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March 15, 2019

*Submitted electronically to*  
<https://comments.cftc.gov>

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

**Re: Swap Execution Facilities and Trade Execution Requirement (RIN 3038-AE25)**

Dear Mr. Kirkpatrick:

Vanguard<sup>1</sup> appreciates the opportunity to provide our comments to the Commodity Futures Trading Commission (the “**Commission**”) on its recent proposal to amend the rules governing swap execution facilities (“**SEFs**”) and the trade execution requirement (the “**Proposal**”).<sup>2</sup>

Vanguard, along with many other asset managers, benefits from the ability to trade on SEFs, and these benefits are attributable to the Commission’s current SEF regulations, which have advanced improvements in liquidity, price transparency, expanded competition, and trade efficiency.<sup>3</sup> Vanguard agrees with and supports the Commission’s efforts to address certain aspects of the current SEF regulations in order to encourage the innovation and growth of these trading platforms and markets. We applaud the Commission for engaging in a thoughtful, thorough effort to address the current SEF regulations and take positive steps towards furthering the Commission’s policy goals of transparency and fair competition.<sup>4</sup>

As a part of prudent management, Vanguard funds enter into derivatives contracts, including swaps and futures, to achieve a number of benefits for our investors, including hedging portfolio risk, lowering transaction costs, managing cash, and achieving more favorable execution compared with traditional investments. Vanguard has been fully supportive of global derivatives regulatory reform, including the mandate of the derivatives title of the Dodd-Frank Wall Street Reform and Consumer Protection Act, to bring much-needed transparency and regulation to the derivatives markets, including subjecting derivatives to regulatory oversight and requiring the reporting, margining, and central clearing of standardized swaps, and exchange-trading of the most liquid standardized swaps.

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<sup>1</sup> Vanguard is a global asset manager that offers about 400 funds with aggregate assets of approximately \$5 trillion.

<sup>2</sup> Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946 (Nov. 30, 2018).

<sup>3</sup> Core Principles and Other Requirements for Swaps Execution Facilities, 78 Fed. Reg. 33476 (June 3, 2013).

<sup>4</sup> See, CFTC Mission Statements, *available at* <https://www.cftc.gov/About/MissionResponsibilities/index.htm>.

The Proposal seeks to address several challenges for swaps trading on SEFs identified by the Commission.<sup>5</sup> With these challenges in mind, the Commission's proposed approach intends to reduce certain complexities and costs that the Commission believes have (i) contributed to swaps liquidity forming away from SEFs, (ii) limited the scope of swaps subject to mandatory SEF trading, and (iii) impeded SEF development, innovation, and growth.<sup>6</sup>

Vanguard, along with other market participants, met with the Commission in early 2019 to discuss various approaches to addressing these challenges. In those discussions, we appreciated the Commission's recognition that the topics addressed in the Proposal are highly interrelated. One cannot look at product and trading methodology expansion without considering rules related to impartial market access. Therefore, our comments on these topics are likewise interrelated and should not be considered in isolation. They are intended to highlight proposals with which we agree, identify concerns to be addressed, and recommend changes to advance this important rulemaking effort. A summary of our comments is as follows:

#### **Summary of Vanguard's Comments:**

- **Codify the current guidance that SEFs provide impartial access to their markets and services.** Impartial access benefits market participants through enhanced competition and transparent pricing, and is instrumental in establishing deep non-fragmented pools of liquidity.
- **The trading mandate should be reserved for swaps that meet minimum requirements.** Only cleared swaps that demonstrate deep on-SEF liquidity are suitable for the trading mandate and the CFTC should implement a holistic approach to assessing such liquidity.
- **Expansion of the methods for execution must meet minimum standards.** While expanded methods are welcome, the CFTC must ensure they foster price transparency, enhance liquidity and support impartial access.
- **The proposed definition of the term "market participant" should be adopted.** We welcome the new definition as it confirms our funds' investors are not participants as they do not execute or direct activity on a SEF.
- **Off-SEF, pre-arranged trading of block trades must be maintained.** It is appropriate to allow off-SEF trading of blocks as the SEF does not provide adequate liquidity for size and use of the SEF mechanics could compromise the pricing of such large positions.
- **Pre-execution, off-SEF communications between clients and dealers must be maintained.** The CFTC must avoid restraint of vital communications which provide market color and facilitate the development of trading strategies.
- **Codify the current guidance on Straight-Through-Processing.** Current guidance has functioned well during the past five years in addressing operational, credit and market risk.
- **Post-trade name give-up for anonymously traded cleared swaps should be prohibited.** Name give-up for cleared swaps is unnecessary and risks information leakage as to participants' positions, strategies, and other sensitive information.
- **Package transactions should be permitted to be executed off-SEF.** The coupling of mandated and non-mandated products must be protected and such packages should be exempt from SEF trading until all components are capable of SEF trading.

