March 14, 2019

BY ELECTRONIC SUBMISSION

Commodity Futures Trading Commission
Christopher Kirkpatrick, Secretary
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comment Letter on Swap Execution Facilities and Trade Execution Requirement (RIN 3038-AE25) Proposed Rule

Dear Mr. Kirkpatrick:

LatAm SEF, LLC ("LatAm SEF") appreciates the opportunity to provide the Commodity Futures Trading Commission (the "CFTC" or "Commission") with comments and recommendations regarding the CFTC proposed rule, "Swap Execution Facilities and Trade Execution Requirement", (RIN 3038-AE25) ("SEF Proposal"). The SEF Proposal would be the most significant reform to the swaps markets since the introduction of Swap Execution Facilities ("SEFs") in 2013. This complex and extensive proposal has been in development for several years and will have far-reaching and long lasting implications for our industry.

LatAm SEF is an interest rate and foreign exchange derivatives swap execution facility specializing in Mexican and Latin American markets. LatAm SEF filed with the Commission for SEF registration at the outset of SEF trading in 2013 and was among the first set of SEFs granted full registration in January 2016. As a dedicated SEF for Mexican and Latin American derivatives, LatAm SEF believes it has a unique perspective on the SEF framework as it applies to the markets LatAm SEF supports and the market participants holding LatAm SEF membership.

LatAm SEF supports the main goals of the proposal, particularly reducing complexity, allowing SEFs to offer flexible execution methods, and promoting SEF trading. LatAm SEF wishes to offer its comments on a number of different aspects of the proposed rule, including the definition of market participant, revision of Footnote 88, requirements and procedures for registration, and regulations governing foreign swaps broking entities.

I. Comments on Proposed Changes to Part 37.2(b): Definition of Market Participant

LatAm SEF appreciates the efforts of the Commission to define the term "market participant" as a means of clarifying a "SEF's jurisdiction over the various participants that may be involved in trading or executing swaps on its facility."[1] However, LatAm SEF believes that the current definition is vague in several places and that additional nuance must be added to the definition.

First, LatAm SEF does not believe that the Commission's definition of market participant is clear and complete.[2] Specifically, LatAm SEF believes the Commission needs to clarify whether it regards an intermediary acting on behalf of a person as a "market participant." The proposed definition clearly establishes that a person qualifies as a "market participant" when accessing the swap execution facility: "(iii) Through directing an intermediary that accesses a swap execution facility on behalf of such person to trade on its behalf."[3] However, the proposed rule leaves open to interpretation whether or not the intermediary also qualifies as a "market participant." Clarification would be relevant given that the definitions of roles are critical to the Rulebooks SEFs are required to maintain and given that the Commission explicitly addresses interdealer brokers elsewhere in these proposals.

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[1] Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946, 61954 (published Nov. 30, 2018) (Hereinafter "Proposed SEF Regulations").

[2] See Proposed SEF Regulations, Question 1, at 61955 ("(1) Is the Commission's proposed definition of "market participant" clear and complete? Please comment on any aspect of the definition that you believe is not clear or adequately addressed.").

[3] See Proposed SEF Regulations at 62094.

Regarding the Commission's second question,[4] LatAm SEF believes the Commission should distinguish between clients giving up complete control to an asset manager and those that do not give up complete discretion. An act of intermediation involving only partial discretion is by definition one in which the intermediary is acting under the client's direction. In this arrangement, the intermediary may not have full insight into the client's overall activity, including client intentions and activity in other marketplaces. The fact that the intermediary's client is actively directing the intermediary to act on the client's behalf distinguishes this relationship from that of the asset manager acting with full discretion, in which the client is passive.

