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March 15, 2019

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

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

Dear Mr. Kirkpatrick:

Bloomberg L.P. and Bloomberg SEF LLC[1] appreciate the opportunity to provide the Commodity Futures Trading Commission (the "Commission") with our comments regarding the Commission's proposed rules in the above-referenced release (the "Release"). Bloomberg strongly supports the Commission's efforts to improve overall swap execution facility ("SEF") regulation. The electronic trading of swaps on SEFs has dramatically improved liquidity and price discovery in the market, and we applaud the Commission's efforts to strengthen the existing swaps regulatory framework by reducing unnecessary complexity, costs, and other burdens that impede SEF development, innovation, and growth.

We support the Commission's proposal to allow greater flexibility for market participants to execute swaps on SEFs without being subject to prescriptive methods of execution. The Commission's proposal to provide greater choice to market participants in the manner in which swaps are executed on SEFs will foster innovation and efficiency. Bloomberg also appreciates the Commission's proposal to adopt, on a permanent basis, relief granted to market participants in a series of no-action letters issued since the introduction of the SEF regime. Likewise,

[1] Bloomberg SEF LLC and Bloomberg L.P. are, together, referred to as "Bloomberg" in this letter. Bloomberg SEF LLC is a wholly owned subsidiary of Bloomberg L.P. operating a swap execution facility ("BSEF") that is registered with, and regulated, by the CFTC. BSEF provides its participants with access to liquidity across credit, interest rate and foreign exchange swaps. Bloomberg L.P. is a global business and financial information company headquartered in New York. The principal product offered by Bloomberg L.P. is the Bloomberg Terminal service (formerly known as the Bloomberg Professional service), which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies and other business and financial professionals worldwide.

Bloomberg agrees that certain changes are warranted to provide greater flexibility to SEFs in meeting their regulatory oversight duties that form part of their compliance programs.

While we are largely supportive of the Commission's proposal, there are certain aspects that we believe warrant further clarification and, in some cases, reconsideration. The proposed prohibition on pre-execution communications extends too far for a market that relies on the ability of dealers and customers to communicate freely about market color and the different types of transaction structures that may be most suitable for a particular business need. Similarly, the prohibition on pre-arranged trading for block transactions may be disruptive to market participants that rely on this feature of the existing regulatory framework to obtain pricing for large trades. We are also concerned that certain aspects of the Commission's proposal to expand the trade execution requirement do not take into account the need for the market to adjust (including to make technological change) once new swaps are added to the trading mandate. Finally, the proposed registration of "aggregators of single-dealer pages" should be clarified and narrowed to provide certainty to the markets and avoid stifling innovation.

We have organized our comments based on these key aspects of the Release and have also provided additional feedback on certain elements of the proposal based on our experience to date operating under the SEF regime. In the Appendix to this letter, we have answered certain specific questions posed by the Commission in the Release.

I. Proposed § 37.201(b) — Pre-Execution Communications and § 37.203(a)—Pre-Arranged Trading Prohibition

Proposed § 37.201(b) would require a SEF to establish rules that "specify a prohibition on engaging in any communications away from the swap execution facility regarding any swap subject to the trade execution requirement of section 2(h)(8) of the Act."[2]

In practice, SEFs do not have the ability to effectively perform surveillance on bilateral discussions that might occur away from their platforms to ensure that pre-execution communications take place within the perimeter of the regulated SEF. In fact, the plain language of the proposed prohibition would prevent SEF participants from discussing *any* swap subject to the trade execution requirement whether or not such discussions are related to actual trading in such swaps. We believe that the prohibition will be impracticable to implement.

While it may be appropriate that the "negotiating or arranging"[3] of a swap be conducted via SEF trading protocols[4] (subject to an exemption discussed later), not all pre-execution

[2] Release at 62097.

communications between a customer and a dealer constitute "negotiating or arranging". A customer should be able to discuss the merits of a specific swap subject to the trade execution requirement with its dealer, so long as the discussion does not involve a firm commitment to enter into a trade, *i.e.,* does not rise to the level of "negotiating or arranging"[5] a trade. We support the Commission's view that any communications conducted via trading protocols that satisfy the definition of a SEF in section 1a(50) of the Commodity Exchange Act ("CEA") should constitute negotiating or arranging a trade and should occur on a SEF, but prohibiting pre-trade communications altogether is not necessary to achieve the policy goal of requiring registration of certain currently unregistered entities. Entities that operate protocols satisfying the definition of a SEF in section 1a(50) of the CEA are already subject to an independent registration requirement under proposed § 37.3(a).[6]