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<sup>5</sup> Proposal at 61950-61951.

<sup>6</sup> Proposal at 61952.

**I. Background: Impartial Access to the Exchange trading of Liquid, Standardized Derivatives Facilitates Enhanced Liquidity, Price Transparency, and Increased Competition.**

Vanguard has welcomed regulatory reforms relating to derivatives that have targeted systemic risk and have expedited a transition of a large portion of the formerly opaque market structure to platforms that are efficient, transparent, and competitive. Mandated, consistent clearing, reporting, and margining are well aimed at enhancing market resiliency. Mandated exchange trading has achieved a revolution in market structure with surveys now demonstrating the majority of the most standardized, liquid derivatives are traded on open-access, transparent platforms providing efficient execution, full transparency, and competitive pricing.

**A. *Trade Execution Rules Target Market Functionality And Not Systemic Risk.***

We agree with the observations in Chairman J. Christopher Giancarlo's Cross Border White Paper<sup>7</sup> as to the distinction between reforms designed to mitigate systemic risk and reforms that address market and trading practices which lack the systemic risk driver. Reforms facilitating the orderly operation of the markets, promoting price discovery, or mandating particular modes of trade execution have served to remedy the formerly bilateral, over-the-counter, derivatives trading mechanics dominated by personal relationships, minimal price transparency and compromised competition. Congress clearly recognized the limitations of that market structure; and in mandating exchange trading of standardized, liquid derivatives, sought to open the market for those products to facilitate a level playing field across market participants with liquidity providers competing on price and liquidity takers having unencumbered access.

This distinction between rules targeting systemic risk and rules targeting improved market functionality is important as it highlights the absence of a risk-related imperative to move trading to a platform, and the need to assess relevant rules based on their likely impact in terms of market drivers such as enhanced liquidity, price transparency and competition.

**B. *Market Functionality is Enhanced by Non-Fragmented Pools of Liquidity.***

Consistent through the development of the trading rules, and in conveying lessons learned in the implementation process, asset managers such as Vanguard have pressed for rules and guidance that provide clear standards for transitioning products from over-the-counter or voluntary exchange trading to mandated exchange trading; support deep, non-fragmented pools of liquidity; and achieve enhanced price transparency while avoiding the premature, inappropriate disclosure of positions. In addition to pressing for enhancements to the current rules, all market participants have incurred significant costs in onboarding service providers and revising trading policies and mechanics to accommodate the enhanced market functionality.

Vanguard greatly appreciates the revolutionary effect of the original SEF trading rules, and now trades the majority of its standardized, liquid derivatives on SEF, whether or not such derivatives are actually mandated for SEF trading. Our funds' derivatives trading has benefitted through the enhanced liquidity, competitive pricing, and ease of execution of trading on a SEF. And while we welcome the Commission's efforts to address long-standing requests for improvements, we remain concerned with proposed reforms that appear certain to compromise many of the benefits of the current structure.

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<sup>7</sup> See generally, J. Christopher Giancarlo, Commissioner, CFTC, *Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank* (Jan. 29, 2015) ("**White Paper**").

**C. *Diverse Trading Methodologies do not Guarantee Deep Liquidity.***

Make no mistake, Vanguard fully supports efforts to facilitate innovation in the execution space, and the expansion of both appropriately liquid products and well-functioning methodologies available for trading on a SEF.

However, given the criticality of the assessment of liquidity in considering new products for mandated SEF trading, it is premature to conclude that all products determined to have the requisite standardization to merit a clearing mandate are also appropriate for application of the SEF trading mandate. And that assessment is not advanced through the openness to a broader array of trading methodologies. The existence of a new methodology, in itself, is not a proxy for the deepness of liquidity in a particular product sufficient to merit the mandated closure of all over-the-counter trading.