II. Comments on Footnote 88

LatAm SEF welcomes the Commission's clarification and codification of Footnote 88 of the 2013 SEF Regulations. Footnote 88 provided the primary impetus for LatAm SEF's 2013 SEF registration. At that time, LatAm SEF and our affiliate IB, Enlace New York, Inc., were active only in non-cleared, permitted products. Since that time, confusion over Footnote 88 has resulted in significant onboarding challenges and loss of market share to larger SEFs listing a broader scope of products also traded by customers of Enlace who prioritize boarding larger SEFs over smaller ones. The Commission has contributed to this confusion in failing to enforce or clarify Footnote 88 during this period as larger SEFs developed businesses executing transactions for smaller IBs meeting the Footnote 88 qualifications but operating outside the SEF framework.

III. Comments on Swaps Broking Entities, Including Interdealer Brokers

Although LatAm SEF appreciates the Commission's efforts to update rules for swaps broking entities, LatAm SEF opposes the current proposal as it relates to these entities.[5] Specifically, the Commission fails to consider or address several significant reasons why interdealer brokers are currently established outside of SEFs. Admittedly, the Commission's view that swap broking entities, including interdealer brokers, meets the SEF definition and falls within the SEF registration requirement is consistent with the Dodd-Frank Act. However, this proposal would cause grave problems to and instability in SEF market operations. As many market observers have noted, the Commission has set SEF membership requirements that many market participants consider onerous and are therefore reluctant to agree to with multiple SEFs.[6] As a result, some market participants will use the services of some smaller interdealer brokers only under the condition that the interdealer brokers route transactions to a larger SEF with which the market participant has already established membership. This is true even where an interdealer broker has an affiliated company registered as a SEF, as is the case with the relationship between interdealer broker Enlace New York, Inc. and LatAm SEF.

Additionally, the Commission requirement that SEFs establish and maintain Rulebooks and that market participants must agree to SEF jurisdiction and rules is an example of a SEF requirement that is unnecessarily burdensome. Such broad requirements become prohibitively challenging for market participants that have relationships with many SEFs. The types of rulebooks at issue are often hundreds of pages long and, although largely consistent across SEFs, they are not identical. According to the Commission's current estimates, "approximately 40-60 swaps broking entities, including interdealer brokers would be required to register as SEFs as a result of the proposed application of the SEF registration requirement in § 37.3(a)".[7] The Commission has not identified these parties, however if a market participant has relationships with all of these parties as well as the currently registered SEFs, that market participant would have to agree to the jurisdiction and rules of as many as 80 SEFs. This is a basic scoping measure that the Commission has neglected to address in the Cost-Benefit

[4] See Proposed SEF Regulations, Question 2, at 61955 ("(2) Should the proposed definition of "market participant" distinguish between clients that give up complete trading discretion to an asset manager or another SEF participant and clients that do not so give up discretion or only give up partial discretion? If so, on what basis should the definition establish such a distinction?").

[5] See Proposed SEF Regulations, Question 11, at 61960 ("(11) Is the Commission's view that swap broking entities, including interdealer brokers, meet the SEF definition appropriate? Please explain why or why not. Is it clear what activity falls within the SEF registration requirement and SEF definition, including the meaning of "trading"? If not, please explain.").

[6] See https://www.americanconference.com/energy-trading-compliance-886l14-was/wp-content/uploads/sites/1358/2016/08/Malyshev.Peter.pdf

[7] See Proposed SEF Regulations, Footnote 930, at 62046.

Consideration. Given the challenges that existing SEFs have had in onboarding active market participants, the Commission should re-evaluate the registration requirements and consider whether the proposal is actually feasible or beneficial to the marketplace. Failure by the Commission to engage in such a re-evaluation would create an unnecessary and unreasonable risk of disruption to the SEF ecosystem. In effect, proceeding to finalization of this regulation with the current proposed text on swap broking entities would be akin to attempting a "reform" of the SEF trading system that would be anticompetitive and favor the biggest SEFs at the expense of the smallest.