In addition, the ability to pre-arrange (*i.e.,* "negotiate or arrange") block trades should continue to be available to market participants, so long as that pre-arranging is not performed using trading protocols that require SEF registration. Market participants typically find it more efficient to discuss the terms of large trades directly using the telephone or free-text messaging tools. A telephone conversation or free-text messaging between two market participants in and

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[3] The concept of "negotiating or arranging" seems to be similar to the currently used notion of "pre-arranging" a trade outside of a SEF (*i.e.,* agreeing on all terms of a trade and making a firm commitment to execute the trade and then entering the trade into SEF systems). *See* Release at 61959 footnote 91.

[4] *See Id.*

[5] "The Commission defined "pre-execution communications" as communications between market participants to discern interest in the execution of a transaction prior to the exposure of the market participants' orders (*e.g.*, price, size, and other terms) to the market; such communications include discussion of the size, side of market, or price of an order, or a potentially forthcoming order. SEF Core Principles Final Rule at 33503. In light of the Commission's general prohibition on pre-arranged trading under § 37.203(a), the Commission defined this term to clarify the permissible types of communications in which market participants can pre-arrange or pre-negotiate a transaction consistent with § 37.9(b)(1). The Commission currently requires that SEFs that choose to allow their market participants to engage in pre-execution communications prior to executing such transactions must do so pursuant to their rules. 17 CFR 37.203(a). Such communications may constitute an element of pre-arranged trading, which is an abusive trading practice prohibited under existing § 37.203(a)." Release at 61985.

To mitigate the risk of pre-execution communications having an element of pre-arranged trading, BSEF adopted Rule 507 to define "Pre-Execution Communication" as "a communication between two Persons for the purpose of discerning interest in the execution of a Swap prior to execution of the Swap on the SEF operated by BSEF, including any communication that involves discussion of the size, side of market, or price of an Order or a potentially forthcoming Order; provided that any communication between two Persons that involves an agreement between the parties to a Swap that legally binds the parties to such Swap shall not be considered a Pre-Execution Communication." *See* Rule 507 of the BSEF Rulebook (version effective January 14, 2019).

[6] We agree with the Commission that an entity, acting through its employees or via electronic systems, accepting a trading interest from one customer and finding a matching trading interest among other customers (*i.e.,* facilitating the negotiation or arrangement of swap transactions through the interaction of bids and offers) engages in an activity described in section 1a(50) of the CEA. Such activity can be conducted by using a telephone or free-text message system, by open outcry or by any other means of communication. *See* Release at 61959.

of itself cannot satisfy the definition of a SEF, as set forth in section 1a(50) of the CEA.[7] On the other hand, it is challenging for an electronic SEF to establish trading protocols for block trades. Fixed properties of an electronic trading ticket cannot accommodate the bespoke nature of individual block trade negotiations, and telephone or free-text-based trading protocols are impractical because personnel of an electronic SEF are not involved in communications among its participants. Requiring SEF Trading Specialists to be involved in the operation of an electronic SEF for block trades would also force the adoption of an unfamiliar and costly new business model (without providing additional transparency benefits to the market). In some cases, an electronic SEF could even be forced to stop offering trading services in certain types of swap transactions altogether.

For these reasons, we strongly recommend that pre-arranging or "negotiating or arranging" block trades should continue to be permitted to occur outside of a regulated SEF environment.

II. <u>Proposed § 36.1(a) — Trade Execution Requirement</u>

The Commission proposes in § 36.1(a) to codify the statutory language of the trade execution requirement, which requires counterparties to execute a swap that is subject to the clearing requirement on a DCM, a SEF or an exempt SEF unless no such entity "makes the swap available to trade" or the swap is subject to a clearing exception in CEA section 2(h)(7).[8]

While we appreciate the extended compliance schedule proposed by the Commission for the new trade execution requirement, it is theoretically possible that a swap might become subject to the trade execution requirement two days after becoming subject to the clearing requirement.[9] This would not provide enough time for the technological integration of a new swap into trading systems of an electronic SEF, thereby pushing the execution of the swap to a

[7] Attempting to classify phone calls (serial or conference) or messages (to one or multiple recipients) occurring without any rules established and enforced by a third party (*e.g.*, a SEF Trading Specialist) as an activity that satisfies the definition of a SEF in section 1a(50) of the CEA might have the effect of classifying any telephone conversation, e-mail or instant message about a swap as SEF activity, thus introducing regulatory uncertainty and stifling the flow of information in the market.