**D. *Impartial Access is the Best Driver of Non-Fragmented Liquidity Pools.***

Especially as the Commission perceives rules that address trading practices as separate from those that address systemic risk, Vanguard prefers that the Commission aims to correct immediate deficiencies, allow for future innovation, but avoid significant regulatory change that would compromise existing benefits. To that end, establishing liquidity standards for the future mandating of products for SEF trading must be a paramount objective. And in particular, for mandated SEF trading, any initiative that would compromise impartial access, and thereby risk the fragmentation of liquidity pools and a retreat from the newly achieved level playing field for all participants, must be strenuously avoided.

In continuing the work to bolster the level playing field, and with clear standards for mandating new products and methodologies, Vanguard fully anticipates the evolutionary expansion of voluntary SEF trading. But we see that expansion happening through market-driven, as opposed to regulator-driven, market innovation. And to preserve the best hope for innovation, impartial access must be defended as the foundation upon which future expansion can be built.

This vision has guided our analysis of the proposed rules, and is reflected in the following comments. As the Commission evaluates the direction of these proposed rules, we commend this vision to also guide its actions.

**II. Vanguard supports codifying the current guidance that SEFs provide impartial access to their markets and services.**

Section 5h(f)(2)(B) of the Commodity Exchange Act (“CEA”) statutorily requires SEFs to provide market participants with impartial access to the market.<sup>8</sup> Vanguard believes this was correctly interpreted by the Commission in the current SEF regulations.<sup>9</sup> And while not consistently implemented, the impartial access goal, coupled with the SEF trading mandate for standardized, liquid derivatives, has had a

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<sup>8</sup> CEA Section 5h(f)(2)(B)(i) (“A [SEF] shall— . . . (B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—(i) to provide market participants with impartial access to the market.”).

<sup>9</sup> 17 CFR § 37.202(a) (“A [SEF] shall provide any eligible contract participant . . . with impartial access to its market(s) and market services.”).

revolutionary effect on the market. Far beyond the inevitable efficiencies has come enhanced liquidity, price transparency and increased competition. And these benefits have been enjoyed on a level playing field by all market participants in terms of impartial access to deep, non-fragmented liquidity pools.

The Proposal, however, would grant SEFs the discretion to not only restrict categories of market participants' access to their markets and services, but also apply disparate fee structures associated with same.<sup>10</sup> Vanguard believes this would create a market for which access is no longer impartial, notwithstanding the Commission's desire to maintain non-arbitrary and non-discriminatory practices.<sup>11</sup>

While Vanguard understands and appreciates the Commission's concerns regarding the current SEF regulations' approach to impartial access,<sup>12</sup> the Proposal would undoubtedly have negative consequences in a mandated market for which no alternative is available. As set out by Commissioner Berkovitz in his dissent, large dealers could establish and maintain exclusive pools of liquidity, which would weaken the ability of smaller firms to access the best, most competitive pricing in order to hedge or offset trades with customers.<sup>13</sup> Further, the Proposal seeks to allow for more flexible methods of execution.<sup>14</sup> Viewed in conjunction with the Proposal's approach to impartial access, large dealers could establish single-dealer platforms and, by providing incentives to trade on these platforms, "siphon liquidity away from RFQ platforms."<sup>15</sup>

These scenarios would negatively affect the market by creating fragmented pools of liquidity and limit dealer-to-client competition, and invariably increase end-user pricing. Such changes would effectively engineer a return to the pre-crisis opaque market structure which Congress sought to remedy in pressing for standardized, liquid derivatives to be traded on a SEF in markets with impartial access.

While, in a perfect world, the increased access afforded by expanded trading mechanisms might compensate for a retreat from impartial access and a mandate to trade less liquid derivatives on an exchange, Vanguard strongly recommends that the Commission support the formation of deep, non-fragmented liquidity pools, open to all through mandated impartial access. As such, Vanguard supports codifying the current guidance on impartial access.

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<sup>10</sup> Proposal at 61996.

