MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

March 15, 2019

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Post-Trade Name Give-Up on Swap Execution Facilities (RIN Number 3038-AE79)**

Dear Mr. Kirkpatrick:

Managed Funds Association[1] ("**MFA**") welcomes the opportunity to respond to the Commodity Futures Trading Commission's (the "**Commission**") request for comment on "Post-Trade Name Give-Up on Swap Execution Facilities" ("**Name Give-Up Comment Request**").[2] We appreciate that the Commission is further investigating this important issue for swaps market structure in connection with its proposed rule on swap execution facilities ("**SEFs**").[3]

We request that the Commission prohibit post-trade name disclosure (or "**name give-up**") by SEFs for swaps that are executed anonymously and intended to be cleared in order to provide an open, competitive, and level playing field for all market participants. We first requested this action in MFA's 2015 position paper and rule petition,[4] and explain our rationale further below in

[1] MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

[2] 83 Fed. Reg. 61571 (Nov. 30, 2018), available at: https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-24643.pdf.

[3] 83 Fed. Reg. 61946 (Nov. 30, 2018) ("**SEF Proposed Rule**").

[4] *See* MFA Position Paper: *Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market*, dated March 31, 2015 ("**MFA Position Paper**") , cited in fn. 9 at p. 61572 of the Name Give-Up Comment Request, available at: https://www.managedfunds.org/wp-content/uploads/2015/04/MFA-Position-Paper-on-Post-Trade-Name-Disclosure-Final.pdf. *See also* MFA Petition for Rulemaking to Amend Certain CFTC Regulations in Parts 1 (General Regulations under the Commodity Exchange Act), 39 (Derivatives Clearing Organizations, Subpart B – Compliance with Core Principles) and 43 (Real-Time Public Reporting), submitted to Mr. Christopher Kirkpatrick,

response to the questions posed in the Name Give-Up Comment Request. In our view, a prohibition of name give-up would strengthen the Commission's swaps trading regime by furthering the Commodity Exchange Act's policy goals of promoting SEF trading of cleared swaps and enhancing price transparency and competition on SEFs. It is therefore critical that the Commission issue a formal rule proposal addressing the practice of name give-up prior to finalizing its other SEF amendments.[5]

MFA has over 3,000 members from firms engaging in alternative investment strategies all over the world. MFA's members are active participants as investors in the U.S. swaps market and support regulatory efforts to decrease systemic risk, increase transparency, and promote an open, competitive, and level playing field. More than five years after the launch of SEFs, MFA is concerned that investors continue to encounter artificial barriers that prevent access to SEFs that historically served the "dealer-to-dealer" segment of the market. In our view, the continued practice of name give-up for anonymously executed cleared swaps is one of the most significant artificial barriers that remains. We note that this letter only addresses anonymous trading on SEFs, and does not address disclosed trading protocols, such as disclosed RFQ, where market participants voluntarily disclose their identities prior to execution.

## 1. Name Give-Up Has No Legitimate Justification on SEFs for Anonymously Executed Cleared Swaps

*Question 1: What utility or benefits (e.g., commercial, operational, legal, or other) does post-trade name give-up provide in SEF markets where trades are anonymously executed and cleared? Is post-trade name give-up a necessary or appropriate means to achieve such benefits?*

MFA strongly believes there is no legitimate commercial, operational, credit, or legal justification for name give-up on SEFs for anonymously executed cleared swaps.

Name give-up is a legacy practice designed for uncleared swaps that are executed anonymously, as trading counterparties need to know who they have been matched with in order to manage the ongoing credit, operational, and legal exposures associated with a bilateral uncleared swap. In contrast, a counterparty to an anonymously executed cleared swap on a SEF has no reason to know with whom it has been matched. This is because the two trading counterparties do not have any credit, operational, or legal exposure to each other. The Commission's straight-through-processing ("**STP**") requirements for SEFs ensure that the anonymously executed swap

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Secretary of the Commission, on October 22, 2015 ("**MFA SEF Petition**"), available at: https://www.managedfunds.org/wp-content/uploads/2015/10/CFTC-Petition-for-SEF-Rules-Amendments-MFA-Final-Letter-with-Appendix-A-Oct-22-2015.pdf.

