



March 4, 2019

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

RIN 3038-AE25-Swap Execution Facilities and Trade Execution Requirements, 83  
Federal Register 61946 (November 30, 2018).

Dear CFTC Commissioners,

I am writing to submit comments on the Proposed Rule for Swap Execution Facilities and Trade Execution Requirement, RIN 3038-AE25. I am the CEO and Founder of Mercaris, a 6-year-old technology start-up company that provides market data, including cash prices, for identity-preserved (IP) agricultural commodities. Identity-preserved commodities are produced and handled in a manner that isolates and preserves the unique characteristics that have value otherwise lost through commingling during normal production, storage, handling and shipping procedures. Examples include non-GMO corn, organic wheat, high oleic soybeans, etc.

Mercaris is the leading, and often only, source of information on supply, demand, and price information on a growing segment of the food supply chain. Organic commodities in the US have seen a notional value increase to over \$5bn in the past 10 years. As a newly established asset class, organic commodities behave differently than their conventional agricultural counterparts with respect to price volatility. This is due to underlying differences in both supply and demand, as well as the inability to substitute conventionally produced commodities for IP commodities.

In the past year, Mercaris has seen a growing interest in creating risk management tools that can be adapted to this small but growing market. This includes pilot programs for OTC swaps on organic and non-GMO grains and oilseeds. As a source of unbiased, third-party price data, Mercaris does not enter into, or broker swaps itself. However, it does provide information to Eligible Contract Participants and/or registered Introducing Brokers who undertake these activities. Therefore, we offer the following comments which we believe would apply not just IP grain commodities, but to other new and emerging commodity markets as well.

Of particular concern, we believe that the effect of the proposed rule overall would be to stifle innovation and limit the ability of industry experts to pilot and launch risk management tools for new or emerging commodities. For example:

Page 50 - ...The Commission proposes that a trading system or platform operated by such an entity must register as a SEF pursuant to CEA section 5h(a)(1) and § 37.3(a). Commission believes that such trading systems or platforms conform to the statutory SEF definition because they allow multiple participants to trade swaps by accepting bids and offers made by multiple participants in that facility or system. The Commission believes that this "trading" activity should occur within a SEF, regardless of whether the product is subject to the trade execution requirement.

By requiring registration as a SEF, or forcing activity for new emerging commodities onto a SEF, the effect is likely to be a significant dampening of innovation. In order to test the commercial viability of a

new (and in our case, non-cleared) products, high costs would be incurred as well as lengthy delays in petitioning SEFs to take a chance on new markets with uncertain returns.

Furthermore, many potential OTC commodities derivatives are based on emerging asset classes that are a) Relatively small markets, from a notional value standpoint b) not a cleared product c) purely voice brokered, and with the participation of multiple entities trading based on multiple bids/offers unlikely in the early phases. In these cases, new swaps contracts will be unable to be created at all, unless existing SEFs consent to devote resources to allowing these uncertain new products onto their platforms, or, significant cost is incurred in becoming a SEF. It is more likely that new swaps products in this category would be more suited to the services and oversight of IBs as they currently exist, and who would find it in their interest to explore the commercial opportunity in matching ECPs for a new product like a swap contract on organic grain.

Therefore, we suggest that the Commission consider an exemption to the rule for swaps to trade on a SEF if they meet the following criteria, in order to support innovation:

1. A time-based exception of up to 3 years for swaps that are based on agricultural assets that are considered new;
2. An exemption for IBs to broker swaps based on a product whose notional value does not exceed \$5bn;
3. An exemption for products that meet the above two criteria and are also non-cleared.

If any the above criteria is met, than any swaps created would continue to be registered with an SDR, but the IB would have no requirement to either become a SEF or have the trades occur within an existing SEF, until the above thresholds are met.

We believe such an exemption would still enable the Commission to meet its stated goals of requiring multiple-to-multiple trading to be subject to the CEA and the Commission's regulations on SEFs, without stifling activity for new markets where these conditions are unlikely to exist, initially. Without such an exemption, the rule enacted in its present form would have an adverse impact on small businesses like Mercaris, due to its impact on small introducing brokers, and would be in violation of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.*

Thank you for your consideration of these comments and we hope that you take into account the entrepreneurial efforts underway that would be stifled if these rules were enacted in this form.

Sincerely,  
Kellee James  
Founder & CEO, Mercaris  
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