<sup>11</sup> See Proposal at 61993 ("The Commission also believes that the proposed rule clarifies that this criteria must be applied to market participants in a fair and non-discriminatory manner, as currently required under the existing requirements of § 37.202(a)(1).")

<sup>12</sup> See Proposal at 61993 (The Commission's stated concerns are that the existing approach "has created uncertainty for SEFs seeking to establish and apply access criteria in a consistent manner", and "favored the promotion of an 'all-to-all' trading environment", which has "limited the ability of SEFs to adapt their operations to the characteristics and dynamics of the swaps market.").

<sup>13</sup> Proposal at 62146.

<sup>14</sup> See Proposal at 61978 ("Rather than impose execution method requirements that are limited to an Order Book or RFQ System, the Commission's proposed approach would allow SEFs to develop and offer—and therefore enable—market participants to choose execution methods that are appropriate to their trading.").

<sup>15</sup> Proposal at 62146.

**III. Vanguard believes that the trading mandate should be reserved for swaps that meet minimum requirements.**

As provided for in the CEA, swaps that are required to be traded on a SEF are those that are mandated for clearing by the Commission and then “Made-Available-To-Trade” (“MAT”) on a SEF.<sup>16</sup> This trading mandate currently only applies to a portion of swaps subject to mandatory clearing.<sup>17</sup> And while imperfect, the MAT requirement effectively serves to limit the trading mandate to those cleared, standardized derivatives which are deeply liquid and for which the SEF presents an effective trading mechanic.

With the expressed intention to increase the volume and variety of derivatives traded on SEFs, the Proposal aims to eliminate this process entirely and require any swap subject to the clearing mandate to automatically be subject to the trading mandate so long as that swap is listed on at least one SEF or designated contract market.<sup>18</sup> This would significantly expand the number of swaps subject to the trading mandate, but requires no accompanying analysis and assessment as to whether the swap is appropriate to be traded on a SEF. Vanguard has significant concerns that this would result in the closure of access to the over-the-counter market for relatively illiquid cleared swaps with no guarantee that the SEF provided commensurate liquidity. Compounding the concern is that new trading mechanics on SEF could be applied without any guardrails with respect to technological readiness and participant connectivity.

Trading on SEF requires, at a foundational level, both adequate liquidity and a robust technological architecture and connectivity. Many market participants, including Vanguard, voluntarily trade on SEFs for non-mandated cleared products using existing trading mechanics when the SEF provides adequate liquidity. We see SEF trading, both in terms of product scope and trading mechanics, advancing organically based on competitive market forces. But to artificially force products and mechanics onto mandated SEF trading without any guardrails other than the requisite level of standardization needed for clearing is not a direction we can support.

Instead, we welcome the sentiments expressed by Chairman Giancarlo before the ABA Derivatives and Futures Law Committee at its January meeting. In addition to our call for the setting of objective standards, we support the Chairman’s vision that “bringing swaps subject to the clearing mandate into the scope of the trading mandate should be done properly and, perhaps, in stages with a relative degree of consensus of buy-side, sell-side and major SEF market participants.”<sup>19</sup>

Self-certification by SEFs of product readiness for the SEF trading mandate has proven to be unreliable. Instead, the Commission must require the existing six factors specified in Commission Regulation 37.10 be considered by the Commission comparing the current trading of the relevant product

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<sup>16</sup> CEA Section 2(h)(8).

<sup>17</sup> See, CFTC, Industry Oversight, Industry Filings, Swaps Made Available to Trade, <https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/file/swapsmadeavailablechart.pdf>.

<sup>18</sup> Proposal at 61979.

<sup>19</sup> J. Christopher Giancarlo, CFTC Chairman, *Keynote Address Before the ABA Business Law Section, Derivatives & Futures Law Committee Winter Meeting* (Jan. 25, 2019), available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo63>.

on SEF to the aggregate trading across the market to determine the existence of adequate on-SEF liquidity to warrant mandatory SEF trading.<sup>20</sup>

In addition to the Commission's consideration of the existing six factors, it is critical (especially if new trading mechanics are involved) for the Commission to also require technological readiness and an adequate threshold number of SEFs and dealers on the SEF transacting in the swap. The implementation of existing platforms took many months and represented a considerable expense across the industry. Representations of readiness must be obtained from all market sectors and not merely from SEFs. At a minimum, at least two SEFs must offer the product, each with at least three dealers offering liquidity to clients. While voluntary SEF trading may advance with lower standards, the Commission must ensure that mandated SEF trading, and the closure of the over-the-counter market for cleared swaps, can only advance having achieved robust mandated standards and technological readiness.

