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March 14, 2019

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Re: RIN 3038-AE25: Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946 (November 30, 2018)

Dear Mr. Kirkpatrick:

The FIA Principal Traders Group (“FIA PTG”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“Commission”) Notice of Proposed Rulemaking on Swap Execution Facilities (“SEFs”) and the Trade Execution Requirement (“TER”) (“Proposed Rulemaking”). We support transparent, competitive, and well-regulated markets and regulatory measures that support these goals.

FIA PTG is an association of firms that use their own capital to trade in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG members are an important source of liquidity in these markets, enabling investors, including commercial end-users, to manage their business risks and to enter and exit markets efficiently. In swaps markets, our participation also supports the objectives of the G-20 OTC derivatives reforms, as FIA PTG members provide new sources of liquidity and increase counterparty diversity, reducing systemic risk and benefiting end-users.

Under the Commission’s current SEF rules, market transparency and competition has increased in swaps markets, as trading activity has transitioned onto multilateral trading venues. However, barriers remain that continue to prevent many FIA PTG members from fully participating as liquidity providers in these markets. Instead of seeking to address these remaining barriers, the Proposed Rulemaking represents a significant step backwards, and would result in less transparency and competition for market participants.

We detail the problematic aspects of the proposal below.

I. Impartial Access

The Proposed Rulemaking permits SEFs to discriminate among various market participants by asserting that only “similarly situated” market participants are entitled to impartial access. This would allow SEFs to discriminate against FIA PTG member firms by limiting access to categories of “similarly situated” market participants that only include incumbent liquidity providers. For example, a SEF could limit access to: (a) self-clearing members of a central counterparty clearing house (“CCP”), (b) registered swap dealers, (c) liquidity providers with certain levels of transaction volumes, or (d) liquidity providers that are approved by a certain number of other liquidity providers on the venue. All such categorizations would result in discrimination against FIA PTG member firms and the Proposed Rulemaking would allow such discrimination in a SEF’s membership criteria, trading protocols, and fee structures.

Permitting SEFs to discriminate against potential new liquidity providers reduces competition and decreases liquidity for end-users. In our view, this aspect of the Proposed Rulemaking is inconsistent with the statutory requirement that SEFs provide **all** market participants with impartial access to the market.¹ In addition, it diverges from EU requirements under the Markets in Financial Instruments Directive (“MiFID II”), which are closely modeled on the Commission’s current interpretation of impartial access and prohibit all of the discriminatory practices described above. We urge the Commission to conduct a more detailed assessment of the practical costs associated with allowing SEFs to discriminate against specific types of market participants, including with respect to transaction costs, market transparency, and competition. Instead of permitting SEFs to erect new barriers to participation in these markets, the Commission should be seeking to end anticompetitive practices and ensuring a level playing field such that market-based competition and innovation can occur.

II. Execution Methods

The Proposed Rulemaking would undermine the multilateral nature of SEFs by granting complete flexibility with respect to trading protocols, including allowing a SEF to offer only RFQ-to-1 or single-dealer trading protocols. While we support providing the regulatory flexibility to enable market-led innovation to occur with respect to trading protocols, the Commission should maintain minimum standards that protect the multilateral, competitive, and transparent execution process on SEFs. Otherwise, SEF execution could mean nothing more than a private bilateral conversation between two market participants, which would represent a return to the opaque and uncompetitive swap market trading practices used prior to the introduction of SEFs.

Removing all standards that ensure that SEFs remain multilateral, competitive, and transparent appears inconsistent with the statutory requirements that SEFs be multiple-to-multiple in nature and promote pre-trade price transparency.² In addition, we note that the EU requirements under

¹ CEA Section 5h(f)(2)(B)(i).

² CEA Sections 1(a)(5) and 5h(e).

MiFID II require Multilateral Trading Facilities (“MTFs”) and Organized Trading Facilities (“OTFs”) to be multilateral and to provide pre-trade transparency to market participants.

To the extent the Commission believes more flexibility is warranted with respect to SEF trading protocols, it should take steps to protect the multilateral, competitive, and transparent execution process on SEFs. In no event should opaque bilateral negotiations (such as RFQ -to-1) be permitted for instruments that are required to be executed on a SEF. This will help to ensure the observed benefits resulting from the market’s transition to SEF trading, such as lower transaction costs, increased price transparency, and more competitive execution workflows, are preserved.

III. Straight-through-processing

The Proposed Rulemaking would significantly alter the Commission’s current straight-through-processing (“STP”) requirements for SEF trading, which have successfully reduced market and operational risk. First, SEFs would no longer be required to send an executed transaction to a CCP within 10 minutes. The removal of this requirement can be expected to result in many executed transactions taking longer to be submitted to clearing, which introduces market and operational risk for market participants to the extent the transaction is not successfully cleared. Second, if a transaction is rejected by a CCP for operational or clerical reasons, then it would no longer automatically be considered void under the proposal. The removal of this requirement could re-introduce bilateral trading documentation for cleared swaps, as SEFs or market participants could require bilateral breakage payments to be made in the event a transaction is rejected from clearing.

Together, the proposed changes to STP would introduce unnecessary friction for market participants transacting cleared swaps on SEFs. Clearing certainty would be undermined as transactions take longer to be submitted for clearing, increasing market and operational risks. In addition, the advantages of trading cleared swaps would be reduced to the extent bilateral counterparty credit considerations, and possibly bilateral documentation, once again become relevant if a transaction is rejected from clearing. This additional friction appears inconsistent with the statutory requirement for SEFs to ensure the financial integrity of cleared swaps,³ and creates divergence with the EU STP requirements under MiFID II, which are closely modeled on the Commission’s current STP standards.

The Commission has failed to justify significantly altering the current STP standards, which have functioned extremely well since 2013. Doing so at this stage risks disrupting liquidity and increasing costs and complexity for market participants transacting on SEFs. In addition, any re-introduction of bilateral counterparty credit risk for cleared swaps can be used as a pretext to discriminate against new liquidity providers, such as FIA PTG member firms, and hinders the evolution of certain trading protocols, such as order books. We recommend the Commission conduct a more detailed assessment of the practical costs associated with these proposed changes and refrain from altering standards that have proven successful in promoting SEF trading and reducing trading-related risks.

³ CEA Section 5h(f)(7).

Christopher J. Kirkpatrick

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If you have any questions about these comments or if we can provide further information, please do not hesitate to contact Joanna Mallers (jmallers@fia.org).

Respectfully,

FIA Principal Traders Group

A handwritten signature in blue ink that reads "Joanna Mallers". The signature is written in a cursive, flowing style.

Joanna Mallers

Secretary

cc: Chairman J. Christopher Giancarlo
Commissioner Brian Quintenz
Commissioner Rostin Behnam
Commissioner Dan Berkovitz
Dan Bucsa, Chief of Staff & Senior Policy Advisor to Commissioner Stump