

MEMO# 32211

February 13, 2020

ICI Draft Comment Letter to CFTC on Post-Trade Name Give-Up - Your Comments Requested by February 24

[32211]

February 13, 2020 TO: Derivatives Markets Advisory Committee RE: ICI Draft Comment Letter to CFTC on Post-Trade Name Give-Up - Your Comments Requested by February 24

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 are due to the CFTC on March 2.

ICI, with the assistance of our outside counsel, has prepared the attached draft comment letter for your review and feedback. The letter is summarized briefly below. Please provide your written comments to sarah.bessin@ici.org by February 24, 2020. We encourage you to provide specific feedback and examples in response to the bracketed questions in the draft letter.

Under the practice of post-trade name give-up, the identity of each swap counterparty is disclosed to the other after a trade has been matched anonymously on a SEF. 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 ("Covered Swaps"). The Proposed Rule follows the CFTC's request for comment last November on post-trade name give-up.^[2]

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).

ICI's comment letter strongly supports the CFTC's proposal to prohibit post-trade name give-up for Covered Swaps. The letter explains that, while the identities of the parties to a swap is an important term for uncleared swaps, disclosure of the parties is unnecessary for Covered Swaps. The letter further explains that post-trade name give-up harms buy-side market participants, including regulated funds and their shareholders, by resulting in information leakage and less favorable trading terms. It also notes that information leakage through post-trade name give-up is inconsistent with the information privacy requirements that Congress set up for swap data repositories, and that the practice may have a discriminatory effect on market participants, undermining the goals of the impartial access requirement under the Commodity Exchange Act.

The letter explains that prohibiting post-trade name give-up would increase liquidity on SEFs by encouraging buy-side traders to participate in trading on venues that offer anonymous execution of intended to be cleared swaps, including venues that offer order book functionality. The letter also responds to arguments by advocates of post-trade name give-up that prohibiting the practice would not lead to increased liquidity or would be detrimental to bank capital allocation or market integrity.

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[Attachment](#)

endnotes

[1] For a summary of the Proposed Rule, *please see* ICI Memorandum No. 32159 (Jan. 27, 2020), *available at* https://www.ici.org/my_ici/memorandum/memo32159.

[2] ICI filed a comment letter in January 2019 urging the Commission to abolish this harmful practice. 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>.