March 2, 2020

VIA ELECTRONIC SUBMISSION

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

**Re: Post-Trade Name Give-Up on Swap Execution Facilities: Proposed Rule – RIN 3038-AE79**

Dear Mr. Kirkpatrick:

The Financial Services Forum (the "Forum")[1] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "Commission" or "CFTC") with comments on the Commission's proposed rule (the "Proposed Rule") relating to post-trade name give-up ("name give-up") on swap execution facilities ("SEFs").[2] The Proposed Rule would ban name give-up for swaps executed anonymously on a SEF that are intended to be cleared.

As we explain below, name give-up is not merely a post-trade process whose only legitimate purpose is to mitigate bilateral credit risk; instead, it is an integral part of how certain transactions are executed within a well-functioning market. As a trading protocol favored by a significant segment of the market, Order Book execution with name give-up promotes a more efficient swaps market that reduces costs and enhances liquidity for all market participants.

As shown by the data analysis we have provided in the Appendix to this letter, the majority of trading in swaps that are made available to trade ("MAT") occurs on request-for-quote ("RFQ") SEFs, which facilitate large trades and provide tight spreads. Order

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[1] The Financial Services Forum is an economic policy and advocacy organization whose members are the chief executive officers of the eight largest and most diversified financial institutions headquartered in the United States. Forum member institutions are a leading source of lending and investment in the United States and serve millions of consumers, businesses, investors, and communities throughout the country. The Forum promotes policies that support savings and investment, deep and liquid capital markets, a competitive global marketplace, and a sound financial system.

[2] 84 Fed. Reg. 72262 (Dec. 31, 2019).

Book SEFs, most of which are broker facilitated, hybrid voice/electronic platforms (not fully electronic platforms with continuous trade matching), in turn are used by dealers to hedge the risk that they accumulate by providing liquidity via RFQ. Dealers also use Order Book SEFs to hedge non-MAT swaps that they execute with clients off-SEF. Name give-up is a critical protocol on such Order Book SEFs; it allows dealers to execute trades using the workup trading protocol and evaluate and reduce hedging costs.

Eliminating such a useful tool would have a chilling effect on the liquidity that dealers provide, both on RFQ SEFs and off-SEF, including to commercial end users. Banning name give-up would also result in wider spreads in the swaps market given that dealers would be faced with increased hedging costs, a result that would be exacerbated if a final rule were passed at a time during which the market will be working to address the discontinuation of the London Interbank Offered Rate ("LIBOR"). We note in particular that commercial end users would be harmed by wider spreads and reduced liquidity but could receive no conceivable benefits considering that they do not trade in cleared swaps on SEFs.

In addition to these negative consequences that we expect would result if the Commission adopted a name give-up ban, we see no compelling relevant data cited to support the belief that the ban would attract sufficient additional non-dealer market participants to Order Book SEFs to outweigh these negative consequences. Non-dealer market participants can trade in fully anonymous Order Book SEFs today, but they do not. Instead, a name give-up ban seems likely to result in wider spreads and a diminution in overall market quality and resiliency.

There also is no compelling legal justification for banning name give-up—banning name give-up is not necessary to promote fair competition, privacy of swap data reporting, or impartial access. Instead, the ban would conflict with key provisions of the Commodity Exchange Act ("CEA"). As the Commission has already narrowed the execution methods by which MAT swaps can trade, banning name give-up would further be inconsistent with the flexible execution methods that Congress intended for SEFs.[3]

For these reasons, the Commission should not ban name give-up. If the Commission is still convinced that some form of market intervention is needed, then it should only consider less drastic, more incremental alternatives.

## *I. Name Give-Up Is An Integral Part of a Well-Functioning Market*

### *A. Clients Benefit From Tight Pricing and Stable Liquidity via RFQ SEFs[4]*

The current cleared swaps market structure provides for tight pricing and stable liquidity via RFQ SEFs. As one sign that the current market structure is efficiently working,

[3] CEA Section 1a(50).

[4] Part I.A addresses request for comment #10.

overall dealer revenues in the MAT swap market are low and declining[5] and clients have been the beneficiaries of this trend. Despite the fact that clients have access to RFQ SEFs and Order Book SEFs offering both name give-up and fully anonymous protocols, they choose to direct the vast majority of their trading to RFQ SEFs.[6] This is because, relative to Order Book SEFs, RFQ SEFs have proven to provide better pricing and the consistent ability to engage in larger trades without materially affecting prices.[7] The proportion of CDS and IRS executed on RFQ SEFs relative to Order Book SEFs has also increased over time.[8] Further, a large portion of trading in Order Book SEFs involves package transactions (primarily swap spreads, i.e., interest rate swaps traded as part of a package with Treasuries), whereas trading in RFQ SEFs is generally in outright swaps, and so trading on Order Book SEFs is not a substitute for trading on RFQ SEFs.[9]

### *B. Liquidity on RFQ SEFs and for Non-MAT Swaps Executed Off-SEF Is Supported by Hedging in Order Book SEFs Offering Name Give-Up[10]*

Dealers use Order Book SEFs primarily to hedge residual risk arising from client-facing business done over RFQ SEFs (as well as frequent business in non-MAT swaps done off-SEF, such as hedging a bespoke rate swap with a combination of swap spreads and other MAT swap transactions). Order Book SEFs do not typically offer a continuous limit order book with trade matching based on price/time priority or another algorithm; rather, due to the unique liquidity characteristics of swaps relative to other asset classes such as equities or futures, most Order Book SEFs exhibit a non-continuous, episodic trading environment that depends on brokers' discretion to source liquidity and match parties together, with name give-up being a key component of brokers' execution methods. Dealers have chosen these broker-facilitated Order Book SEFs that offer name give-up over fully anonymous SEFs for several reasons:

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5 Revenue generated from MAT swaps market activity relative to overall swaps revenue is generally marginal for Forum members who are swap dealers.

6 See Appendix A (demonstrating that (1) more than 90% of credit default swaps ("CDS") measured using notional are executed on RFQ SEFs; and (2) approximately 70% of interest rate swaps ("IRS") measured using notional are executed on RFQ SEFs).

7 Collin-Dufresne, P., et al., Market Structure and Transaction Costs of Index CDSs (Sept. 12, 2017) ("Collin-Dufresne") at 17, n. 30 (noting that, conditional on being capped, the average size of dealer-to-client trades is larger than the average size of dealer-to-dealer trades based on trading data gathered for two credit indices).

8 See Appendix A (demonstrating that (1) an average of 91.3% of CDS measured using notional traded on RFQ SEFs in 2019 (as compared to 85.4% in 2014); and (2) an average of 73.9% and 70.7% of IRS measured using notional and DV01, respectively, traded on RFQ SEFs in 2019 (as compared to 42.5% and 43.5% in 2014).

9 See Appendix A (demonstrating that 67% of Order Book SEF activity and only 2% of RFQ SEF activity was transacted as spreadover package transactions in 2019).

10 Part I.B addresses request for comment #8.

- **Name give-up is part of the workup execution protocol.**[11] Name give-up is not, as the Proposed Rule argued, an "ancillary post-trade protocol."[12] Instead it is an important part of the workup execution protocol, which allows counterparties to trade in larger volumes with less price distortion. Once two counterparties are matched in an Order Book SEF, the SEF may offer one of the parties the ability to increase the size of the trade with its original counterparty at the original execution price. However, whether or not that first party is willing to trade in a larger size with the original counterparty depends on who that original counterparty is. The first party will make an assessment based on whether or not such counterparty is likely to be able to execute on the full size that the first party is willing to offer and whether the counterparty might impose adverse selection costs on the first party upon knowing its trading interests, as discussed below. Following this private negotiation period, there may be a public period during which other SEF participants can trade at the price agreed by the two original transacting parties. However, the original transacting parties' full trading interest is not necessarily disclosed during this public period.

  According to one study, a material portion of the trading on CLOB SEFs is executed away from the Order Book via workup and matching protocols.[13] Also, because offering the workup protocol draws in more parties to use a SEF, it makes the SEF more vibrant overall even when participants do not intend to work up a given trade. Banning name give-up would, however, drastically impair the workup protocol, too. Given the extent to which the Commission already restricts execution methods for MAT swaps—solely to Order Book and RFQ methods—further restricting execution methods by banning name give-up and therefore impairing workups would be inconsistent with the CEA, which provides that SEFs may execute swaps activities "through any means of interstate commerce."[14] Banning name give-up merely because certain market participants prefer not to use it would also stifle innovation on SEFs more generally, as SEFs will be unwilling to expend resources on developing new protocols if there is a strong likelihood that the Commission will ban a protocol once it is disfavored by a group of market participants.