[8] "The Commission believes that the statutory phrase ''makes the swap available to trade'' specifies the listing of a swap by a DCM, a SEF, or an exempt SEF on its facility for trading. Accordingly, § 36.1(a) would specify that counterparties must execute a transaction subject to the clearing requirement on a DCM, a SEF, or an Exempt SEF that lists the swap for trading." Release at 62036.

[9] For example, if a swap becomes subject to the clearing requirement on day 190 after the effective date of the proposed rule, and listed for trading on the same day by a SEF via the Commission's certification process provided in § 40.2, a Category 2 entity will have to comply with the trade execution requirement on day 193.

SEF that operates its trading protocols by SEF Trading Specialists using voice or free-text communications systems.

To allow sufficient time for proper implementation of electronic trading systems and protocols for a new swap, we propose that the trade execution requirement compliance date for swaps that are currently not subject to this requirement be delayed by a period of time to be determined by market participants through a deliberative process subject to oversight by the Commission.

With respect to the trade execution requirement compliance schedule in proposed §36.3,[10] we respectively submit that it would be more efficient to impose the same deadline for all market participants to avoid the spending of resources by both SEFs and market participants on implementing a temporary solution to determine which entity belongs to which category.

III. Proposed § 37.203(e) — Error Trade Policy

We support the Commission's proposal to allow a SEF to implement its own protocols and processes to correct error trades. Our view is that a SEF's error policy should allow a SEF to assign to its participants the responsibility of identifying and correcting error trades, so long as the correction is performed as specified by the SEF. A SEF's trade correction processes or systems should not be required to meet the definition of a SEF in section 1a(50) of the CEA, as no true negotiating or arranging is involved. Rather, the exploratory discussions that occur between participants about whether trades *already* executed involve an error are, by definition, not communications that would meet the statutory definition of SEF activity. Accordingly, the prohibition on pre-arranged trading should not apply to corrections of error trades, since any offsetting or correcting trades can be effectuated only via pre-arranging. This would allow a SEF to fulfill its obligations to report to a swap data repository ("SDR") in a prompt and efficient manner.

We believe that trades that are rejected by a derivatives clearing organization ("DCO") due to credit reasons should be *void ab initio* and proposed § 37.702(b)(1) should explicitly state this requirement.[11] We also believe that the *void ab initio* rule should not apply to trades rejected from a DCO for clerical and operational errors. Trades rejected for clerical and operational errors can be successfully resubmitted to a DCO, and applying the standard of *void ab initio* to trades rejected for clerical and operational errors would introduce unnecessary

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[10] Release at 62088.

[11] Consistent with proposed § 37.702(b)(1), however, the Commission notes that SEFs would now be required to deem any swap submitted for clearing as *void ab initio* if a DCO rejects the trade from clearing due to credit reasons. Release at 62001.

disruption to the market. A SEF should have full discretion to address trades rejected for clerical and operational errors so the SEF can expeditiously resolve the error and ensure the trade details successfully pass validation at the DCO. These errors, by definition, do not impact the economic terms of the swap and should be left to a SEF's sole discretion to resolve.

The Commission also proposes to define "error trade" as "any swap transaction executed on a swap execution facility that contains an error in any term of the swap transaction, including price, size, or direction."[12] We believe the definition of an "error trade" should cover all terms confirmed by a SEF or submitted to a DCO or SDR, but should not address specific types of errors. Instead, a SEF should have the authority to designate additional elements of a trade as "errors." For example, a designation of a wrong clearing broker could be treated as an error.