Even if the issues above were addressed, however, the Commission still needs to take additional steps to improve this portion of the rulemaking before proceeding to finalize it. The Commission should also state publicly the de minimis threshold for interdealer broker registration and consider setting it at a level that would permit smaller and specialist interdealer brokers to continue to operate outside of the SEF framework. The lack of a public de minimis threshold in the SEF Proposal places smaller interdealer brokers at a disadvantage because such interdealer brokers do not have certainty as to whether or not they must register as a SEF. This is a similar situation to the one interdealer brokers active only in permitted products found themselves in when, in 2013, the Commission included Footnote 88 in the final SEF Regulations, giving those interdealer brokers significantly less time to prepare registration filings than interdealer brokers active in tier one cleared products and therefore having registration certainty based on the proposed regulations.

With regards to your question about what factors could prevent a swaps broking entity from complying with the SEF registration requirement or seeking an exemption,[8] LatAm SEF believes there are a litany of factors that could prove to be obstacles to registering or seeking an exemption. Simply put, the SEF registration requirements and process are extensive, demanding and time-consuming. The challenges of complying with the requirements, preparing a registration filing and executing the filing process may, and likely will, exceed the resources of some of the estimated 40-60 new registrants the Commission has identified.

A brief rundown of the myriad registration requirements reveals just how burdensome these requirements can be for some firms. The SEF registration requirements cover all aspects of an organization, including administration, management, staffing, operations, trading systems, trade surveillance, data center and infrastructure, business continuity and disaster recovery, and communications. The process of preparing the application takes several months and, due to the nature of the content, involves staff responsible for the day-to-day business of the organization. Extending, converting, or upgrading existing organizational assets or building out new organizational assets to meet SEF requirements requires yet further investment, resources and time. Any of these requirements or the sum total of all of them could prevent a swaps broking entity, including an interdealer broker, from complying quickly with the SEF registration requirement or from seeking an exemption.

LatAm SEF does believe that the proposed six-month delay period is sufficient to allow swaps broking entities time to seek registration or to seek an exemption.[9] However, although six months is sufficient time to conduct a registration filing and adapt operations to achieve a baseline compliance with regulations, such compliance will likely rely on manual operations that will be automated and re-aligned with regulatory standards over time. Depending on the markets that the registrant is active in, the complexity of the registrant's enterprise and its maturity, the process of automating systems and operations to achieve operational efficiency will likely take several years.

LatAm SEF is concerned about the idea of routing swap transactions to exempt SEFs during this six-month delay period.[10] Allowing swaps broking entities, including interdealer brokers, to route transactions to exempt SEFs raises questions about how such transactions will be treated. For example, would an exempt SEF be required to

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[8] See Proposed SEF Regulations, Question 13, at 61960 ("(13) What factors, if any, would prevent a swaps broking entity, including an interdealer broker, from complying with the SEF registration requirement or from seeking an exemption from registration pursuant to CEA section 5h(g)?").

[9] See Proposed SEF Regulations, Question 14, at 61960 ("(14) Is the proposed six-month delay period sufficient to allow swaps broking entities, including interdealer brokers, time to seek registration or alter their operations in compliance with the SEF registration requirements? Why or why not?").

[10] See Proposed SEF Regulations, Question 15, at 61960 ("(15) Should the Commission allow swaps broking entities, including interdealer brokers, to route swap transactions to exempt SEFs during this six-month delay period? Why or why not?").

have the clearing and trade reporting capabilities that a customer such as a swap dealer is subject to? If not, would use of an exempt SEF provide a de facto end run around SEF trading regulations and how would this impact the Commission's goals or promoting transparency and trading on-SEF? LatAm SEF strongly believes that the Commission must comprehensively answer these and related questions before deciding to allow the routing of swap transactions on exempt SEFs during the six-month delay period and further believes that the Commission should seek public comment on these questions.

IV. Foreign Swap Broking Entities and Other Foreign Multilateral Swaps Trading Facilities

LatAm SEF has serious concerns about the proposed regulations regarding foreign swap broking entities and other foreign multilateral swaps trading facilities. As a SEF with significant international and foreign swaps activity and expertise, LatAm SEF is uniquely well-positioned to comment on this subject. As discussed below, LatAm SEF believes that this portion of the proposed rulemaking is seriously flawed and requires substantial revision before finalization. If the Commission fails to extend the delay for Eligible Foreign Swaps Broking Entities to comply with regulations, make key changes to relevant regulations, or improve its engagement with foreign regulators, the Commission will cause undue and unnecessary harm to many foreign swaps broking entities and foreign multilateral swaps trading facilities.