- **Name give-up helps manage adverse selection costs.** Over time, dealers also use name give-up to understand what types of market participants are generally trading on a particular Order Book SEF (e.g., other dealers, hedgers, long-term investors, or speculators). As a study cited by the Commission in the Proposed

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11 This bullet point addresses request for comment #6.

12 Proposed Rule, 84 Fed. Reg. at 72265.

13 Collin-Dufresne at 5.

14 CEA Section 1a(50).

Rule acknowledges, "speculators impose adverse selection [costs]."[15] Therefore, instead of facing a speculator on the other side of a trade, who is more likely to trade in the same direction on other venues or trade in one direction in a small size on one venue in order to push the price in a certain direction so that it can trade in the opposite direction on a different venue at a better price, dealers prefer to match with the natural other side of a trade (e.g., another dealer generally seeking to maintain a risk-neutral position). Such "naturals" are more likely to be hedging all their residual accumulated risk, rather than trading in a manner that would move the price in an unfavorable direction. Name give-up thus allows a dealer incrementally over time to calibrate which SEFs it hedges in so as to maximize the chances of trading with the natural other side and thus manage adverse selection costs. Without name give-up, dealers would have difficulty ascertaining the potential costs of hedging in a given SEF, and the resulting higher and less certain hedging costs would impair their ability to provide liquidity on RFQ platforms as well as off-SEF and therefore result in worse pricing for clients.

- **Name give-up makes RFQ pricing more tailored and efficient.**[16] The price that a dealer gives a client over RFQ depends on the costs of hedging the client-facing trade, which depends on the dealer's available liquidity to hedge on Order Book SEFs over time. The dealer's available liquidity depends in turn on whether the client will also be accessing that liquidity. For example, if a dealer receives an RFQ from someone the dealer has also seen trade frequently in Order Book SEFs, the dealer knows that it is more likely that the same RFQ requester will also be seeking liquidity in the Order Book SEFs and consequently reducing the liquidity available in the Order Book SEFs for the dealer's hedge. In contrast, an RFQ requester that does not trade in the Order Book SEFs is more likely to be requesting its full size from the dealer and the dealer will have greater access to liquidity in the Order Book SEFs to hedge. Name give-up allows a dealer, over time (not just at the point of execution), to more accurately assess its risk of providing balance sheet capacity to a particular client and determine how it should quote to the client in order to achieve the same desired return on capital for trading with that client as with another, e.g., by quoting a tighter price to the second RFQ requester than the first one.[17] Dealers evaluate whether RFQ requesters are trading in Order Book SEFs incrementally over time, not on a trade-by-trade basis. Banning name give-up would make it more difficult for dealers to make these evaluations, which would worsen prices on

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15 Lee, T. and Wang, C., Why Trade Over-the-Counter? When Investors Want Price Discrimination (2019 working paper) ("Lee and Wang") at 11.

16 This bullet point addresses request for comment #9.

17 Request for comment #7 implies that dealers allocate capital based on their counterparties on Order Book SEFs. In reality, dealers are allocating capital in the form of balance sheet capacity to clients via RFQ and then hedging the resulting risk on Order Book SEFs.

RFQ SEFs as dealers tend to price toward the lowest common denominator, i.e., the RFQ requesters trading most aggressively in other venues.[18]

- **Name give-up serves a crucial role for package transactions.** Package transactions, such as swap spreads, are a large component of the swap market, and a majority of the trading volume on Order Book SEFs involves package transactions. Name give-up allows for the effective execution of package transactions irrespective of whether both legs of a package transaction are cleared or not. For package transactions in which at least one leg involves a transaction that is not a cleared swap, name give-up still serves to address the bilateral credit risk associated with such leg. Further, even for package transactions where both legs are cleared, name give-up is still important given the fact that other types of instruments are not subject to pre-trade credit check requirements or *void ab initio*. Unless the trading venue for a non-swap instrument is itself a clearing and carrying firm, the transaction still needs to go through the other side's clearing and carrying firm. Clearly then, a name give-up ban could only ever apply to the cleared swap leg of a package transaction (especially considering that the Commission has no jurisdiction to regulate any non-swap legs).

As the foregoing illustrates, name give-up is not an anachronistic holdover from the uncleared swap markets that has no place in the cleared swap markets. Nor is name give-up an illegitimate device designed to screen out buy-side participation on Order Book SEFs: no one is prevented from trading on fully anonymous Order Book SEFs or Order Book SEFs with name give-up today. Proponents of a name give-up ban might argue that trading on fully anonymous Order Book SEFs is not profitable for non-dealers today because dealers refuse to trade there, instead protecting their revenues through name give-up, which deters competing liquidity providers on Order Book SEFs. However, this argument is based on a mistaken belief that most dealers are providing liquidity on Order Book SEFs with name give-up. Instead, they are mostly taking liquidity to hedge the liquidity they provide on RFQ SEFs and off-SEF. So, even if dealers moved their activity from Order Book SEFs with name give-up to Order Book SEFs with fully anonymous protocols, they would likely be looking to take liquidity for the most part on such SEFs, not provide it.

### *C. Banning Name Give-Up Would Harm the Swaps Markets[19]*

If the Commission banned name give-up, dealers would be faced with increased hedging costs, which would in turn result in wider spreads and less liquidity in the swaps

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[18] In response to request for comment #11, given the importance of name give-up to a dealer's hedging and because name give-up becomes even more critical for swaps that are less liquid, it is most important to retain name give-up for less liquid swaps. Generally, the less liquid a particular swap is, the more crucial it is to have market participants that are willing to accumulate balance sheet risk and manage such risk over time.

[19] Part I.C and Part II.A below address requests for comment #4, #5, and #13. In response to request for comment #3, because, as we note in Part I.C, dealers will reconsider the extent of their

market.[20] Banning name give-up would therefore cause dealers to reconsider the extent of their involvement in the MAT swaps market.

Additionally, limiting the availability of a useful execution protocol and driving away well-capitalized dealers with capacity to take risk on their balance sheets for clients may invite greater volatility and less deep and stable liquidity for clients, especially during stress events. Notably, these issues would affect the swap market generally—not just MAT swaps—because dealers frequently hedge in the MAT swap market when they provide clients with liquidity in non-MAT swaps, including even bespoke swaps.

If dealers lost the ability to hedge efficiently in the MAT swaps market, commercial end users would face pronounced negative impacts because they rely on their relationships with dealers to access the swaps market. Unlike hedge funds, asset managers and proprietary traders, commercial end users would not and frequently could not access the fully anonymous Order Book SEFs where the purported benefits of a name give-up ban might conceivably materialize.

Banning name give-up would not be a small regulatory change that aims to encourage liquidity with little risk of negative impact. It would drastically alter the swaps market configuration such that it can potentially lead to an exodus of dealer participation. Further, the timing of the Proposed Rule coincides with a time at which market participants are working to address the discontinuation of LIBOR. LIBOR transition will be a difficult time for the rates markets as liquidity will need to transition from LIBOR-based swaps, which remain the most liquid swaps in the market, to swaps based on new risk-free rates. This is not the time for the Commission to make potentially disruptive changes to rate swap market structure.

## *II. There Is No Compelling Justification for Banning Name Give-Up*

### *A. Name Give-Up Is Not the Reason Why Trading on Order Book SEFs Is Not More Robust, and Banning It Would Not Promote Trading on SEFs[21]*

Banning name give-up would amount to eliminating a trading protocol that a key segment of the market (dealers) is clearly dependent on in the <u>hopes</u> that another trading protocol, fully anonymous Order Books, will attract more liquidity even though it fails to do so today. The Proposed Rule purports that a name give-up ban will promote trading on SEFs.[22] This view assumes that (1) existing volume on Order Book SEFs will not

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participation in the MAT swaps market if name give-up were banned, a name give-up ban would reduce transparency and make the market more volatile.

20 <u>See, e.g.</u>, [SEFs] and Trade Execution Requirement, 83 Fed. Reg. 61946, 61995 (Nov. 30, 2018) ("dealers base their prices on the cost of hedging . . . in the dealer-to-dealer markets").

21 Part II.A responds to request for #12 and addresses why we do <u>not</u> believe additional liquidity providers will join affected SEFs post name give-up ban.

22 Proposed Rule, 84 Fed. Reg. at 72265.

diminish once a name give-up ban is in effect; (2) new market participants will trade on Order Book SEFs once name give-up is no longer allowed; and (3) the name give-up ban will have no effect on RFQ liquidity.