[5] MFA encourages the CFTC to review this letter in conjunction with MFA's separate and related comment letter on the SEF Proposed Rule.

is quickly submitted to, and accepted or rejected by, a derivatives clearing organization ("**DCO**"). Once accepted for clearing, each trading counterparty faces the DCO and has no credit, operational, or legal exposure to the other trading counterparty. In the rare circumstance that the swap is rejected from clearing, the Commission's STP requirements deem the transaction to be void *ab initio*, meaning that the trading counterparties still have no exposure to each other.

The fact that there is no legitimate reason to disclose counterparty names post-execution for anonymously executed cleared swaps is validated by comparing other asset classes. For example, trading venues provide anonymous execution in equities, futures, foreign exchange, and Treasuries, among others, without name give-up. We have not identified any unique considerations specific to swaps that justify the continued practice of name give-up. We also note that the main middleware provider has developed functionality to allow manual affirmation to occur for swaps transactions without name give-up, but SEFs have elected not to use this functionality to date.

In the Name Give-Up Comment Request, the Commission referenced two arguments that are occasionally used to justify name give-up. First, some suggest liquidity providers use name give-up to allocate capital among their customer base.[6] However, this argument ignores the fact that the disclosure provided by name give-up only occurs *post-execution* and, therefore, does not provide the liquidity provider with an ability to determine how (and to whom) to allocate capital for that particular transaction. If the liquidity provider desired such control over the allocation of capital, then it would presumably elect to use a disclosed trading protocol, instead of anonymous execution. By electing to anonymously execute a swap, a market participant is indicating that it is comfortable being matched with any other participant on the trading venue and that it does not control who will be its ultimate trading counterparty.

Second, the Name Give-Up Comment Request referenced a concern that buy-side firms might "game" the market by posting aggressive orders in an anonymous order book and hoping that dealers respond with more favorable pricing on other trading venues as a result.[7] This scenario lacks credibility for many reasons, most notably that posting aggressive orders in an order book can be expected to result in other market participants quickly executing against those orders, leaving the buy-side firm with transactions at unfavorable prices that it never wanted to enter into in the first place. In addition, the reputational, legal, and regulatory risks associated with such behavior further demonstrate that this concern is theoretical at best. For these reasons, it is unsurprising that we are not aware of any evidence of any such "gaming" by investors and other buy-side firms in other asset classes on trading venues that offer anonymous execution without name give-up.

[6] Name Give-Up Comment Request at 61572.

[7] *Id.*

**2. Name Give-Up is an Anti-Competitive Practice.**

*Question 2: Does post-trade name give-up result in any restraint of trade, or impose any anticompetitive burden on swaps trading or clearing?*

Yes, name give-up is a significant impediment to investors being able to trade on anonymous order books that have historically served the "dealer-to-dealer" segment of the market, thereby operating as a restraint of trade and an anticompetitive burden on swaps trading on SEFs.

Name give-up is a significant impediment for several reasons. First, it functions as a source of uncontrolled information leakage for investors. As discussed above, a market participant has no control over who it will be matched with when executing on an anonymous order book. Therefore, before using an anonymous order book with name give-up, an investor must be comfortable sharing its trading activity with every other participant on the trading venue, including other buy-side firms. This is an unattractive proposition that undermines the anonymous nature of the trading protocol and deters participation.