A. LatAm SEF Supports Extending the Two-Year Compliance Delay

Regarding the Commission's question about whether the delay of two years for Eligible Foreign Swaps Broking Entities to comply with the final rule is an adequate delay,[11] LatAm SEF believes the delay is likely not adequate. To put a finer point on it, a two-year delay will not be adequate if the Commission wants to achieve its stated goals regarding the regulation of these entities. As the Commission knows, this is the second public iteration of these regulations. It has been more than five years since the previous set of proposed SEF regulations and it has taken the Commission three and a half years to publish these proposals since Commissioner Giancarlo's January 29, 2015 white paper. The pace at which the Commission has progressed on these issues suggests that the prospect of clarifying the cross-border jurisdictional reach of the SEF registration requirement for foreign multilateral swaps trading facilities, including foreign swaps broking entities, in two years is unlikely, particularly as it involves coordination with foreign regulatory bodies. Please consider the following points during the Commissions post-comment period review of this matter:

First, the Commission states that it "may exempt facilities from SEF registration if the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities in the home country of the facility."[12] However, the Commission provides no list of such countries or governmental authorities, and such a list is not likely to be drawn up and approved in even a several year time frame.

Second, despite the fact that the swaps regulatory regime of the European Union ("EU") is similar to that of the U.S., the Commission experienced difficulties in establishing exemptions for EU-based MTFs and OTFs. LatAm SEF believes it is unlikely that these difficulties will abate during the next several years given the good-faith efforts that both the U.S. and EU have taken to negotiate since 2014.

Third, some of the foreign jurisdictions listed in footnote 102 have made less progress in establishing swaps regulatory regimes than has been made in the United States or the EU.[13] Given the difficulties experienced between the U.S. and the EU, it is not reasonable to expect the Commission to have a smoother or faster experience with all of these jurisdictions.

Fourth, systems and practices in some of the foreign jurisdictions listed in footnote 102 are not as mature as those of their U.S.-based counterparts. Whereas U.S. dollar swaps were available for clearing and subject to standardized workflows as supported by swap dealers, middleware providers and clearing houses in advance of the 2013 SEF regulations, this was not the case for swaps in currencies for some jurisdictions listed in footnote

[11] See Proposed SEF Regulations, Question 16, at 61963 ("(16) Is the delay of two years for Eligible Foreign Swaps Broking Entities an adequate delay? If not, then how long of a delay should the Commission consider and why?").

[12] Proposed SEF Regulations at 61961.

[13] See Proposed SEF Regulations at 61961.

102. Currencies for some jurisdictions listed in footnote 102 have only been supported for clearing since 2018[14], and are currently only cleared on a voluntary basis when transacted between swap dealers and are not cleared when local market participants are involved. Given the brief period of time these jurisdictions have had to adapt to industry standards, it is unrealistic to expect them to comport with U.S. standards in a two-year span.

Fifth, infrastructure in some of the foreign jurisdictions listed in footnote 102 may not be as mature as that of the U.S. and other countries. Some countries listed in footnote 102 may have limited or unreliable internet bandwidth, requiring market participants to install dedicated private data lines in order to achieve the connectivity standards necessary for electronic execution methods and transaction straight-through-processing workflows present in the U.S. and favored by some CFTC commissioners. The infrastructure and technical conditions in some of the foreign jurisdictions listed in footnote 102 may impact their ability to meet U.S. standards in a two-year span.

Finally, the Commission currently has no regulatory framework for granting an exemption itself or through a regulator in a swaps trading facility's home country. Given the challenges of developing such a framework and achieving agreement with multiple national regulators, it is unlikely that this will be accomplished in a two-year span. When all these obstacles are considered together, LatAm SEF fears that the Commission would be making a mistake to count on these issues being comprehensively addressed within a two-year period, and that does not even take into account the need to give the private sector time to adapt to the expected new international agreements and regulations before asking Eligible Foreign Swaps Broking Entities to register as SEFs. LatAm SEF believes that it would be better to delay the SEF registration requirement for these entities for up to five years to ensure that there is adequate time for cross-border agreements to be struck and adapted to by the private sector.