Vanguard also supports the Chairman's vision for a holistic process including an application filed by a SEF supporting a SEF mandate with compelling data across the factors, a fulsome cross-market comment process, Commission consideration of both the data and cross-market comments ahead of approval, and an appropriate phase-in period once a new product is approved.

While this approach will undoubtedly add time and require Commission resources, the closure of access to the over-the-counter market for cleared products is an extremely serious matter that compels informed oversight and control. And this more robust process for mandated SEF trading will not impair the organic, evolutionary development of voluntary SEF trading – both in terms of products and mechanics. As noted above, such voluntary SEF trading is already well underway and extensively used given the efficiencies afforded by SEF trading.

And we would be remiss if we failed to underline that while a robust process and standards must be required for mandated SEF trading, the ultimate value to the market will be seriously compromised if impartial access to SEFs is not maintained. Fragmented, shallow liquidity pools do not serve market participants, and diverse trading mechanics do not compensate for a retreat to limited liquidity pools, non-transparent pricing, and diminished competition.

**IV. Vanguard supports the Commission's efforts to provide flexible methods of execution, but believe minimum standards should be met in order to promote impartial access.**

The current SEF regulations limit methods of execution to (i) a firm bid or offer placed into a central order book that is available to all participants (“**Order Book**”) and/or (ii) a “request-for-quote” is sent to at least three unaffiliated dealers on a SEF (“**RFQ-3**”).<sup>21</sup> The Commission has acknowledged that these two methods may not be adequate to accommodate SEF trading for all cleared swaps, as relative liquidity levels may better be accommodated through alternative trading methodologies.<sup>22</sup> As such,

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<sup>20</sup> 17 C.F.R. § 37.10 (The Commission lists the following six factors that formulate the basis upon which a SEF can submit a MAT application: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; or (6) the usual number of resting firm or indicative bids and offers.).

<sup>21</sup> 17 CFR § 37.10.

<sup>22</sup> 78 Fed. Reg. 33476 at 33482.

Vanguard is supportive of expanding the methods of execution, but is hesitant to allow SEFs unlimited flexibility to offer methods of execution that may not be suitable for certain swaps.

Vanguard recommends the Commission implement a substantive review process to determine whether SEF-proposed execution methods comply with the SEF Core Principles, the CEA, and Congressional intent. The review process should include submission of an application to the Commission demonstrating that the proposed execution methods (i) satisfy the goals of pre-trade price transparency and competitive execution, (ii) provide sufficient access to pools of liquidity, (iii) support impartial access, and (iv) are suitable for electronic execution. As with any SEF-proposed product expansion to the trading mandate, it is imperative that in addition to the Commission's review of the application and supporting data, a robust comment period is afforded to seek input across all participant types. If the Commission finds the application and public comment compelling and approves an application, again, an adequate implementation period must be afforded.

One adjustment to trading methodologies that Vanguard finds particularly compelling is the development of average pricing capabilities on SEF. Asset managers could better access the market continuously, while achieving best execution across the range of funds for which trading is needed, if smaller trades could be executed through the day with pricing averaged and applied equivalently across funds to which new positions were allocated. This is the type of innovation which would add value to the market while preserving impartial access and enhancing liquidity development.

Again, preserving impartial access, and requiring standards and comment for expansion of the product or mechanic mandate for SEFs, are all interrelated and must be advanced together in the Commission's reforms are to be enduring.

#### **V. Vanguard supports the Commission's proposed definition of the term "market participant".**

While the Commission does not currently define the term "market participant", based on previous guidance the term likely includes the clients of asset managers.<sup>23</sup> The Proposal seeks to clarify the term "market participant" to mean "any person who accesses a SEF (i) through direct access provided by a SEF; (ii) through access or functionality provided by a third-party; or (iii) through directing an intermediary that accesses a SEF on behalf of such person to trade on its behalf."<sup>24</sup> This addresses asset managers' concerns as it clearly removes the clients of asset managers who do not directly access nor direct activity on a SEF. Vanguard fully supports the Commission's approach and requests that the Commission adopt the definition as proposed.