Second, name give-up allows dealers to observe whether investors and other buy-side firms have started to transact in anonymous order books. This information can be used as a policing mechanism by dealers to deter buy-side participation.[8]

Limiting investor access to only certain SEFs is a restraint of trade and an anticompetitive burden on swaps trading. Investors are unable to access the unique liquidity pools and trading protocols offered by SEFs that historically served the "dealer-to-dealer" segment of the market, reducing pre-trade transparency regarding available bids and offers and limiting their choice of trading protocols. Information asymmetries are also created, as only dealers have full access to all of the SEFs in the market. For these reasons, it is unsurprising that dealers reportedly favor retaining name give-up for anonymously executed cleared swaps.[9]

**3. Eliminating Name Give-Up Requires Commission Action.**

*Question 3: Should the Commission intervene to prohibit or otherwise set limitations with respect to post-trade name give-up? If so, what regulatory limitations should be set and how should they be set in a manner that is consistent with the CEA? What would be the potential costs and/or benefits of*

[8] *See, e.g.*, Karen Brettell, "Banks' pressure stalls opening of US derivatives trading platform," *Reuters* (Aug. 27, 2014), available at: https://www.reuters.com/article/usa-derivatives-banks-idUSL1N0QW1T220140827; and "Meet the new OTC market-makers," *Risk* (Feb. 27, 2014), available at: https://www.risk.net/derivatives/2331122/meet-new-otc-market-makers.

[9] *See, e.g.*, Peter Madigan, "CFTC to Test Role of Anonymity in SEF Order Book Flop," *Risk* (Nov. 21, 2014), available at https://www.risk.net/derivatives/2382497/cftc-test-role-anonymity-sef-order-book-flop.

*doing so? What might be the potential impacts on liquidity, pricing, and trading behavior? Would a prohibition cause dealers to remove liquidity from the market or charge higher prices? Would new liquidity makers fully and consistently act in the market to make up any shortfall in liquidity?*

MFA believes that the Commission should intervene to prohibit name give-up for anonymously executed cleared swaps in order to ensure an open, competitive, and level playing field for market participants. Without regulatory intervention, nothing has changed on this issue since SEFs were first introduced in 2013 and it is difficult to see one SEF unilaterally removing name give-up without the support of its current customers (*i.e.*, the dealers). SEFs have acknowledged that regulatory action is necessary, with an executive at one "dealer-to-dealer" SEF reportedly stating: "The revealing of the name is a legacy behaviour and it's not necessary that we reveal it. Should we be told not to by the regulators, we will flick a switch and the world will go on. It will not be a profound change and it's not going to require re-engineering the system."[10]

The Commission has the authority and legal basis to prohibit name give-up for anonymously executed cleared swaps. First, given the lack of justification for the practice and the negative effect that it has on investor participation on certain SEFs, name give-up is inconsistent with the statutory mandate that SEFs provide market participants with impartial access.[11] Second, name give-up is inconsistent with Commission rules designed to protect the private trading information of market participants that execute anonymously. In particular, Commission rule 49.17(f)(2) prohibits SDRs from disclosing the identity of one trading counterparty to the other for an anonymously executed cleared swap. In explaining this prohibition, the Commission stated:

> When a swap is executed anonymously on a [SEF] or [DCM] and then cleared in accordance with the Commission's [STP] requirements—such that the counterparties to the swap would not otherwise be known to one another—***the identity of each counterparty to the swap and its clearing member for the swap, as well as the [LEI] of such counterparty and its clearing member, is information that is private vis-à-vis the other counterparty to the swap***, and this privacy must be maintained by a registered SDR [swap data repository] pursuant to CEA section 21(c)(6).[12]

However, the continued practice of name give-up for anonymously executed cleared swaps undermines this Commission rule, as it allows a trading counterparty to obtain the same private information from another source.

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[10] *Id.*

[11] CEA Section 5h(f)(2)(B)(i).

[12] CFTC Interim Final Rule on "Swap Data Repositories - Access to SDR Data by Market Participants", 79 Fed. Reg. 16672 (March 26, 2014) at 16673-74 (emphasis added), available at: https://www.govinfo.gov/content/pkg/FR-2014-03-26/pdf/2014-06574.pdf.