B. The Commission Should Take Additional Action to Clarify Key Regulations Before the Delay Ends

LatAm SEF believes that simply extending the delay is insufficient action by itself.[15] The Commission should undertake several measures before it applies the proposed regulation and before it requires that Eligible Foreign Swaps Broking Entities file a notice as per § 37.3(a)—d.(2) Proposed Conditions for Delay of SEF Registration Requirement.

First, swaps trading facilities consulting their home regulators will expect their regulators to be familiar with the requirements of the CFTC regulation and to agreement with the regulation. If home regulators lack this awareness, swaps trading facilities and market participant confusion will result in market uncertainty and further fragment swaps markets. Several of the swaps markets in the jurisdictions listed in footnote 102 are only a fraction of the size of the U.S. dollar and other tier one currency swap markets, and some are considered "emerging markets."[16] For example, in January 2019, the notional size of the Chilean interest rate derivatives market was less than one half a percent of the size of the U.S. dollar interest rate derivatives market. The fragmentation that the Commission's cross-border policy may cause in these markets will be significantly more severe than the fragmentation currently seen in the swaps markets. The Commission should coordinate with regulators in other jurisdictions to form a cross-border framework, harmonize regulations and speak on these matters with a unified voice in advance of implementing this regulation.

Second, the Commission needs to do more work to create a standard, formal regime for granting exemptions. The Commission states that "facilities that do not wish to register as a SEF and prefer to comply with the regulatory requirements of their home country may seek an exemption from SEF registration pursuant to CEA section 5h(g) either directly or via the auspices of their home country regulator," yet the Commission has not adopted a formal regulatory framework for granting an exemption.[17] The Commission should develop such a framework and work with regulators in other jurisdictions to establish a method for seeking exemption through their home country regulator in advance of implementing this regulation.

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[14] See, e.g., "CME Group Clears First Chilean Peso and Colombian Peso Interest Rate Swap," CME Group, May 23, 2018 (https://www.cmegroup.com/media-room/press-releases/2018/5/23/cme_group_clearsfirstchileanpesoandcolombianpesointerestrateswap.html)

[15] See Proposed SEF Regulations, Question 17, at 61963 ("(17) Are there additional considerations that the Commission should take into account in establishing this delay?").

[16] See Proposed SEF Regulations at 61916.

[17] *Id*.

Third, the Commission should provide greater information about which countries it believes have comparable regimes in advance of the five-year delay ending. The Commission states that it "may exempt facilities from SEF registration if the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the appropriate governmental authorities in the home country of the facility," however the Commission provides no list of such countries or governmental authorities.[18] The Commission should define this list and make it available to the public in advance of implementing this regulation.

Fourth, the Commission needs to make more information publicly available about what constitutes sufficient connection with the United States to require that foreign swaps entities register as SEFs. Under the Commission's proposal, foreign multilateral swaps trading facilities, including foreign swaps broking entities, would be required to register as a SEF or request an exemption if their activity has a "direct and significant connection" with commerce of the United States. The Commission has not yet defined what constitutes a "direct and significant connection," however it cites countries having a strikingly small presence in swaps markets. For example, the Commission includes Chile and Colombian in the list of foreign jurisdictions in footnote 102. In 2018, Chilean foreign exchange derivatives comprised 5.55 percent of the overall foreign exchange SEF markets and Chilean interest rate derivatives comprised just 0.17 percent of the entire interest rate derivatives SEF markets; and in 2018, Colombian foreign exchange derivatives comprised only 3.50 percent of the overall foreign exchange SEF markets and Colombian interest rate derivatives comprised just 0.06 percent of the entire interest rate derivatives SEF markets.[19] Swaps trading facilities and market participants in these jurisdictions would rightfully want to know if the Commission considers this significant enough to fall under the proposed regulations and to see the related cost-benefit analysis.