Proposed §37.203(e)(3) would establish a minimum set of notification requirements for a SEF related to error trades. A SEF would be required to notify its market participants, as soon as practicable, of (i) any swap transaction that is under review pursuant to the SEF's error trade rules and procedures; (ii) a determination that the trade under review is or is not an error trade; and (iii) the resolution of any error trade, including any trade term adjustment or cancellation.[13]

We believe that it is essential for an SDR (rather than a SEF) to disseminate the information required by proposed § 37.203(e)(3) as reported to the SDR by a SEF. All trades, including those later disputed as error trades, are initially disseminated by an SDR and all participants are notified of an error trade by such dissemination. Requiring an SDR to disseminate the required information, rather than a SEF, would permit all participants in the swaps market to be notified of a trade's subsequent trade correction via the same source. Failure to use the robust and widely accessible functionality of an SDR for this purpose would undermine the value of public dissemination of error trade information. Were the Commission to adopt a requirement for individual SEFs to disseminate this information rather than SDRs, SEFs would need to use their own individual websites for this purpose, possibly in a manner not machine readable or otherwise not in a form readily consumable by the market. Market participants would be required to consult multiple sources for error trade information, which could confuse market participants and effectively frustrate the transparency goals of SEF regulation.

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[12] Proposed §37.203(e); Release at 62098.

[13] Proposed §37.302(e)(3); Release at 62098.

IV. **Proposed § 37.201(c)(1) — Definition of "SEF Trading Specialist"**

The Commission proposes to define a "SEF Trading Specialist" as:

[A]ny natural person who, acting as an employee (or in a similar capacity) of a swap execution facility, facilitates the trading or execution of swaps transactions (other than in a ministerial or clerical capacity), or who is responsible for direct supervision of such persons.[14]

BSEF is an electronic platform with personnel who do not negotiate or arrange or exercise discretion in the facilitation of the trading or execution of swaps. We respectfully request that the Commission clarify that personnel involved in the design or implementation of electronic SEF technology would not be considered "SEF Trading Specialists." We also respectfully submit that the Commission should clarify that any involvement of SEF personnel that occurs *after* a trade is executed (*e.g.*, assisting with the submission of a trade to a DCO for clearing or assisting with offsets or corrections of an error trade) does not constitute "negotiating or arranging" a trade since no new market-risk position is established. Personnel involved in such activities should not be designated as "SEF Trading Specialists."

V. **Proposed § 37.702 — Advance Order-by-Order Clearing Member Identification**

Proposed 37.702 (b)(2) would require a SEF to provide for the financial integrity of its transactions by requiring each market participant to identify a clearing member in advance for each counterparty on an order-by-order basis.[15] Our experience is that the existing pre-trade credit check process functions well to facilitate straight-through-processing and we believe that imposing specific checks would be unnecessary. SEFs should be able to rely on the self-clearing status of participants that are clearing members or that maintain a proprietary account[16] with a clearing member without checking their credit on an order-by-order basis.

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[14] Release at 62097. "[F]acilitating the "trading" of swaps means the negotiating or arranging swaps transactions; negotiating or arranging consists of facilitating the interaction of bids and offers." Release at 61900.

[15] "For transactions routed through a swap execution facility to a registered derivatives clearing organization for clearing: . . . (2) By requiring that each market participant identify a clearing member in advance for each counterparty on an order-by-order basis […]. See proposed § 37.702(b); Release at 62101.

[16] As defined in § 1.3.

VI. Proposed § 37.3(a) — Requirements and Procedures for Registration: Single-Dealer Aggregator Platforms

The Commission proposes that a system or platform that aggregates multiple "one-to-many" systems or platforms should be subject to SEF registration.[17] The proposal would have a significant impact on both users and vendors of software that facilitate pricing data aggregation. The scope of the proposal should be clarified and narrowed to provide certainty to the market and avoid unintended consequences and the stifling of innovation by technology providers. Technology that can be used to simultaneously display (or aggregate) pricing data from one or several one-to-many price distribution sources in and of itself does not constitute a trading system or protocol subject to regulation under the CEA.

For example, market participants often have the ability to view multiple distinct pricing data feeds via multiple sources and can easily display those feeds side-by-side (or co-mingle those feeds) utilizing their own internal or third-party software. The Commission's proposal would have the likely unintended consequence of requiring either the market participant itself (through its use of in-house software) or the vendor of software to register as a SEF.