It is important to note that by prohibiting name give-up for anonymously executed cleared swaps, the Commission is not mandating anonymous trading or "all-to-all" trading. Market participants can continue to use all available SEF trading protocols, including fully disclosed trading protocols, in order to best meet their trading needs. However, if a SEF elects to offer a pre-trade anonymous trading protocol for cleared swaps, then all market participants onboarded to that SEF should be permitted to use the available trading protocol in order to trade anonymously without being forced to bear the risks associated with unnecessary post-execution disclosure of their identity.

In our view, the benefits of a regulatory prohibition outweigh any potential costs. Eliminating name give-up will facilitate investors selectively accessing additional liquidity pools and trading protocols. We expect that a regulatory prohibition on name give-up would improve price discovery and pre-trade transparency, while reducing information asymmetries. In addition, new liquidity providers may be able to enter the market more easily, diversifying sources of liquidity and increasing competition. While the current SEF regime has improved conditions for investors, it has failed to provide buy-side market participants with access to the unique trading protocols and liquidity available on inter-dealer broker ("**IDB**") SEFs.

Some have expressed concerns that eliminating name give-up may have adverse consequences for liquidity. This concern assumes dealers would fundamentally alter current trading practices, such as by transitioning trading activity away from the anonymous trading protocols that IDBs offer. In our view, it is unlikely that dealers would choose to use disclosed trading protocols for dealer-to-dealer hedging activity given competitive considerations, and, therefore, we would not expect the existing liquidity on IDB SEFs to be negatively impacted. Competitive market forces would also ensure that, in the unlikely event an individual dealer reduced its offering, others would quickly step into its place. As noted above, eliminating name give-up increases market competition by facilitating new liquidity providers entering the market. Experience in other asset classes does not provide any evidence of liquidity deterioration when trading venues offer anonymous trading without name give-up.

For the reasons above, we recommend that the Commission clearly prohibit name give-up for anonymously executed cleared swaps. We note that this prohibition is specific to cleared swaps. Package transactions containing both a cleared swap and an uncleared instrument would still be permitted to use name give-up for the uncleared leg, given the need to know counterparty identities to manage the ongoing credit, operational, and legal exposures. However, name give-up should not be required for packages containing a cleared swap and another cleared instrument, such as a U.S. Treasury security cleared at the Fixed Income Clearing Corporation, for the same reasons outlined above.

**4. Flexible Methods of Execution are Not the Solution to Address Name Give-up**

*Question 4: Should post-trade name give-up be subject to customer choice or SEF choice given the flexible execution methods in the Commission's recent SEF notice of proposed rulemaking?*

The Commission's proposal to allow SEFs greater flexibility with respect to trading protocols will unfortunately fail to address the legacy practice of name give-up. This is because SEFs are permitted to offer anonymous order books without name give-up under the current SEF rules but have chosen not to. Given the lack of support from dealers for eliminating the practice, we would expect the current *status quo* to continue absent regulatory action from the Commission.

The current *status quo* actually deprives investors of meaningful choice of execution venues and trading protocols, contrary to the Commission's recent proposal. As discussed above, name give-up operates as an impediment that restricts investor access to certain SEFs. In addition, the practice prevents investors from engaging in truly anonymous trading for cleared swaps. Although the IDB SEFs purport to offer anonymous execution, there is no way for an investor to trade in a fully anonymous manner on an IDB SEF today due to the practice of name give-up. With no legitimate justification for continuing the practice for anonymously executed cleared swaps, we urge the Commission to intervene in order to promote an open, competitive, and level playing field for market participants. It is therefore critical that the Commission issue a formal rule proposal addressing the practice of name give-up prior to finalizing its other SEF rule amendments.

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MFA thanks the Commission for considering our views on the Name Give-Up Comment Request. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Laura Harper Powell

Laura Harper Powell
Associate General Counsel
Managed Funds Association

cc: The Hon. J. Christopher Giancarlo, Chairman
The Hon. Brian D. Quintenz, Commissioner
The Hon. Rostin Behnam, Commissioner
The Hon. Dawn DeBerry Stump, Commissioner
The Hon. Dan M. Berkovitz, Commissioner

Amir Zaidi, Director, Division of Market Oversight