Finally, the Commission should provide additional information about what constitutes "de minimis" activity involving the United States for foreign swaps entities. Under the Commission's proposal, threshold standards that "could include a de minimis component, whereby the activity of U.S. persons below some defined quantitative threshold on a particular foreign multilateral swaps trading facility would not trigger a need for SEF registration." The Commission has not defined the proposed de minimis component or made available the criteria on which it might be based. By deferring such details until a final regulation, the Commission places smaller foreign multilateral swaps trading facilities at a disadvantage to larger competitors by either (a) providing them less time to prepare for new regulations that larger competitors can be certain they must comply with and therefore begin preparing for earlier, or (b) forcing them to initiate preparations only to later discover that this was an unnecessary allocation of time and resources if they should later learn that they fall under a de minimis threshold. This scenario appears strikingly similar to that of footnote 88 of the 2013 SEF regulations in which the Commission clarified with only 120 days until effective date that brokers active only in permitted products would be required to register as SEFs, triggering a shift in market share to those SEFs that had had longer preparation times based on their registration certainty due to their mandatorily cleared product sets.

C. The Commission Should Not Impose Additional Conditions on Eligible Foreign Swaps Broking Entities During This Delay Period

LatAm SEF does not believe that these additional regulatory clarifications should be combined with additional regulatory requirements on eligible foreign swaps broking entities during the delay period.[20] As noted above, the task of educating foreign regulators and establishing a broad, common-sense framework across numerous countries is a daunting one and will likely take a great deal of the Commission's time and resources to forge. Placing additional regulations on Eligible Foreign Swaps Broking Entities during this delay period could be counterproductive. If the temporary measures are not part of the final agreement, eligible entities will have complied with them for potentially no reason but at potentially significant costs. Conversely, if the final agreements with other countries include additional restrictions, no harm is done by not requiring eligible entities to comply with them in the interim. After all, any such compliance would be voluntary during the delay period, as compliance is not required for eligible entities until the end of the period. In effect, there is no clear benefit to spending time and resources to impose temporary conditions on eligible entities that are voluntary until the

[18] IV.C.1. § 37.3(a)—d. Foreign Swap Broking Entities and Other Foreign Multilateral Swaps Trading Facilities.

[19] FIA SEF Tracker (https://fia.org)

[20] See Proposed SEF Regulations, Question 18, at 61963 ("(18) Are there additional conditions that the Commission should consider imposing on Eligible Foreign Swaps Broking Entities during this delay period?").

compliance deadline ends. However, there is a significant potential cost to both the Commission and the private sector if such inherently temporary conditions are imposed during the delay period, not least that the Commission will be diverting its own limited personnel away from engaging with foreign regulators to impose these conditions.

Instead of imposing such precarious additional conditions on Eligible Foreign Swaps Broking Entities during the delay period, the Commission should redouble its efforts to engage with foreign regulators. Specifically, the Commission should work in a cooperative manner with regulators in foreign jurisdictions to establish a cross-border framework and cross-border recognition prior to implementing regulations impacting foreign multilateral swaps trading facilities. Parties operating in these jurisdictions will very likely consult their home regulators on these matters. Without a consistent message from all regulators and a harmonized approach to implementation across regulators, further market fragmentation can be expected. When market fragmentation occurs in some of the smaller jurisdictions the Commission currently lists in footnote 102, it may have a more severe impact than has been seen to-date in major global economies. The Commission references the G-20 commitment to "to take action at the national and international level to raise standards together," yet the Commission appears to be acting unilaterally rather than coordinating with foreign jurisdictions in a manner that could be characterized as working "together."

V. Straight-Through Processing

LatAm SEF wishes to comment on two specific aspects of the proposed regulatory changes to straight-through processing requirements: applicability of pre-execution credit checks to trades involving self-clearing SEF Members and expected cooperation between SEFs and clearing firms.

