

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

**Re: Swap Execution Facilities and the Trade Execution Requirement**

Dear Mr. Kirkpatrick:

360 Trading Networks Inc. (360T SEF) appreciates the opportunity to submit these comments on the above referenced Notice of Proposed Rulemaking, specifically as it relates to FX derivatives including Non-Deliverable Forwards, Non-Deliverable Swaps and FX Options.

As a CFTC registered SEF, 360T SEF offers trading in foreign exchange derivatives including FX options, FX non-deliverable forwards (NDF), FX non-deliverable swaps (NDS) and FX options. Our services provide clients with greater transparency and enhanced control at every stage of the trading lifecycle, while enabling clients to comply with their own regulatory obligations.

360T SEF supports the Commission's policy goals underlying SEF registration as well as regulation reducing systemic risk, increasing counterparty protections and increasing market efficiency, orderliness and transparency. Recognizing that the existing regulatory approach has transitioned some degree of swaps trading and market participants to SEFs, we agree that it has also created challenges for swaps trading on SEFs, ultimately inhibiting SEF trading, development, innovation and growth. As a general concept, 360T supports the Commission's proposal to strengthen its swaps trading regulatory framework to more appropriately account for swaps market characteristics and is providing specific comments below for the Commission's consideration.

#### **I. Requirements and Procedures for Registration**

We support the expansion of the SEF registration requirement and agree with the Commission's view that Single Dealer Aggregator Platforms comport with the statutory definition of a SEF by providing a trading system or platform where multiple dealers send or stream bids and offers to multiple participants. However, we believe such a proposal should not be limited to the aggregation of Single Dealer Platforms.

Absent a specific definition of Single Dealer Platform, the potential still exists for Single Dealer Aggregator Platforms who meet the statutory definition of a SEF to avoid registration by claiming they are not aggregating Single Dealer Platforms. While we do not believe this is the Commission's intent, we suggest the Commission explicitly state that the registration requirement apply to all platforms aggregating bids and offers in swaps defined under 7 U.S.C. § 1a(47) with the exception of SEF Aggregator Portals.

We further agree that the registration requirement should apply to swap broking entities who meet the statutory definition of a SEF because they allow multiple participants to trade swaps with multiple participants in a manner consistent with CEA 5h(a)(1) and 1a(50). However, while we support the six-month delay for domestic entities, we believe the two-year delay for foreign swaps broking entities may result in an unfair competitive advantage for those foreign entities that also operate a registered SEF. Chairman Giancarlo's two white papers have provided more than enough adequate notice of this proposed change to the industry and an extended delay is inappropriate. Therefore, we recommend the Commission consider shortening the delay to six months, consistent with the delay for domestic swap broking entities.

## **II. Minimum Trading Functionality and Order Book Definition**

Though we understand and support the Commission's desire to establish a base level of pre-trade price transparency, we believe SEFs should have the flexibility to do so in a manner that encourages SEF trading. Requiring certain trading functionality such as an order book fails to account for the evolutionary nature of markets and serves to inhibit the innovation necessary to foster robust and liquid swaps markets. The Commission correctly acknowledges that mandating a SEF offer an Order Book for swaps has imposed significant financial and operational burdens on SEFs by requiring them to operate and maintain functionality that is not used. We therefore concur with the Commission's proposal to eliminate the minimum trading functionality and Order Book requirement.

## **III. Legally Binding Documentation**

It is well documented that SEFs have encountered issues in trying to comply with §37.6, which requires a SEF provide each counterparty to a transaction that is entered into on or pursuant to the rules of the swap execution facility with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction. In order to satisfy this requirement, SEFs must obtain documentation of relationship terms often privately negotiated between counterparties prior to execution. Recognizing these challenges, Commission staff granted and extended time-limited no action relief allowing SEFs to incorporate relationship terms by reference without obtaining copies of the agreements prior to execution.

As this continues to pose a challenge to SEFs, we support the Commission's proposal to establish separate transaction documentation requirements for cleared and uncleared swaps. In particular, in the case of uncleared swaps, the revised approach requiring a SEF provide to counterparties with a "trade evidence record" that does not require the inclusion of relationship terms contained in the underlying documentation between counterparties would have the desired outcome of reducing the financial, administrative and logistical burdens for SEFs in having to request accept and maintain a library of every previous agreement between counterparties. We further believe that the terms included in a "trade evidence record" should be limited to the "economic terms" agreed to between counterparties and as it is consistent with the role of the SEF in a swap transaction.