#### **VI. Vanguard believes the Commission should continue to permit off-SEF, pre-arranged trading of block trades.**

Under the current framework, market participants are permitted to engage in off-SEF pre-execution communications and pre-arranged trading of block trades prior to being booked on a SEF. This not only assists market participants in complying with certain regulatory requirements, particularly pre-execution

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<sup>23</sup> 78 Fed. Reg. 33476 at 33506 (June 4, 2013) (The Commission stated that the term "'market participant' when used with respect to a SEF means a person that directly or indirectly effects transactions on the SEF" and that this includes "persons whose trades are intermediated.").

<sup>24</sup> Proposal at 61954.



credit screenings pursuant to § 1.73,<sup>25</sup> but allows them to secure competitive pricing, which would otherwise be challenging on SEF due to the size of the trades.

The Proposal seeks to restrict the ability of market participants to engage in pre-execution communications off-SEF, and would “require . . . any swap that has a notional or principal amount at or above the appropriate minimum block trade size applicable to such swap on a SEF” be traded on a SEF’s trading system and platform, and would no longer permit market participants to “submit an already-executed block trade to the SEF pursuant to its rules”.<sup>26</sup>

Notwithstanding that the Proposal also offers the potential for new trading methodologies on SEF, as the Proposal omits appropriate controls and certainty that sizeable, less liquid trades could be accommodated without compromise, Vanguard believes the end of off-SEF block would result in market participants receiving less competitive pricing while increasing the risk of market distortions. As such, Vanguard recommends that the Commission retain the current framework as it relates to block trades.

**VII. Vanguard believes the Commission should continue to allow for pre-execution communications between clients and dealers.**

Pre-execution communication between clients and dealers is an important aspect of gaining market color in order to evaluate potential trades relative to strategies and objectives. The ability to communicate freely allows relationships to develop and information to flow organically. For swaps subject to the trading mandate (including blocks exempt from SEF trading), the Proposal aims to implement limitations on pre-execution communications by requiring all such communication to migrate onto a SEF platform.<sup>27</sup>

The Proposal, however, does not provide a clear definition of what constitutes pre-execution communication,<sup>28</sup> which will likely cause confusion and possibly inadvertent non-compliance among market participants. Further, the technological advancements required to accommodate this requirement, including the development of communication integrations as well as data use policies and monitoring programs to protect privacy, would be costly to both market participants and SEFs with no perceived benefit. Finally, the lack of perceived benefit is due, in part, to the fact that pre-execution communications are already subject to CFTC oversight.<sup>29</sup>

For these reasons, Vanguard respectfully disagrees with the Commission’s proposal to move all pre-execution communications on-SEF, and recommends that the current state be retained.

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<sup>25</sup> 17 CFR § 1.73.

<sup>26</sup> Proposal at 62043.

<sup>27</sup> Proposal at 61986.

<sup>28</sup> *See id.* (The Proposal attempts to define the parameters by stating that the negotiation and arrangement of swaps subject to TER constitutes “trading” that should occur on a SEF, and further states that “trading” includes the “the negotiation or arrangement of transactions through the interaction of bids and offers.” However, there is no further distinction nor determination on when communication transforms from “market color” to “pre-execution communication”).

<sup>29</sup> *See* 17 CFR §§ 1.31, 1.35 (Introducing brokers involved in a transaction are required to maintain records of pre-execution communications.); *see also* 17 CFR § 23.201 (Swap dealers have similar record keeping requirements.).

