



Commodity Futures Trading Commission

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Fact Sheet – Notice of Proposed Rulemaking on Swap Execution Facilities and the Trade Execution Requirement and Request for Comment on Post-Trade Name Give-Up

The Commodity Futures Trading Commission (Commission) issued a rule proposal to amend existing requirements and propose new requirements pertaining to swap execution facilities (SEFs) and the trade execution requirement, as set forth in the Commodity Exchange Act (CEA). The proposed rules include the adoption and/or codification of many existing staff guidance documents and staff no-action relief letters.

In addition, the Commission issued a request for comment on the practice of post-trade name give-up for intended-to-be-cleared swaps that are executed on SEFs.

SEF Registration Requirement

The proposed rules would apply the statutory SEF registration requirement to certain swaps broking entities, including interdealer brokers, and aggregators of single-dealer platforms. Domestic swaps broking entities would receive a six month-delay from the SEF registration requirement. Foreign swaps broking entities would receive a two-year delay from the SEF registration requirement.

The proposed rules would also amend the SEF registration requirement to clarify that entities that meet the SEF definition would be required to register as a SEF, irrespective of whether the swaps that they list for trading are subject to the trade execution requirement (*i.e.*, codification of footnote 88 issue).

Trade Execution Requirement

The proposed rules would eliminate the “made available to trade” (“MAT”) determination process for SEFs and DCMs and establish a new approach based on a revised interpretation of the trade execution requirement in CEA section 2(h)(8). The trade execution requirement would apply to swaps that are both (i) subject to the clearing requirement and (ii) listed by a SEF or DCM for trading. Based on this approach, a number of new interest rate swaps and credit default swaps would be subject to the trade execution requirement.

The existing compliance schedule for the trade execution requirement would be replaced by new compliance deadlines of 90, 180, or 270 days that would apply respectively to different categories of market participants. The trade execution requirement, however, would be subject to certain exemptions pursuant to CEA section 4(c): (i) swaps subject to a clearing exception or exemption; (ii) swap components of package transactions involving the issuance of a new bond; (iii) swaps between inter-affiliates; and (iv) swaps listed for trading only by an Exempt SEF(s).

Methods of Execution

A SEF would no longer be required to offer an Order Book for all of the swaps that it lists for trading (*i.e.*, the minimum trading functionality requirement). For swaps that are subject to the trade execution requirement, a SEF would no longer be limited to offering an Order Book or a “Request for Quote” system that requires transmission of requests to a minimum of three other market participants (“RFQ-to-3 System”). A SEF would instead be able to offer flexible methods of execution for all listed swaps, including swaps subject to the trade execution requirement. A SEF, however, would be required to establish general, disclosure-based trading and execution rules for any execution method that it offers, including rules describing (i) protocols for each trading system or platform offered; (ii) the use of discretion in trading systems or platform; and (iii) the general sources and methodology for generating market pricing information.

In conjunction with a SEF's ability to offer flexible execution methods, the exceptions to the prohibition on pre-arranged trading would be eliminated. The proposed rules would also prohibit pre-execution communications that market participants conduct away from a SEF's trading system or platform, except for those related to a swap that is either (1) not subject to the trade execution requirement or (2) part of a package transaction that includes a component (swap or non-swap) that is not subject to the trade execution requirement.

SEF Trading Specialists

The proposed rules would establish requirements for "SEF trading specialists" (*i.e.*, SEF employees) who perform core functions that facilitate swaps trading and execution for a SEF. A SEF would be required to adopt (i) fitness qualifications that prohibit certain persons from acting as SEF trading specialists consistent with the CEA's statutory disqualifications, (ii) proficiency testing, (iii) ethics training, and (iv) a code of conduct. The proposed rules would also establish a SEF duty of supervision over SEF trading specialists.

Impartial Access Requirements

The proposed rules would allow a SEF to structure participation criteria and trading practices, including fee schedules, in a manner that aligns with the swaps market practices. Such criteria must be transparent, fair, and non-discriminatory and applied to all or "similarly situated" market participants in a "fair and non-discriminatory" manner, which means that such criteria should be non-arbitrary and based on objective, pre-established requirements or limitations.

Straight-Through Processing Requirements

The proposed rules would clarify that SEFs and derivatives clearing organizations (DCOs) must work together to facilitate processing and routing of a trade to a DCO in a "prompt, efficient, and accurate manner." The proposed rules would also clarify that the "as quickly as technologically practicable" (AQATP) standard requires a DCO to accept or reject a swap (or futures) transaction within a specified time frame.

The proposed rules also include codifications of existing staff guidance to require SEFs to facilitate pre-execution credit screening for swaps intended to be cleared; and require market participants to identify a clearing futures commission merchant (FCM) before each order.

Financial Resources

The proposed rules would amend the financial resources requirements to clarify that a SEF would only need to maintain adequate financial resources to cover the operating costs needed to comply with the SEF core principles and Commission regulations for a one-year period, as calculated on a rolling basis. The proposed rules would also amend the existing liquid resource requirement from six months of a SEF's operating costs to the greater of (i) three months of a SEF's projected operating costs; or (ii) the projected costs for a SEF to wind down its business, as determined by the SEF.

In determining projected operating costs, a SEF may follow new proposed Acceptable Practices, which are based on staff guidance, that identifies various operating costs that a SEF may exclude or pro-rate in its projected operating cost calculations. This calculation would be based on a SEF's current business model and any anticipated changes. A SEF's quarterly financial reports would be required to identify all of its expenses, including those that it has excluded from its calculations, and provide the basis for any amounts excluded or pro-rated from its projected operating costs.

SEF Compliance and Self-Regulatory Organization (SRO) Oversight

The proposed rules would streamline many SEF SRO obligations and provide a SEF with the ability to tailor its rule enforcement program, disciplinary procedures, and sanctions to its trading operations and market. Under the proposed rules, a SEF would also be able to choose additional types of entities to serve as a regulatory service provider to assist with fulfilling its compliance responsibilities.

The proposed rules would further streamline a SEF chief compliance officer's (CCO) existing duties, simplify the preparation and submission of a SEF's annual compliance report, and provide a SEF's senior officer (*i.e.*, the CEO or equivalent officer) with the same oversight responsibilities over the CCO as the SEF's board.

Request for Comment on Post-Trade Name Give-Up

The Commission also issued a request for comment that seeks public views as to the necessity or utility of post-trade name give-up practices in facilitating swaps trading where swap transactions are anonymously executed and intended to be cleared.