Bloomberg L.P. supports technology known as "single-dealer pages." Each single-dealer page is an electronic bulletin board dedicated to one dealer that displays that dealer's pricing for various instruments outside of the SEF environment. Each dealer controls the content displayed on its own page as well as who may view the page. On its own initiative (and without aggregation performed by Bloomberg technology), a user can open multiple single-dealer page windows and arrange those windows on one screen. A user can then send to each dealer a separate message regarding a transaction. A dealer's response will be displayed on that dealer's single dealer page. In a similar manner, a market participant could use non-Bloomberg technology to arrange multiple internet windows with pricing data from multiple dealers on the same screen. Similarly, execution management systems also frequently support a mechanism for users to aggregate pricing data from multiple dealers of a user's choice and send messages back to each dealer. These software solutions and others, such as order management systems, may additionally offer a mechanism for sending a quote request, order, or other message to a specific dealer.

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[17] "Specifically, a Single-Dealer Aggregator Platform typically operates a trading system or platform that aggregates multiple Single Dealer Platforms and, thus, enables multiple dealer participants to provide executable bids and offers, often via two-way quotes, to multiple non-dealer participants on the system or platform. Those non-dealer participants are thus able to view, execute, or trade swaps posted to the Single-Dealer Aggregator Platform's system or platform from multiple dealer participants. These types of systems or platforms, however, have not registered their operations as SEFs. The Commission believes that the type of trading system or platform provided by Single-Dealer Aggregator Platforms should be subject to the SEF registration requirement because it meets the SEF definition in CEA section 1a(50) by allowing multiple participants to trade swaps by accepting bids and offers made by multiple participants in the facility or system." Release at 61956.

The use of technology in the manner described above does not constitute a trading protocol subject to regulation under the CEA[18] and could not be reasonably understood to constitute activity subject to SEF registration. There is no "system or platform" dictating which single-dealer pages or other pricing data sources should be displayed to a user, even if the user has the ability to view pricing data of multiple dealers or other pricing sources on the same screen. Subjecting Bloomberg single-dealer pages and other technology described above to SEF regulation is not supported by the CEA and would not achieve the policy goal of migrating swaps trading occurring on multilateral systems onto SEFs.

On the other hand, SEF registration already applies if a technology provider (i) aggregates pricing data on its system according to the rules established by the technology provider, and (ii) supports users' ability to interact with that data. BSEF already performs this form of aggregation in connection with its request for streaming protocol. To the extent the Commission intended in its proposal to subject functionality like this to regulation, no change is required as aggregation in this manner is already within BSEF's perimeter.

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[18] *See* Section 1a(50) of the CEA.

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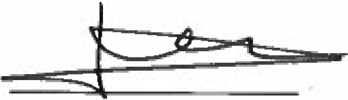
We appreciate the opportunity to provide our comments on the proposed rules, and would be pleased to discuss any questions that the Commission may have with respect to this letter.

Very Truly Yours,



Ben Macdonald

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APPENDIX

ANSWERS TO SPECIFIC QUESTIONS TO PROPOSED RULES

(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.

No. The proposed definition could lead to a scenario in which a SEF compliance department might be prevented from obtaining information required by Core Principle 4 because the information belongs to a counterparty to a swap that is not a market participant and is not subject to SEF jurisdiction.[1]

(6) Does a SEF's ability to monitor trading to prevent such risks require it to have access to client trading records that include activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets? Are there any trading records that are currently created and maintained by clients of asset managers that would not also be retained by the asset managers? If so, please describe such records. Should SEFs receive such records for regulatory purposes?

Please see our response to question 1.

(30) Is the Commission's proposal to require a SEF to prohibit market participants from conducting pre-execution communications away from a SEF with respect to swaps that are subject to the trade execution requirement appropriate? In light of the Commission's proposal to allow SEFs to offer flexible execution methods, are there any impediments for market participants to execute those swaps, in particular those that would become subject to the Commission's proposed approach to the trade execution requirement?

We believe that the prohibition will be difficult, if not impossible, to implement. In fact, the plain language of the proposed prohibition would prevent SEF participants from discussing *any* swap subject to the trade execution requirement whether or not such discussions are related to actual trading in such swaps.

Clarity should be provided around what activity constitutes "negotiating or arranging." Without such clarification, the proposed rule will result in uncertainty around whether participants are engaging in "arranging or negotiating," leaving it ultimately to SEFs to decide, which would result in confusion among market participants and result in violations on some platforms but potentially not others.