First, as described above, banning name give-up would impair workup protocols, increase adverse selection risk, and create challenges for package transactions, all making trading in Order Book SEFs less desirable for dealers. Dealers could adjust by reducing their need to hedge via Order Book SEFs, such as by relying more on offsetting client flows via RFQ or reducing liquidity provided to clients.

Second, in light of the fact that buy-side clients are not trading on available and operational Order Book SEFs offering fully anonymous protocols today, there is little reason to expect that a name give-up ban will lead them to trade on those Order Book SEFs. As noted above, the majority of trading in MAT swaps occurs on RFQ SEFs and involves outright swaps, with trading in swap spreads and other package transactions in Order Book SEFs used to hedge the risk that is accumulated by providing liquidity via RFQ. Thus, the two venues serve distinct functions, which explains the absence of trading on Order Book SEFs by buy-side clients. Additionally, RFQ SEFs are more attractive because they offer better pricing, greater market depth, and more reliable liquidity relative to Order Book SEFs of all sorts, both those offering name give-up and those offering fully anonymous protocols. We also note that in other markets that have more actively traded venues with fully anonymous protocols, such as the Treasuries market, buy-side clients still overwhelmingly choose RFQ venues.[23]

Further, there are several operational hurdles that many buy-side clients would need to address to trade in Order Book SEFs. As an initial matter, such additional market participants would need to establish a relationship with a futures commission merchant ("FCM") that is connected to the Order Book SEF and is willing to clear the full volume of a bundled trade at the asset manager level before it is allocated. Also, when an asset manager executes many smaller trades at different prices in the Order Book SEFs, there would need to be a process to take the average price of all those trades before the asset manager allocates trades to its clients (so some clients are not unfairly advantaged over others).[24] These infrastructure issues are not presented on RFQ SEFs, where the asset manager can execute a single trade on the full volume with a dealer at a single price and then have the FCM clear on an account-by-account basis. Additionally, credit hubs

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[23] McPartland, K., Treasury Traders Shy Away from Order Book, Greenwich Associates (Jan. 20, 2018), https://www.greenwich.com/blog/treasury-traders-shy-away-order-books (noting that 95% of buy-side participants in the Treasuries market do not trade on-the-run U.S. Treasuries via Order Book).

[24] See Keynote Address of Commissioner Dan M. Berkovitz at DerivCon 2019, New York, New York (Feb. 27, 2019), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaberkovitz2 ("Investment managers use average pricing, which is available in futures markets, to allocate trades to different funds under management. Average pricing is not available for many swaps traded on SEFs."); see also Remarks of Commissioner Dan M. Berkovitz at the Commodity Markets Council State of the Industry 2019 (Jan. 27, 2019), https://www.cftc.gov/PressRoom/SpeechesTestimony/opaberkovitz1.

would need to establish connectivity to Order Book SEFs so that FCM pre-trade credit checks can take place on those SEFs.

A name give-up ban also seems unlikely to attract non-dealer market makers (e.g., floor traders) to Order Book SEFs. Market makers seek to maintain a market neutral risk profile, without directional trading strategies. As such, it is not clear why name give-up would be a deterrent to these market makers trading on Order Book SEFs today. We think the more likely reason that they are not a large part of the market is that making markets in swaps is relatively more capital intensive than other asset classes, such as equities or futures, because swaps trade much less frequently and in larger size, thus necessitating maintaining larger inventory positions for longer periods. Relative to traditional dealers, non-dealer market makers tend to have less capital, maintain fewer positions overnight, and depend more on hedging quickly and efficiently in order to trade profitably. Unlike dealers, such other market makers also do not have business models that focus on relationship-based trading with the goal of profiting over a longer time horizon.

Finally, even if a name give-up ban did attract other liquidity sources to Order Book SEFs, which we consider unlikely, overall market quality is likely to suffer as well-capitalized dealers are deterred from trading on both Order Book and RFQ SEFs. For example, in the Treasuries market, high frequency trading ("HFT") firms tend to pull back liquidity relatively sooner compared to other market participants during periods of elevated volatility.[25] In contrast, dealers are better able to provide stable, reliable liquidity in the swaps market during periods of elevated volatility because they are better capitalized. This capability is especially important for swaps, given their episodic liquidity and larger average trade sizes.

We further note that analogies to the equities and futures markets are flawed. The swap markets have many fewer participants, much lower trading volume, far greater variation in tradeable products, and much larger typical trade sizes.[26] The swaps market also involves principal-based (as opposed to agency-based) trading, which is another reason why managing balance sheet capacity is more important in the swaps market than the equities or futures markets. Seeking to push the market towards anonymous all-to-all trading like in equities and futures—something that the Proposed Rule suggests is not one of its goals but would nonetheless be the result of further limiting execution protocols—is not appropriate for a market with these characteristics. In a market where the Commission has already restricted choice of execution method to RFQ and Order Book, further restricting choice would be especially problematic.

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[25] Salem, M., et al., Where Have All the Cowboys Gone? (Aug. 14, 2019); see also Jiang, G. J., et al., High-Frequency Trading in the U.S. Treasury Market: Liquidity and Price Efficiency Around Microeconomic News Announcements (Aug. 12, 2015) (finding that HFT activity has a negative impact on liquidity and widens spreads before major macroeconomic news announcements and lowers depth of the Order Book after announcements).

[26] See Giancarlo, J. C., Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank (Jan. 29, 2015) at 11.

### *B. Banning Name Give-Up Would Not Promote Fair Competition*

The Proposed Rule also cites the promotion of fair competition as a reason for banning name give-up.[27] But as noted above, Order Book SEFs with fully anonymous protocols exist today, and no one is prevented from using them. Nor is anyone forced to use Order Book SEFs with name give-up. Rather, the existing market structure promotes competition by providing market participants multiple protocols from which to choose depending on their business models and preferences. In this regard, we note that the CEA actually mandates that the Commission promote "responsible innovation and fair competition among . . . markets and market participants."[28] Contrary to what is argued in the Proposed Rule and by commenters, banning name give-up would itself impair competition (certainly, innovation and competition among markets) and unnecessarily push dealers to trade fully anonymously in order to access an Order Book SEF, despite their bona fide preference for name give-up.

The Commission further argues that banning name give-up would promote fair competition by reducing "information leakage"[29] However, what may be viewed as "information leakage" to a subset of buy-side firms and proprietary traders, is viewed by dealers as a mechanism that helps them offer clients better pricing. One commenter has argued that name give-up creates information asymmetries since in the current swaps market with name give-up, only dealers trade on all SEFs.[30] The reality, however, is that dealers merely provide, but do not access, pricing and liquidity on RFQ SEFs. In addition, non-dealers can RFQ multiple dealers and are free to access Order Book SEFs offering name give-up, which any market participant can join and observe pricing and executions even if they choose not to trade. Dealers, on the other hand, do not see each other's pricing on the RFQ platforms.

### *C. Name Give-Up on SEFs Is Unrelated to Swap Data Reporting Privacy*

The Proposed Rule argues that name give-up undermines the requirement that a swap data repository ("SDR") maintain the privacy of any and all swap transaction information that it receives from a swap dealer, counterparty, or any other registered entity.[31] However, name give-up is no more related to the SDR information privacy requirement than the RFQ trading protocol—in both instances the parties trading on a SEF choose to have their names disclosed. In contrast, because Commission rules mandate swap data

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27 Proposed Rule, 84 Fed. Reg. at 72265.

28 CEA Section 3(b).

29 Proposed Rule, 84 Fed. Reg. at 72266.

30 Letter from Laura Harper Powell, Associate General Counsel, Managed Funds Association, dated March 15, 2019 at 4.

31 Proposed Rule, 84 Fed. Reg. at 72266.

reporting, if an SDR (vs. a SEF) disclosed the parties' identities it would be forcing disclosure even when the parties do not choose to make it.

Further, CEA Section 21(c)(6) only imposes the privacy requirement on SDRs. Whether or not SEFs disclose parties' information when they voluntarily provide it does not affect or undermine the SDR's privacy obligations with respect to information market participants are required to provide. If Congress wanted to extend the privacy requirement to SEFs, it certainly would have done so. Given that Congress did not extend privacy requirements to SEFs, just because some market participants do not prefer to disclose their identifies via SEFs does not mean it is illegitimate for others to voluntarily choose to do so.