A. Comments Regarding Pre-Execution Credit Checks on Trades of Self-Clearing SEF Members

LatAm SEF believes that the proposed changes to 37.702(b)(2)-(3) do not comprehensively address all clearing arrangements in practice today, particularly those involving SEF market participants that are clearing firms or clear through a clearing firm that is an affiliate organization ("self-clearing"). Currently, the pre-execution credit checks offered by LatAm SEF are used exclusively in client clearing arrangements in which the counterparty uses a third party clearing firm to facilitate clearing. Self-clearing market participants have their own credit screening programs as required under "§ 1.73 Clearing futures commission merchant risk management" and therefore do not typically require the pre-execution credit screening capabilities offered by SEFs because doing so would be duplicative of their own measures. Neither the regulatory language as proposed, nor the NPRM discussion under "XII. Part 37—Subpart H: Core Principle 7 (Financial Integrity of Transactions)," make reference to these self-clearing arrangements. In codifying 2013 Staff STP Guidance under proposed 37.702(b), LatAm SEF therefore requests that the Commission update this language prior to finalization to affirmatively include such arrangements as an acceptable practice.

B. Comments Regarding Cooperation between SEFs and Clearing Firms

LatAm SEF wishes to inform the Commission that some of the assumptions it is making about the state of cooperation between SEFs and clearing firms may not be borne out in reality. Footnote 689 of the proposed rulemaking notes that "the 2013 Staff STP Guidance expressed the view that SEFs and FCMs should work together to effect the risk-based limits to ensure straight-through processing of swaps."[21] LatAm SEF appreciates and agrees with the sentiment expressed in this sentence; coordination and cooperation between SEFs and clearing members is critical to making the swaps markets optimally function. However, the Commission does not codify this view in the proposed rules. As drafted, this regulatory text appears to place all the responsibility for reaching an agreement with a clearing firm on the SEF, creating an imbalance in the negotiating process that inherently disadvantages SEFs. If the SEF has the responsibility of signing an agreement with a Member's preferred clearing firm in advance and the clearing firm does not wish to sign an agreement, this regulatory text will effectively discourage the signing of clearing agreements, thereby going against the very heart of the goals this section espouses and placing clearing firms in a position to decide winners and losers amongst SEFs.

This one-sided language is notably in contrast to the Commission's language regarding expected cooperation between SEFs and DCOs. In footnote 679 of the proposed rulemaking, the Commission notes that "Proposed 37.702(b)(1) and § 39.12(b)(7)(i)(A), as amended, would require SEFs and DCOs to respectively coordinate and

[21] Proposed SEF Regulations at 62023.

work together to effect the ''prompt, efficient, and accurate'' standard."[22] Footnote 679 therefore makes clear that the Commission makes SEFs and DCOs jointly responsible for cooperation and agreement.

LatAm SEF therefore requests that the Commission standardize the language regarding cooperation between SEFs and clearing firms by requiring that all parties have a joint and equal responsibility to cooperate and coordinate.

VI. Miscellaneous Provisions

A. Comments on Proposed Amendments to § 37.3(b)(1)—Application for Registration and Appendix A to Part 37

Based on LatAm SEF's experience with the SEF registration process, the Commission's proposals to revise the application for SEF registration will improve the process for future registrants and for Commission staff involved in the registration process. The lack of clarity and redundancy of the original Form SEF caused confusion about the level of detail expected for various questions and about whether to repeat entire sections in multiple places or to reference a section where the same question was already addressed. The reorganization, consolidation, streamlining, elimination of exhibit duplication and addition of new exhibits dedicated to specific areas will aid registrants in navigating the registration subjects such as organization structure, board governance, personnel, affiliated entities, financial information, compliance, rules and documentation, agreements, swaps reporting capabilities, clearing, regulatory service providers, trading functionality, trade surveillance, and requests for confidentiality.