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[1] *See* proposed §§ 37.401(b) and 37.404; Release at 62100.

(31) With respect to swaps that are not subject to the trade execution requirement, is the Commission's proposal to allow SEFs to permit market participants to conduct pre-execution communications away from a SEF appropriate?

Please see our response to question 30.

(32) Are there any technical limitations that a SEF would face to accommodate pre-execution communications that would otherwise impede the ability of market participants to trade and execute swaps on a SEF?

SEFs do not have the ability to effectively perform surveillance on bilateral discussions that might occur away from their platforms to ensure that pre-execution communications take place within the perimeter of a SEF.

(33) Should the Commission allow an exception to the proposed prohibition against pre-execution communications for communications involving "market color"? If so, how should the Commission define "market color"? For example, should such a definition consist of views shared by market participants on the general state of the market or trading information provided on an anonymized and aggregated basis? Should such a definition exclude (i) an express or implied arrangement to execute a specified trade; (ii) non-public information regarding an order; and (iii) information about an individual trading position? Are these elements appropriate and should the Commission consider additional elements?

Communications involving "market color" do not constitute "negotiating or arranging" and should be permitted outside SEF trading protocols. Please also see our response to question 30.

(35) Should the Commission allow an exception to the proposed prohibition against pre-execution communications for all corrective trades intended to resolve error trades pursuant to the proposed error trade policy rules under § 37.203(e), as discussed further below? Please explain why or why not.

Yes, the Commission should allow an exception to the proposed prohibition against pre-execution communications for all corrective trades intended to resolve error trades pursuant to the proposed error trade policy rules under § 37.203(e). The prohibition on pre-arranged trading should not apply to corrections of error trades since any offsetting or correcting trades can be effectuated only via pre-arranging.

(36) The Commission is proposing to allow market participants to engage in pre-execution communications away from a SEF for package transactions in which at least one component is not subject to the trade execution requirement. For the swap components of some of these package transactions that are currently traded and executed on SEFs—for example, those where all other components are U.S. Treasury securities—should they not be subject to this exception? Are there other types of package transactions for which the Commission should provide an exception to the proposed prohibition on pre-execution communications?

Allowing market participants to engage in pre-execution communications away from a SEF for package transactions in which at least one component is not subject to the trade execution requirement is appropriate. Also, please see our response to question 30.

(46) Does the lack of a void ab initio requirement for non-credit related errors create concerns about market risk with respect to error trades that have been executed, but have not been voided despite the rejection from clearing? If so, should a SEF be limited in the types of errors that may be corrected without void ab initio, e.g., errors that do not create market risk? Should the Commission adopt a mandatory void ab initio requirement that certain types of errors, e.g., those that do cause market risk, must be resolved via a corrective trade approach? Or should counterparties otherwise have the ability to maintain breakage agreements to address such risks?

Only trades rejected by a DCO for credit reasons should be *void ab initio* and the Commission should adopt this requirement. All operational and clerical errors should be resolved in a timely manner, and a SEF should have discretion to resolve all clerical and operational issues according to its rules.

(47) Is the Commission's proposed definition of "error trade" overly broad or narrow? Should the definition or requirement specifically address certain types of errors, such as the wrong affiliate counterparty or the wrong product identified?

The Commission's definition of "error trade" as "any swap transaction executed on a swap execution facility that contains an error in any term of the swap transaction, including price, size, or direction" is too narrow. The definition should cover all terms confirmed by a SEF or submitted to a DCO or SDR, but should not address specific types of errors. Instead, a SEF should have authority to designate additional elements of a trade as "errors." For example, the designation of an incorrect clearing broker could be treated as an error.

(48) Is the Commission's proposed definition of "error trade" sufficient to include those trades where an incorrect term (e.g., incorrect notional amount) results in a rejection by a DCO ostensibly due to credit reasons, but where the DCO otherwise would have accepted

the trade had the trade included the correct terms? If not, then how should the term "error trade" be defined to better discern this situation from a situation where a true rejection for credit reasons has occurred? Similarly, is the Commission's proposed definition of "error trade" sufficiently clear so that the SEF knows which errors are required to be treated as error trades and which errors are required to be treated as void ab initio? If not, please explain. Should the Commission's definition of "error trade" specifically state that it does not include rejections from clearing for credit reasons?