### *D. Banning Name Give-Up Would Not Be Consistent with Impartial Access*[32]

Although the Proposed Rule does not argue that name give-up violates impartial access, it argues that name give-up is inconsistent with the policy goals of impartial access, arguing that although the protocol is not discriminatory in isolation, it has "resulted in a discriminatory effect against certain market participants."[33] "Discriminatory effect" is an amorphous and potentially unbounded concept that could be used to justify nearly any market intervention to facilitate one segment's preferences over another's; it is nonsensical to argue that a venue is engaged in discrimination just because one group of market participants prefers not to use a protocol that the venue offers. Were such market participants to have no choice but to do so to access the market, then this would indeed be true. However, that is not the reality with name give-up because other choices exist.

Differently situated market participants each have different trading protocol preferences: some prefer RFQ, some prefer Order Book SEFs that offer name give-up, and some prefer Order Book SEFs offering fully anonymous protocols. Extending the logic that the Commission should ban one protocol because a subset of market participants do not like it, should the Commission ban RFQ because certain market participants prefer not to trade using RFQ? In our view, it is the name give-up ban that would be a discriminatory act because it would force dealers who wish to trade on Order Book SEFs to do so using fully anonymous protocols even when they prefer the name give-up protocol. Whereas today dealers and clients alike have choice among the types of Order Book SEFs on which to trade.

Further, the Proposed Rule argues that banning name give-up would advance another goal of impartial access, which is to allow additional liquidity providers to participate on SEFs.[34] However, as we describe above, not only will eliminating name give-up surely

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32 Part II.D addresses request for comment #1.

33 Proposed Rule, 84 Fed. Reg. at 72267.

34 Id.

push certain market participants that currently trade on Order Book SEFs to reconsider the extent of their trading, but there is also no evidence to demonstrate that alternative liquidity providers will start trading on Order Book SEFs that are fully anonymous. Therefore, prohibiting name give-up would not achieve the desired impartial access objective.

### *E. It Would Be Inappropriate to Ban Name Give-Up Beyond MAT Swaps, as Even for MAT Swaps, There Is No Sound Compelling Basis for the Ban*[35]

As noted above, name give-up is not merely an "ancillary post-trade protocol[,]"[36] but rather an integral component of execution methods for many Order Book SEFs. The Commission has not previously restricted execution methods for non-MAT swaps, so it would be inappropriate, and arguably outside of the Commission's authority, to extend any ban on name give-up beyond MAT swaps. Further, prior restrictions on execution methods for MAT swaps were designed to ensure that a particular trade order interacted with multiple potential counterparties in accordance with the SEF definition.[37] Whether name give-up exists or not has no bearing on this justification for restricting execution methods. Therefore, there is no compelling legal basis for banning name give-up.

## *III. To Satisfy Its Cost-Benefit Mandate, the Commission Must First Collect More Data*

### *A. The Commission's Cost-Benefit Analysis Does Not Support Banning Name Give-Up*

The cost-benefit analysis contained in the Proposed Rule is not sufficiently robust. For example, the Proposed Rule purports that "negative pricing effects on SEFs would be unlikely to result" from the ban on name give-up.[38] However, as discussed in Part I.C, banning name give-up would have a chilling effect on dealer liquidity and widen the spreads offered on those SEFs where nearly all non-dealer activity takes place today. Further, there are other costs that need to be taken into account, such as the potential negative effects on market quality and diversity as well as the potential for increased volatility and decreased stability, particularly during times of stress. Instead of considering such a wide range of potential costs, the Proposed Rule inappropriately narrowly focuses in on the potential effects on pricing.

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35 Part II.E addresses request for comment #2.

36 Proposed Rule, 84 Fed. Reg. at 72265.

37 CEA Section 1a(50) ("The term 'swap execution facility' means a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system").

38 Proposed Rule, 84 Fed. Reg. at 72269.

The only study cited by the Proposed Rule that actually studied the practice of name give-up in the swaps market does not point to positive results. Instead, it actually supports the position that liquidity would decrease overall because the study finds that a name give-up ban would decrease total volume and widen average spreads.[39] Otherwise, the Proposed Rule looks to studies that largely address markets that are not analogous to the swaps market, such as the cash equities market. Given the unique nature of the swaps markets, those studies cannot be relied upon heavily and certainly not without attempting to study the swaps market itself.

Additionally, the studies cited by the Proposed Rule point to mixed results, and even the studies that the Proposed Rule offers to support a name give-up ban are not compelling. For example, one of the studies cited by the Proposed Rule to support the idea that anonymous post-trade reporting improves quoted spreads, price impact, and limit order book depth only analyzed the effects of moving from multilateral to bilateral transparency (i.e., a move from fully disclosed protocols to revealing broker codes to only the counterparties to a particular trade).[40] This is not the same as studying a move from bilateral transparency to no transparency.

### *B. The Commission Cannot Justify a Name Give-Up Ban Without More Study*

We believe that a final rule banning name give-up should not be passed unless the Commission has proved that benefits of such a ban are reasonably expected to meaningfully exceed the potential costs, which we do not believe is the case. Accordingly, before adopting a final rule, the Commission should study further why market participants are not trading on fully anonymous Order Book SEFs. Such a study could help the Commission understand whether there are ways it could create conditions to make trading on anonymous Order Book SEFs attractive without completely eliminating Order Book SEFs offering a protocol that is currently viable and important to a segment of market participants. One component of such a study could entail studying why the Treasuries market organically evolved to fully anonymous trading without regulatory fiat. Perhaps such a study would reveal that there are characteristics of the Treasuries market (e.g., certain product characteristics or how certain market participants are regulated) which make fully anonymous trading attractive but which do not exist in the swaps market. The study should also analyze how the equities and futures markets developed to accommodate non-dealer liquidity providers in order to deal with the infrastructure and operational issues we flagged above in Part II.A.

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39 Lee and Wang at 26-27. Although this study finds that these changes might increase welfare in an absolute sense, that finding is based on increased welfare for speculators, at the expense of dealers and hedgers.

40 Dennis, P.J., and Sandas, P., Does Trading Anonymously Enhance Liquidity? (2019 working paper) at 5.

## *IV. The Commission Should Consider Less Drastic, More Incremental Alternatives*[41]

If the Commission is nonetheless still convinced that a ban on name give-up makes sense, it should consider certain intermediate measures instead of adopting an absolute ban. Below are more incremental measures that the Commission can take.

### *A. Require SEFs to Provide Fully Anonymous Order Books as an Option*

Instead of requiring Order Book SEFs to cease offering name give-up, the Commission could require every Order Book SEF that offers name give-up to design a method that would permit its participants to decide whether to opt out of name give-up, which could be through a parallel, fully anonymous Order Book or by allowing participants to opt-out of name give-up on an order-by-order basis. Consistent with a SEF's ability to conduct its activities "through any means of interstate commerce,"[42] this approach would help to preserve choice in the market and address the need for market participants to have the freedom to transact in the manner in which they wish to. At the same time, to the extent buy-side clients do not feel like they can access Order Book SEFs today without undesirable information leakage, this alternative would allow them to obtain such access fully anonymously.

### *B. Pilot Period*

Instead of passing a final rule to ban name give-up in order to study the counterfactual (i.e., a MAT swaps market without the name give-up protocol),[43] one alternative would be to provide for a pilot period for the name give-up ban. Currently, there is no real data to support what the potential effects of a name give-up ban on the swaps market would be. Once a name give-up ban is imposed, it will not be so easy to reverse it. Not only will the Commission have to go through another rulemaking process to reverse the ban, but after the ban is imposed, market participants will make changes to their trading practices, the businesses they invest in, and the systems they use, none of which are easily reversible. A pilot period, during which name give-up is banned for some but not all MAT swaps, will allow the Commission to collect data on the counterfactual, instead of relying on speculation regarding the effects of a ban. Given the temporary nature of a pilot program, market participants would not necessarily make wholesale changes to their market behavior, and the Commission could easily terminate the pilot or let the pilot expire if the name give-up ban turns out to be detrimental to the swaps market.

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41 Part IV addresses request for comment #17.

42 CEA Section 1a(50).

43 See, e.g., CFTC to Hold an Open Commission Meeting on December 10, YouTube (Dec. 19, 2019), https://www.youtube.com/watch?v=CUy97DkydxU (Commissioner Berkovitz asks, "How would there be data on something that doesn't exist?") (Chairman Tarbert later notes, "We're dealing with a counterfactual here . . . we'll obviously study [the final rule once it is finalized] to consider . . . what the effects are.").