B. Comments on Proposed Amendments to § 37.3(b)(3)—Amendment of Application for Registration

The elimination of the requirement that a SEF file an updated Form SEF in order to amend a registration order and the elimination and clarification of the use of part 40 to file application amendments subsequent to registration are both helpful and instructive. LatAm SEF supports this common-sense revision to the application process.

C. Comments on Proposed Amendments to § 37.4—Procedures for Implementing Rules

LatAm SEF agrees with the Commission's revisions to the product listing method because these changes result in a fully transparent correlation between a SEF's listed products and those appearing on the Commission web site under "Product Terms and Conditions Rules." The result of this change will be both greater certainty about available products to SEF users and increased transparency to the general public.

D. Comments on Proposed Amendments to § 37.5(c)—Equity Interest Transfer

LatAm SEF agrees that the Commission's proposed changes clarify the scope of the Commission's interest in SEF ownership as well as the Commission's concerns and expectations regarding a change in ownership.

E. Comments on Proposed Amendments to § 37.6(b)(1)—Legally Binding Documentation

LatAm SEF appreciates the Commission's revisiting and careful consideration of swap transaction documentation requirements for cleared and uncleared swaps, particularly with regards to relationship terms contained in underlying documentation between counterparties. With regards to documentation requirements for uncleared swaps, SEFs have relied on no-action relief such as that provided in CFTC letters 17-17, 16-25, 15-25, and 14-108 where agreements previously negotiated by counterparties could not be secured in advance of trade execution for the reasons detailed in those letters. A resolution to the reliance on no-action letters will provide clarity and long-term certainty to SEF operators. However, LatAm SEF disagrees with the Commission's attempt to coin a new phrase, "trade evidence record," to deal with the matter of conflicting/non-conflicting terms in previous agreements between counterparties. This phrase is inconsistent with market practices, including those established by ISDA at a time when all swap transactions were bilateral and memorialized by brokers in a "trade confirmation." It is also inconsistent with phraseology used in other jurisdictions where the phrase "trade confirmation" is used and will continue to be used regardless of Commission regulations. Lastly, it is difficult to change human behavior to adopt a new phrase in place of one that is heavily used on a day-to-day basis where conditions demand speed and clarity and where that has been the case for decades.

[22] Proposed SEF Regulations at 62022.

As an alternative to the proposed phrase, "trade evidence record," the Commission should consider maintaining the phrase "trade confirmation" and, if necessary, stipulating the data elements or content required in trade confirmations for cleared and non-cleared swaps. This approach would be consistent to that used for reporting trades to swap data repositories, where reports for cleared and non-cleared transactions are conducted using the same report types (e.g. real-time, primary economic terms, etc.) but feature some different data elements related to clearing, when applicable.

In answer to other questions on trade documentation, LatAm SEF believes that the Commission should require a SEF to include a minimum set of terms, such as the primary economic terms, in a trade confirmation[23], but that in order to facilitate swaps involving terms agreed to by parties bilaterally, the confirmation or trade evidence record not be required to include all the terms of a swap transaction agreed to on the SEF.[24]

VII. Conclusion

LatAm SEF appreciates the opportunity to comment on the SEF NPRM. Please direct questions on this letter to Joseph Skelly at 646-344-3274 or jskelly@latamsef.com.

Sincerely,

Joseph Skelly
Chief Compliance Officer and Chief Operations Officer
LatAm SEF, LLC

cc: Honorable J. Christopher Giancarlo, Chairman
Honorable Brian D. Quintenz, Commissioner
Honorable Rostin Behnam, Commissioner
Honorable Dan Berkovitz, Commissioner
Honorable Dawn Stump, Commissioner
Amir Zaidi, Director, Division of Market Oversight

[23] See Proposed SEF Regulations, Question 19, at 61973 ("(19) Should the Commission allow a SEF to issue a trade evidence record that does not include all the terms of a swap transaction agreed to on the SEF?").

[24] See Proposed SEF Regulations, Question 20, at 61973 ("(20) Should the Commission require a SEF to include a minimum set of terms in a trade evidence record, e.g., material economic terms? Should the Commission specify those terms in the proposed regulation?").