#### **IV. Trade Execution and MAT Process**

The Commission is correct in proposing to adopt a revised interpretation of CEA 2(h)(8) and 360T supports the Commission's view that once the clearing requirement applies to a swap, then the trade execution requirement applies to that swap once any single SEF or DCM lists the swap for trading. However, we caution that this revised interpretation cannot be proposed in isolation and is tied to greater flexibility in acceptable execution methods in order to achieve the statutory goal of promoting swaps trading on SEFs.

#### **V. Rule Enforcement Program**

We appreciate the Commission's acknowledgement that the existing swaps regulatory framework was based in part on the futures regulatory framework and that current part 37 regulations do not sufficiently account for the differences between the swaps and futures markets. As such, 360T supports the Commission's proposal to amend §37.203 to enable a SEF to establish a rule enforcement program that is best suited to its trading system/platforms and market participants while ensuring the ability to fulfill its self-regulatory obligations.

#### **VI. Regulatory Services Provider by a Third Party**

The Commission is proposing a series of amendments that would provide a SEF with further options in choosing and utilizing a regulatory services provider to assist with fulfilling its regulatory obligations. Specifically, the Commission is proposing to expand the scope of entities that may provide regulatory services under §37.204(a) to include any non-registered entities approved by the Commission. The Commission believes that this will allow SEFs to choose from a greater number of potential third-party providers, potentially increasing competition, and result in reduced operating costs, encourage innovation and technological barriers, and mitigate barriers to entry for new SEFs.

We support greater competition and appreciate the potential benefits outlined by the Commission. However, there is a risk that seeking to reduce operating costs by expanding the number of regulatory service providers will unintentionally create a race to the bottom as providers compete on price and subsequently degrade the services provided to accomplish this.

#### **VII. Core Principle 4 (Monitoring or Trading and Trade Processing)**

Requiring a SEF to monitor its market participants' trading activity and reference data beyond its own market and on an ongoing basis places unnecessary operational and cost burdens on SEFs and is inconsistent with current practice in swaps and other derivatives markets. We support the Commission's proposal to amend §37.401 and clarify that a SEF must conduct real-time market monitoring of "trading activity" on its own market while providing discretion to determine when to collect and evaluate data on its market participants' trading activity beyond its own market rather than on an "ongoing basis".

## **VIII. Additional Requirements for Cash-Settled Swaps**

As the Commission correctly notes, the requirements under §37.403(a) that a SEF demonstrate it monitors the pricing of the reference price used to determine cash flows or settlement and §37.403(c) that the SEF demonstrate it monitors the continued appropriateness of the index or instrument are impractical due to their proprietary nature. Accordingly, we support the Commission's proposal to eliminate the requirement under §37.403(a) and amending §37.403(c) to require that the SEF to monitor the "appropriateness" of the index or instrument.

## **IX. Required Clearing**

The Commission proposes to amend §37.701 to require a SEF to establish a direct and independent clearing agreement with each registered DCO or exempt DCO to which the SEF submits swap transactions for clearing. While 360T generally supports this as good practice, we ask that the Commission consider the potential that it creates for introducing additional resource and cost burdens for SEFs who choose to engage a third-party service provider as there may be fees associated with each independent clearing agreement in addition to any third-party service provider fees incurred.

## **X. Financial Resources Requirement**

We support the Commission's proposal to consolidate the requirement under existing §37.1301(c) into a new proposed §37.1301(a) and the several amendments as written. Though we believe the one-year period can be shortened without any significant market impact, we nevertheless agree that it will measurably reduce the financial resources a SEF needs to maintain. We do not believe such a reduction impairs the stability of a SEF, the marketplace or the marketplace's confidence in the SEF structure.

## **XI. Types of Financial Resources**

We support the Commission's proposal to amend the liquid financial resources requirement from six months of operating costs to the greater of (i) three months or (ii) the projected costs for a SEF to wind down its business as determined by the SEF. Given the current number of registered SEFs, there is no reason to believe that a period longer than three months is necessary.

## **XII. Conclusion**

We appreciate the opportunity to submit our comments on this Notice of Proposed Rulemaking and applaud the Commission's efforts to further the Dodd-Frank Act's statutory goals for SEFs, including the promotion of more SEF trading and pre-trade price transparency in the swaps market. We hope that the Commission will consider our suggestions.

Please feel free to contact me should you have any questions.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ian Hawes".

Ian Hawes  
360 Trading Networks Inc.

cc: Chairman J. Christopher Giancarlo  
Commissioner Brian Quintenz  
Commissioner Rostin Behnam  
Commissioner Dawn Stump  
Commissioner Dan Berkovitz

Amir Zaidi, Director, Division of Market Oversight