### *C. Adopt Appropriate Exclusions from the Ban*

If the Commission decides to go beyond the more incremental alternatives described above by adopting an outright ban on name give-up, then it should adopt appropriate exclusions from the ban to limit the ban's adverse effects. These exclusions should cover:

- **SEFs Offering Workup Protocols.** As explained in Part I, name give-up is an integral part of workup protocols, which greatly benefit the market. To avoid the collateral damage of drastically impairing workup protocols, the Commission should exclude a SEF from the name give-up ban if a material portion of the SEF's trading volume (measured using DV01 or notional, as appropriate depending on the type of swap), over a specified period is executed via workup, subject to (1) a reevaluation period if the SEF falls below the threshold by a reasonable amount, with the SEF remaining eligible for the exception so long as it exceeded the threshold by the end of the reevaluation period, and (2) a transition period before a SEF must implement the name give-up ban after either the SEF falls below the threshold at the end of the reevaluation period or falls below the threshold by an amount that makes the SEF ineligible for the reevaluation period. Such a materiality threshold would ensure that workup is a meaningful component of the SEF's offering, not a pretext for retaining name give-up. We think this approach would be preferable to a trade-by-trade exception for workups because it is not possible to know in advance, before name give-up, whether the parties will engage in workup.

- **Package Transactions.**[44] In light of the importance of name give-up to the effective execution of package transactions as discussed in Part I, a name give-up ban should not apply to any package transaction any component of which is not a cleared swap.

- **Error Corrections.**[45] When a swap is rejected from clearing due to an operational or clerical error, name give-up will remain necessary for the parties to communicate with each other to correct the error. This is especially the case in connection with error corrections supervised by a SEF on an *ex post facto* basis as contemplated by recent Commission no-action relief and rulemakings.[46]

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44 This discussion regarding package transactions addresses requests for comment #14 and #15.

45 This bullet point addresses request for comment #16.

46 See CFTC No-Action Letter No. 20-01 (Jan. 8, 2020); [SEF] Requirements and Real-Time Reporting Requirements, 85 Fed. Reg. 9407 (Feb. 19, 2020). Name give-up also helps manage the risk of the rare instances where credit concerns might cause a trade to fail to clear and thus become void *ab initio*; for example, in a "Lehman"-like scenario where a market participant, whether a proprietary trader or FCM clearing for clients, might for credit reasons lose access to clearing organizations, name give-up helps those matched with such a participant understand the greater risk that the clearing organization might reject that trade. Knowing this, the counterparties to such a participant might seek out alternative liquidity. We note that the Commission's straight-

* * *

As the foregoing illustrates, we are certain that prohibiting name give-up will have negative effects on the swaps market, which we hope the Commission will consider before it finalizes the Proposed Rule.

If you have any questions concerning our comments, please feel free to contact the undersigned (KFromer@fsforum.com). The Forum welcomes the opportunity to discuss these issues further with the Commission and its staff.

Respectfully submitted,

Kevin Fromer
President and Chief Executive Officer
Financial Services Forum

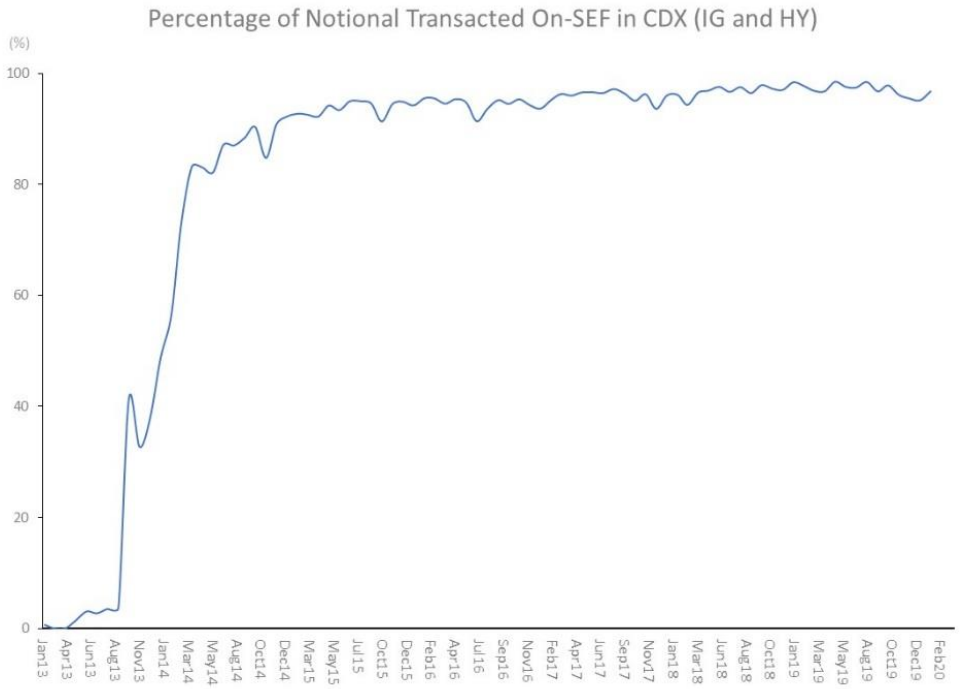
through-processing rules do not guard against this scenario because they do not require clearing organizations to conduct pre-trade credit checks.

## Appendix: Data[47]

(1) Volume Related Data.

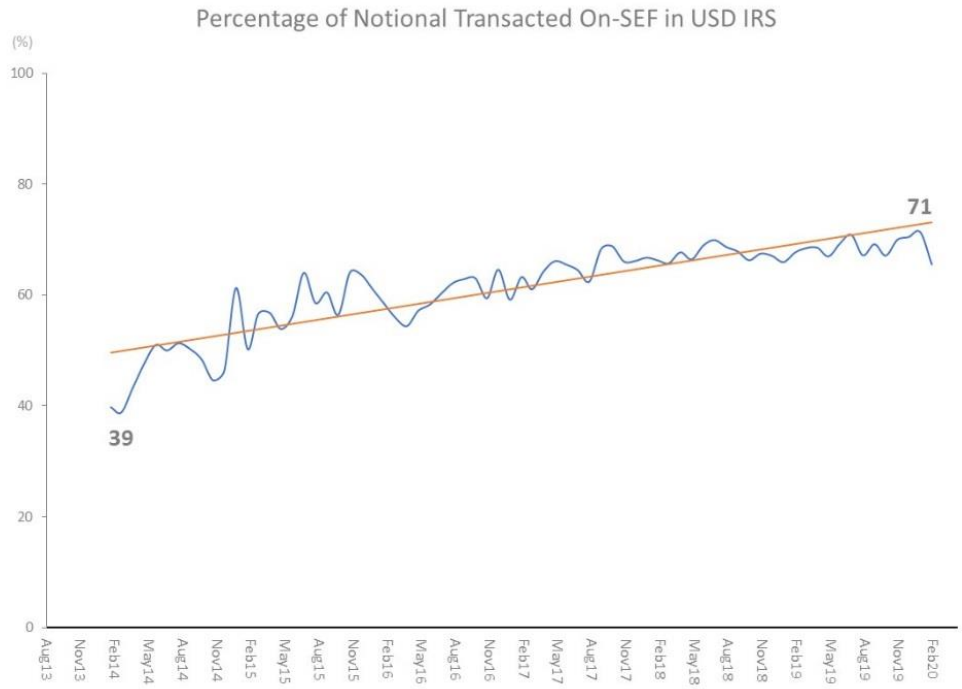
- ***Adoption of SEF trading is occurring with volumes trading on SEFs increasing over time and trading on RFQ SEFs growing far more rapidly than trading on Order Book SEFs***.

    - CDS: As shown below, over $6.4 trillion notional executed on SEF in 2019, which represents almost all of the market's volume and a 62% increase relative to 2014.




[47] All information provided herein has been derived from data provided by Clarus Financial Technology (clarusft.com) and Bloomberg.

