trade name give-up would be permitted with respect to the non-MAT swap between November 1, 2020 and July 5, 2021 only if there is no direct or indirect disclosure of the counterparties to the MAT swap. Beginning July 5, 2021, post-trade name give-up with respect to the non-MAT swap is also prohibited.
- For a non-MAT swap that is voluntarily cleared, “to the extent a SEF’s current systems do not indicate whether a swap is intended to be cleared . . . the SEF must make necessary adjustments to its systems and processes to ensure that it can determine

whether a swap is intended to be cleared before permitting post-trade name give-up.”^[4]

- SEFs that match LEIs to reject an attempt by a branch of a bank to execute against the order of another branch of the same bank may notify the counterparties to the transaction that the trade was rejected because the counterparty LEIs are the same, even though that disclosure may result in disclosure of the counterparty name of the affiliate branch.

Sarah A. Bessin
Associate General Counsel

endnotes

^[1] *Post-Trade Name Give-Up on Swap Execution Facilities*, 85 Fed. Reg. 44693 (July 24, 2020) (“Adopting Release”). For a summary of the final rule, please see ICI Memorandum No. 32575 (July 2, 2020), available at https://www.ici.org/my_ici/memorandum/memo32575.

^[2] *i.e.*, a swap that is “made available to trade” and therefore subject to the trade execution requirement under Commodity Exchange Act Section 2(h)(8).

^[3] The FAQs are available at https://www.cftc.gov/IndustryOversight/TradingOrganizations/PTNGUfaqs?utm_source=govdelivery.

^[4] Adopting Release at 44698.

Source URL: <https://icinew-stage.ici.org/memo-32898>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.