**VIII. Vanguard respectfully disagrees with the Commission’s approach to Straight-Through-Processing and recommends codifying the current guidance.**

While the Proposal seeks to codify existing guidance concerning pre-execution credit screenings to facilitate compliance with risk-based limits and the identification of a futures commission merchant (“FCM”) in advance of each order intended to be cleared,<sup>30</sup> it modifies straight-through-processing (“STP”) in an impactful manner. Specifically, SEFs would no longer be required to process and route transactions to a derivatives clearing organization (“DCO”) within a ten-minute timeframe.<sup>31</sup> Rather, SEFs would be subject to a “qualitative” interpretation of the revised “prompt, efficient, and *accurate*” standard, thereby permitting SEFs to delay the processing and routing of transactions to a DCO following execution.<sup>32</sup>

Vanguard believes that the current guidance has been developed and successfully implemented for over five years, and any disruption to current processing standards would present a variety of risks for market participants, including, but not limited to, market, credit, and operational risk. As such, Vanguard supports the codification of existing guidance on pre-execution credit screenings and FCM identification, the time standard on processing and routing transactions to a DCO, and the current *void ab initio* approach related to rejections due to operational or clerical errors.

**IX. Vanguard respectfully requests that the Commission prohibit post-trade name give-up for anonymously traded cleared swaps.**

Post-trade name give-up is a long-standing and necessary practice for uncleared swaps that are anonymously executed. This is due to the fact that each party to the transaction has ongoing obligations to and is exposed to the credit risk of the other party for the duration of the swap.

In the cleared swaps market, however, these ongoing obligations and risks no longer exist once accepted by a DCO for clearing, as both parties now face the DCO. Vanguard recommends that the Commission prohibit post-trade name give-up for cleared swaps,<sup>33</sup> and believes the practice, if adopted, would result in harmful information leakage, exposing market participants’ positions, strategies, objectives, trading practices, and other sensitive information. As such, Vanguard respectfully requests that the Commission prohibit post-trade name give-up for anonymously traded cleared swaps.

**X. Vanguard believes the Commission should continue to permit pre-trade communication and flexible methods of execution for package transactions.**

Package transactions<sup>34</sup> are complex products that include components subject and not subject to the SEF trading mandate. Recognizing the impracticality of bifurcating pre-trade communication and trading

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<sup>30</sup> Proposal at 62023.

<sup>31</sup> Proposal at 62022.

<sup>32</sup> *Id.*

<sup>33</sup> *See*, Post-Trade Name Give-Up on Swap Execution Facilities, Request for Comment, 83 Fed. Reg. 61571 (Nov. 30, 2018).

<sup>34</sup> Proposal at 61988 (These transactions involve two or more counterparties and consist of two or more component transactions whose executions are (i) contingent upon one another, (ii) priced or quoted together as one economic transaction, and (iii) executed simultaneous or near simultaneous to each other.).

mandates for components that are contingent upon one another, the Commission seeks to codify some of the relief that currently applies to certain types of package transactions.<sup>35</sup>

Vanguard believes that the relief contemplated for in the Proposal stops short of providing package transactions with the necessary flexibility they require. Specifically, the Proposal does not address the ability to execute the full spectrum of package transactions through pre-trade communications. For example, in a package transaction that includes a Treasury component and a MAT component, market participants would be prohibited from trading the combination over-the-counter, and would have to trade the components separately, which would result in increased transaction costs and decreased efficiency in managing risk.

Further, the Proposal does not provide relief where at least one swap component is subject to the trading mandate and at least one other component is a futures contract. Current relief allows participants to execute the swap components off-SEF and the futures component through an Exchange for Related Position (“EFRP”).<sup>36</sup> Without maintaining the relief, such transactions could not be executed as a package and would also need to be split into individual components.

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We appreciate the opportunity to comment on the Commission’s Proposal. If you have any questions about Vanguard’s comments or would like any additional information, please contact William C. Thum, Principal, at (610) 503-9823 or [william\\_thum@vanguard.com](mailto:william_thum@vanguard.com).

Sincerely,

/s/ Gregory Davis  
Managing Director  
and Chief Investment Officer  
Vanguard

/s/ Joseph Brennan  
Managing Director  
and Chief Risk Officer  
Vanguard

cc: The Honorable J. Christopher Giancarlo  
The Honorable Brian D. Quintenz  
The Honorable Rostin Behnam  
The Honorable Dawn DeBerry Stump  
The Honorable Dan M. Berkovitz

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Commodity Futures Trading Commission

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<sup>35</sup> Proposal at 61987-61988.

<sup>36</sup> See generally, Proposal at 61987 – 61988 and n. 334, 339 (citing CFTC No Action Letter 17-55 (Oct. 31, 2017), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/17-55.pdf>).