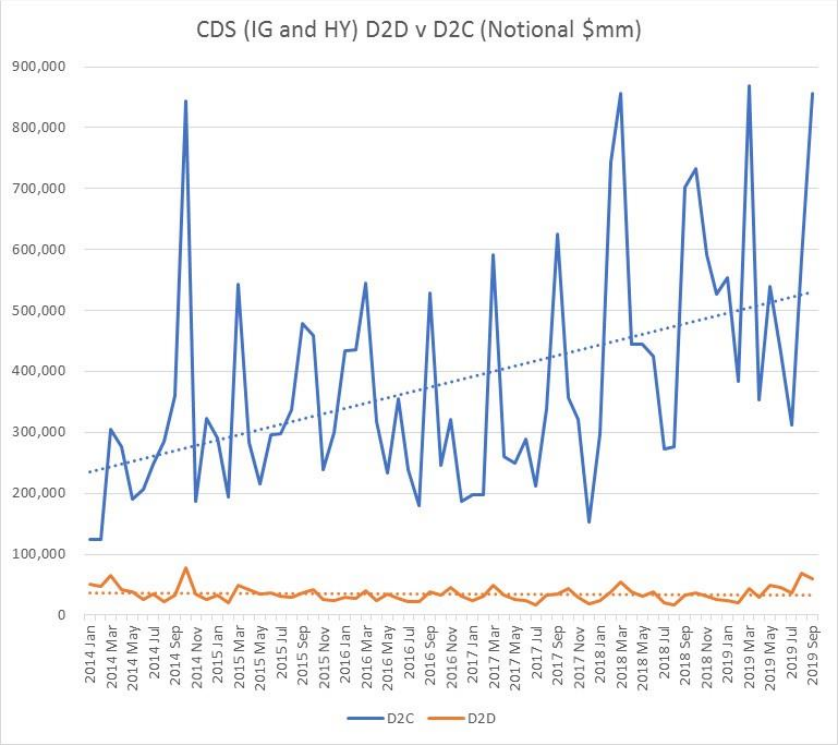
- IRS: As shown below, the off-SEF market is shrinking, with over $33.1 trillion notional ($17 billion of risk (DV01)) executed on SEF in 2019, which represents over 70% of the market. It also represents a 127% increase in notional and 111% increase in DV01 relative to 2014.



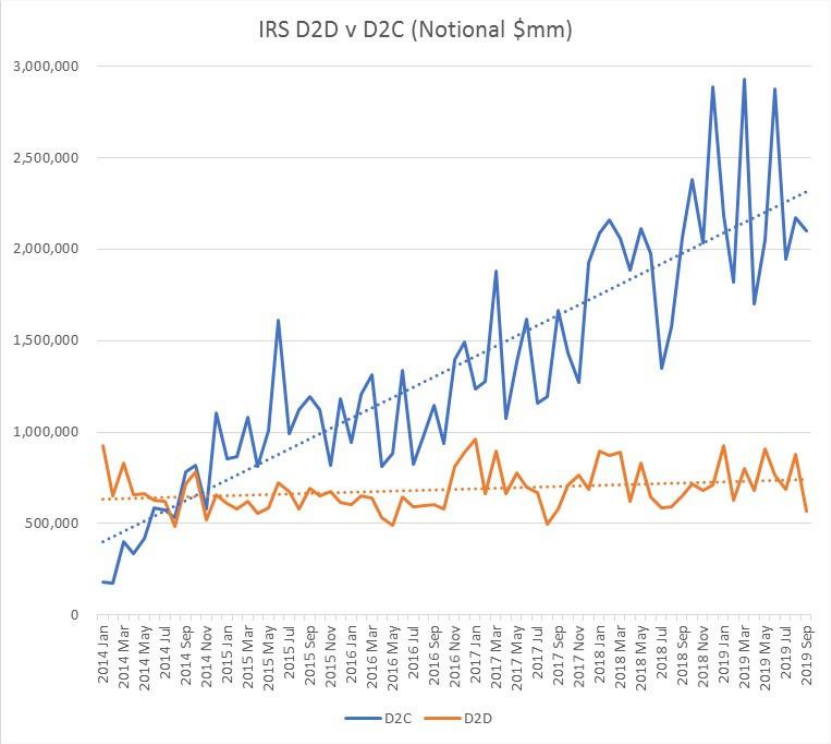
- ***There is not a large pool of liquidity that is not being accessed by buy-side market participants.***

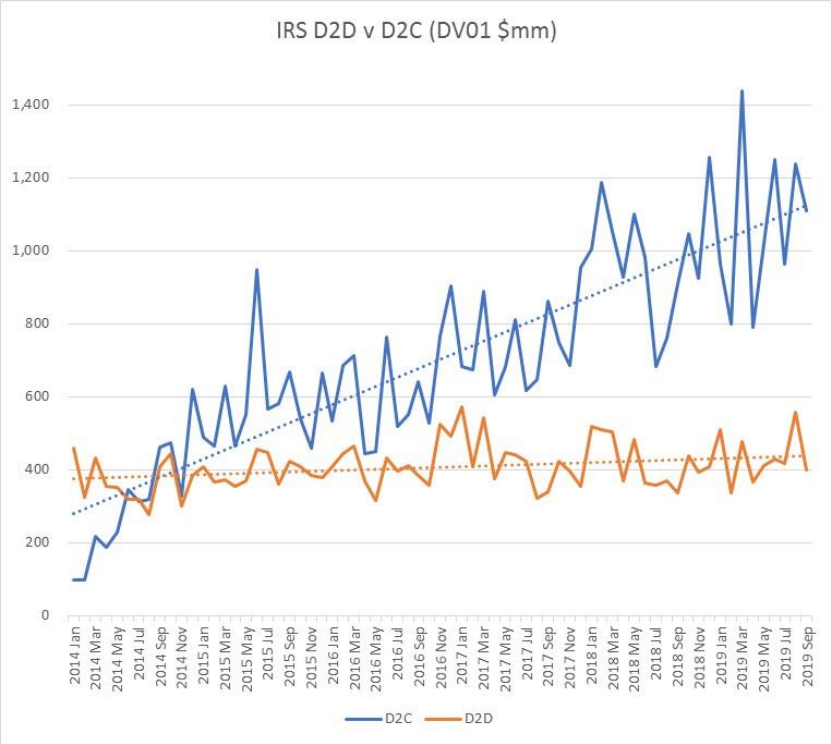
    - In particular, CDS trading on Order Book SEFs is and has been a small proportion (less than 10%) and IRS trading on Order Book SEFs is similarly a small proportion (approximately 30%), with the proportion of trading on RFQ SEFs growing.

        - CDS: As shown below, in 2019, an average of 91.3% of notional traded on RFQ SEFs (as compared to 85.4% in 2014).



- IRS: As shown below, in 2019, an average of 73.9% of notional and 70.7% of DV01 traded on RFQ SEFs (as compared to 42.5% and 43.5%, respectively, in 2014).



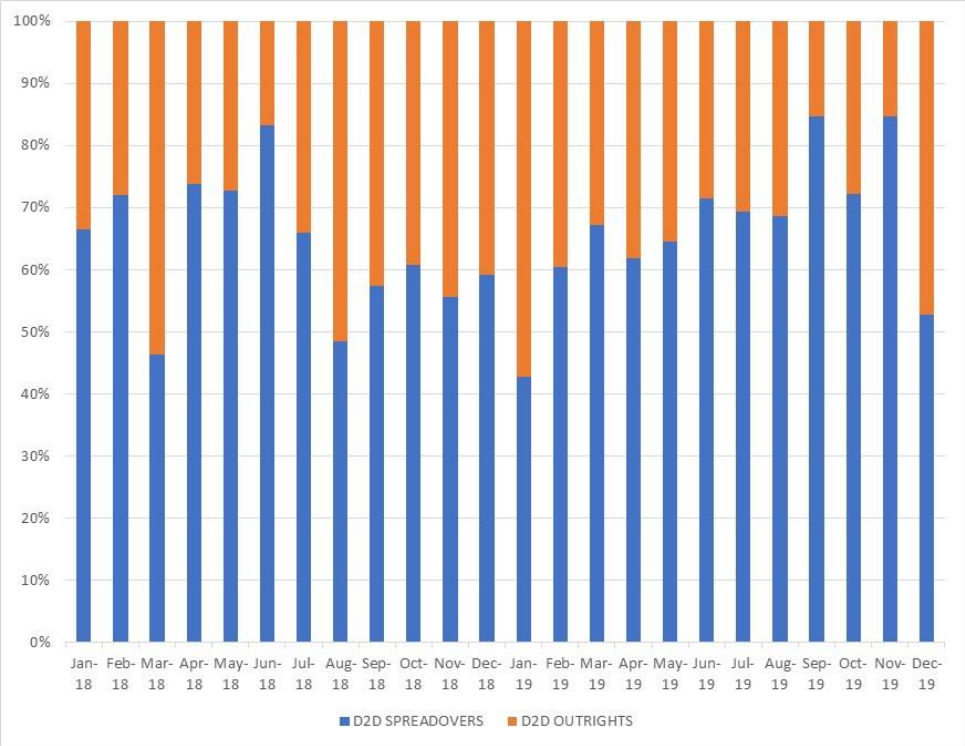



(2) Product Type Data.