Please see our response to question 47. Trades with incorrect notional amounts that pass pre-trade credit checks are likely to be accepted by a DCO and will have to be resolved via offset/correct process. The best way to discern if the rejection from a DCO is a true rejection for credit reasons is by receiving a message from a DCO.

(49) Should trades that are rejected by a DCO for insufficient credit be required to be deemed to be void ab initio by SEFs? If so, should the Commission codify such a requirement under proposed § 37.203(e) or elsewhere in the Commission's regulations?

We believe that trades that are rejected by a DCO due to credit reasons should be *void ab initio* and the requirement should be codified in proposed § 37.702(b)(1).

(51) The proposed regulations require that error trades be resolved in a timely manner, recognizing that a SEF may not be in a position to resolve every error trade within a specific time frame. Would requiring resolution of an error trade "as soon as practicable" or within a specific time frame lead to quicker resolutions and reduce risk for market participants? If so, what time frame would be appropriate and should it vary based on other factors, such as the nature of the product or transaction type, whether the error was a participant error or system error, or whether the error was discovered before or after the trade was cleared?

We support the proposal to implement "as soon as practicable" as a time frame for resolution of error trades. Many SEFs operate globally and resolving an error involving participants located in different time zones may require more time than correcting a trade error for participants within the same time zone.

(53) Should market participants be required to report all errors to a SEF or are there certain errors that are immaterial and do not otherwise require correction?

All errors that change the content of a confirmation, DCO submission or SDR report must be reported to a SEF. In addition, a SEF should have authority to define which other errors should be reportable.

(54) What type of error trade policy should a SEF be required to adopt for swap transactions that are subject to an exception to the prohibition on pre-execution communications under proposed § 37.201(b), given that such swaps may be negotiated or arranged away from the SEF's trading system or platform?

No special procedures are required.

(55) Should a SEF be required to specify who may request a review of a trade as a potential error trade? Should the ability to request a review be limited to the parties to a trade or should market participants affected by the trade also have the ability to request a review?

A SEF should be permitted to specify who may request a review of a trade as a potential error trade. We believe that where both participants agree a trade was done in error (*i.e.,* wrong size, direction or price) a SEF should have the authority to allow participants to correct such trade without pre-approval by the SEF, provided that the participants effectuate the correction as specified by the SEF.

(57) Should the Commission require SEFs to notify all market participants of an error trade and the resolution of such trade or only a smaller subset of participants? Should the Commission provide any time frame for such notice?

All market participants should be notified of an error trade and the resolution of such trade through the public dissemination facilities of an SDR. A SEF should be required to send a report to an SDR as soon as technologically practicable after the status of a disputed trade is determined.

(69) Is the additional flexibility for certain terms and conditions for non-standardized swap contracts appropriate? If not, please explain why.

The additional flexibility for certain terms and conditions for non-standardized swap contracts is necessary and appropriate.

(73) The 2013 Staff STP Guidance and 2015 Supplementary Staff Letter apply to "intended to be cleared swaps," including swaps subject to the clearing requirement and swaps that are voluntarily cleared by the counterparties. Should these requirements apply to voluntarily-cleared swaps?

All swaps to be submitted for clearing to a DCO should be treated the same. There is no difference in operational protocols and compliance procedures from a SEF's standpoint for

swaps subject to the clearing requirement and voluntarily cleared swaps. If swaps subject to the clearing requirement and voluntarily cleared swaps are required to be treated differently, a SEF will have to extend resources to build systems that would be able to accommodate different requirements and there should be significant market benefit to justify such extension of resources.

(79) Is the Commission's proposed requirement for a SEF to have liquid assets equal to the greater of either three months of projected operating costs or projected wind-down costs an appropriate approach? If not, then what should the Commission adopt as a more appropriate liquidity requirement and why? Would a SEF's wind-down period generally be longer or shorter than three months?

Yes, we believe that the proposed liquid asset requirement is appropriate. It is our view that amending § 37.1303 to require a SEF to hold unencumbered, liquid financial assets equal to at least the greater of three months (instead of six months as required by current § 37.1305) of projected operating costs or projected wind-down costs will release capital that can be deployed by a SEF to promote innovation, while also promoting stability by ensuring that a SEF retains sufficient capital on reserve. We believe that a SEF's wind-down period would generally be three months or less.

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