- ***The IRS products executed on Order Book SEFs and RFQ SEFs are very different. Given these product differences, while it is unclear that there would be material buy-side demand to participate in Order Book IRS activity, it is clear that disrupting this market would have a large impact.***

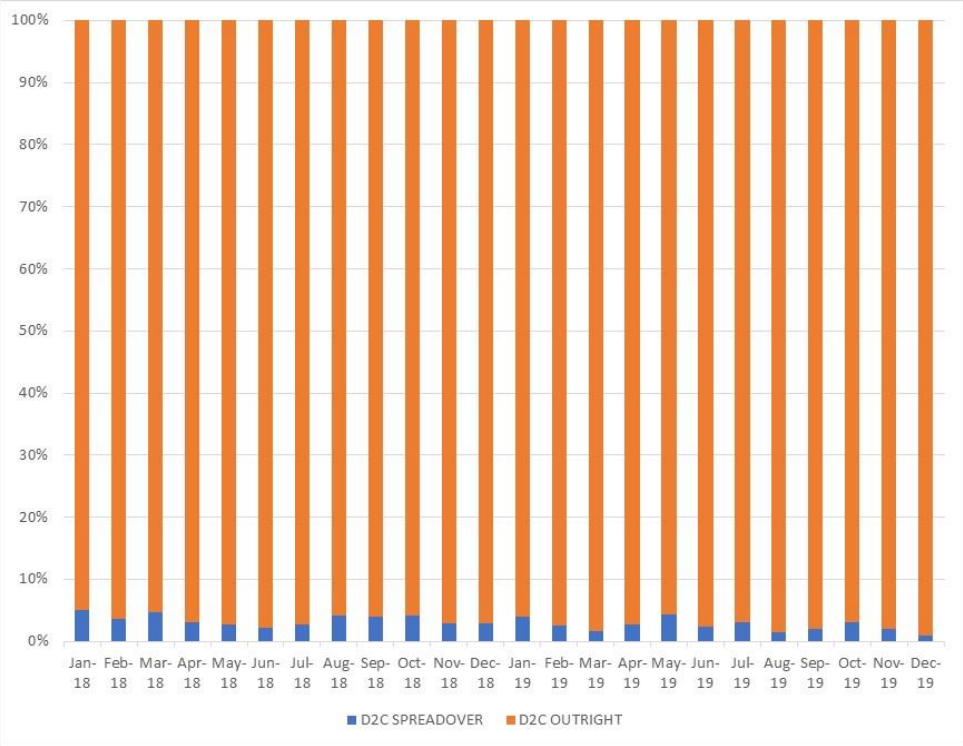
    - As shown below, 67% of all Order Book SEF risk in IRS was transacted as spreadover[48] package transactions during 2019 whereas just 2% of RFQ SEF activity in IRS was in spreadover package transactions. As also shown below, in certain months, spreadover package transactions accounted for 85% of all IRS activity on Order Book SEFs in 2019.

Order Book SEF:

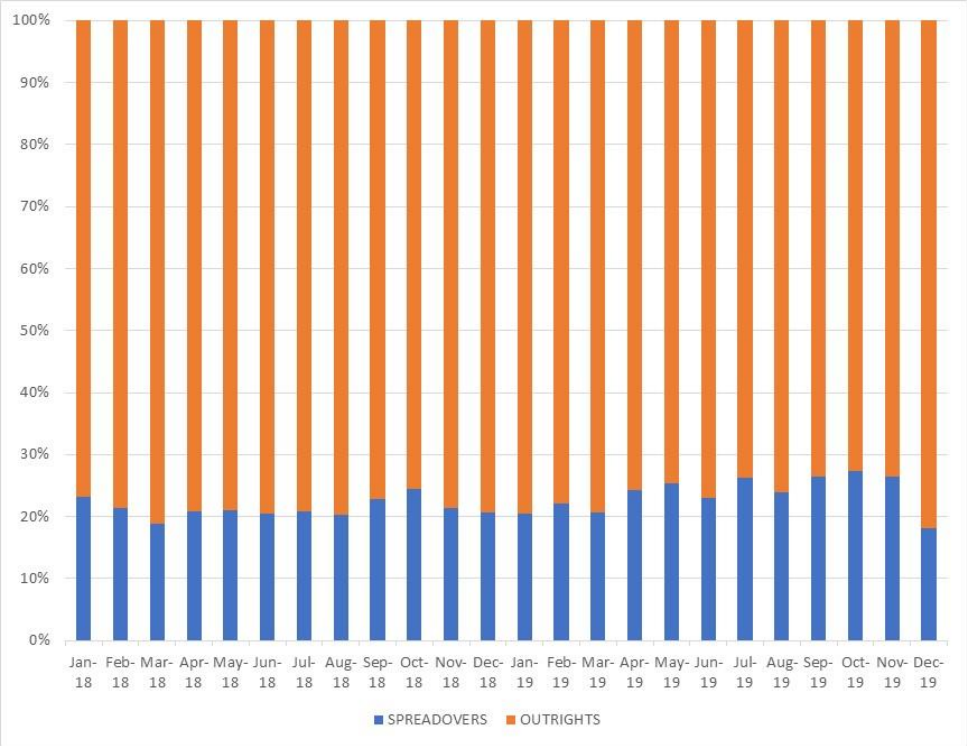



[48] A spreadover is defined as a spot starting USD swap with standard semi-bond conventions (3m Libor vs. fixed leg of 30/360 semi-annual payments). It has a benchmark maturity date (exactly 5y, 10y, 30y, etc. from spot) and is cleared at a central counterparty. The swap is transacted in conjunction with an on-the-run US Treasury bond of appropriate benchmark maturity.

RFQ SEF:

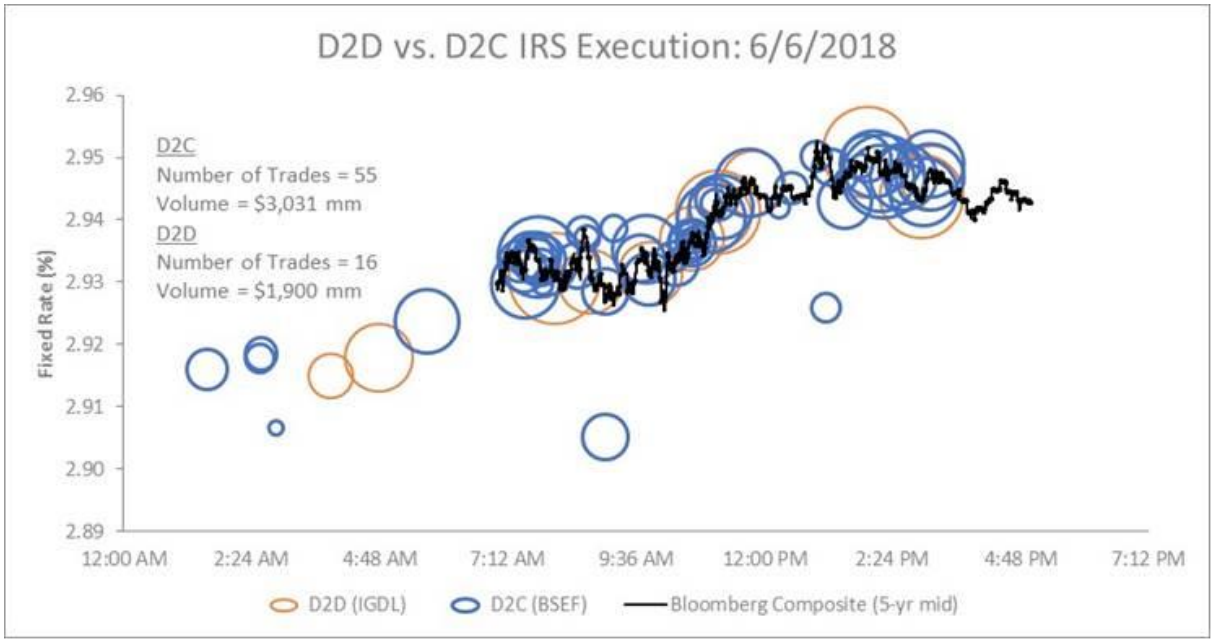

100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Jan-18
Feb-18
Mar-18
Apr-18
May-18
Jun-18
Jul-18
Aug-18
Sep-18
Oct-18
Nov-18
Dec-18
Jan-19
Feb-19
Mar-19
Apr-19
May-19
Jun-19
Jul-19
Aug-19
Sep-19
Oct-19
Nov-19
Dec-19
D2C SPREADOVER
D2C OUTRIGHT

- As shown below, for the market overall, spreadover package transactions made up 24% of all IRS SEF activity in 2019.

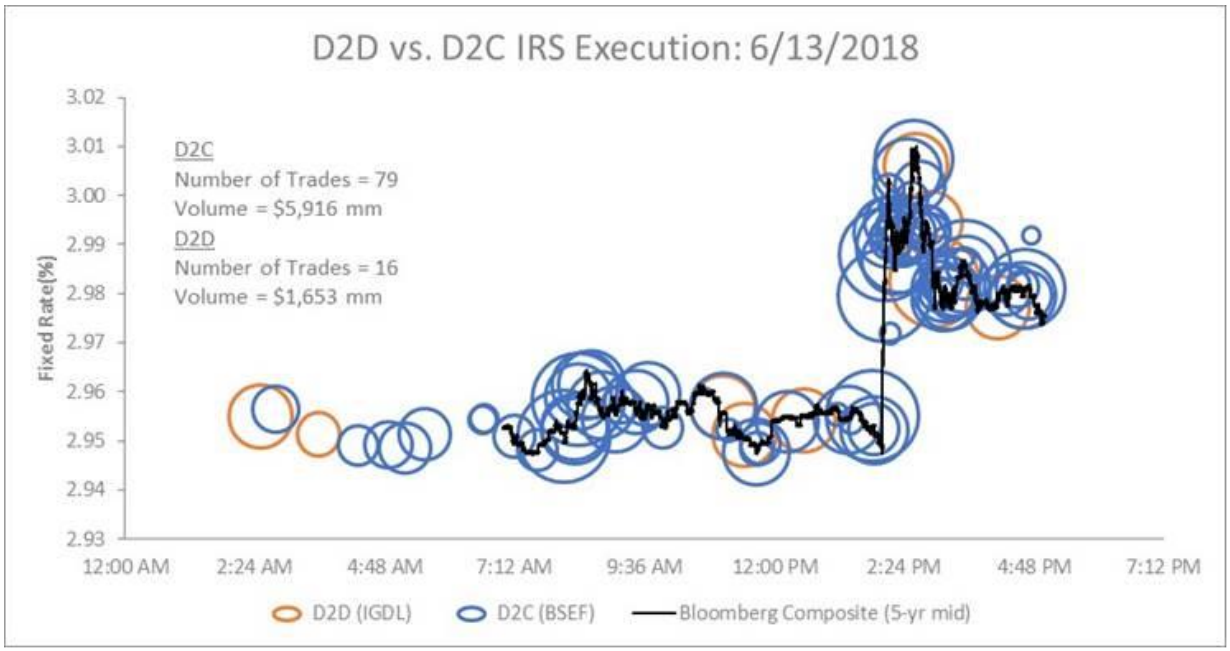


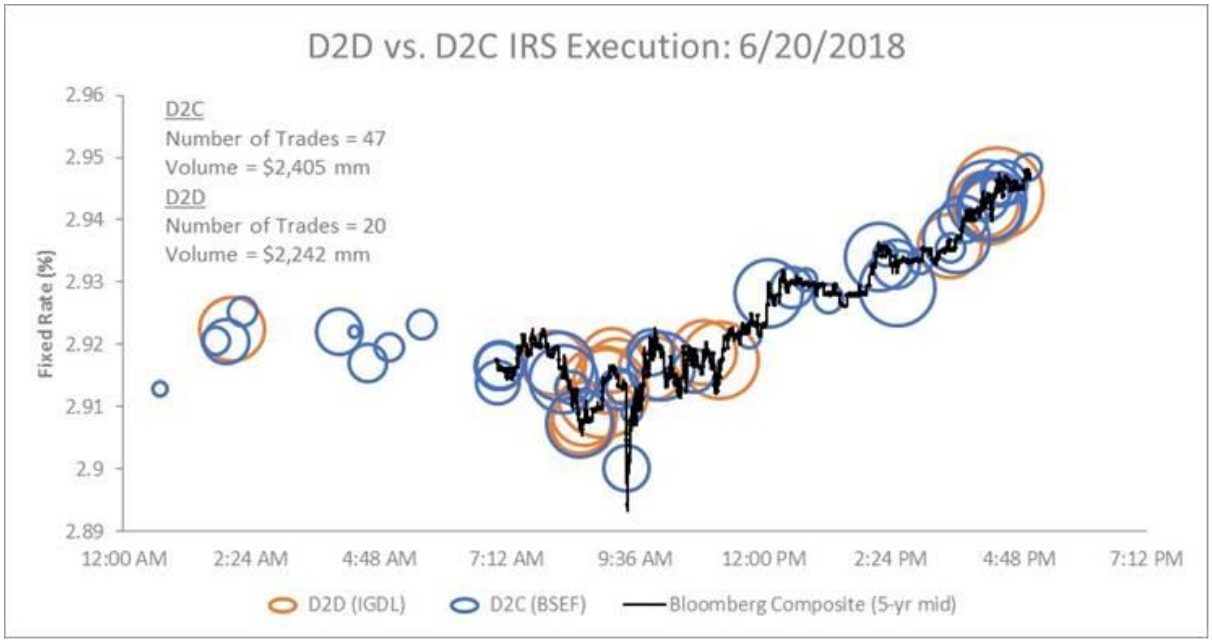
(3) Price Related Data[49].

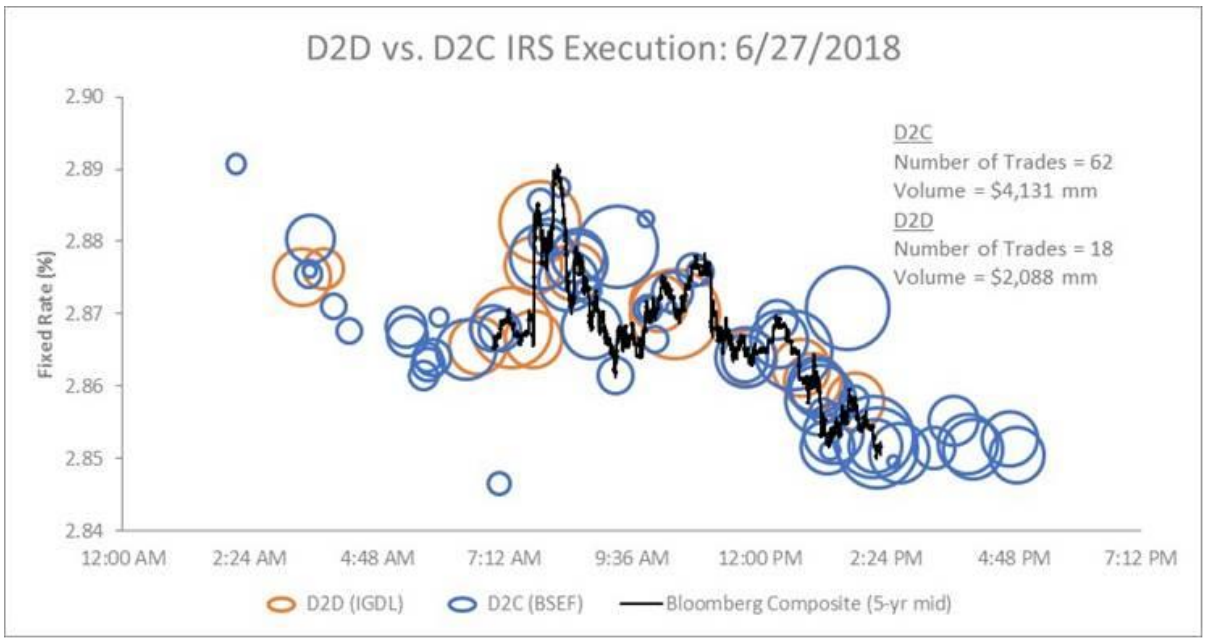
- ***Executions are highly comparable for products that trade in both the RFQ SEFs and the Order Book SEFs with higher volumes and generally larger trade sizes on RFQ SEFs. Comparisons to the Bloomberg Composite show that dealer-to-client ("D2C") executions on RFQ SEFs do not occur at rates that are generally further away from the Bloomberg Composite than do dealer-to-dealer ("D2D") executions on Order Book SEFs while trade volumes are also appreciably larger on D2C than D2D venues.***




[49] The bubble charts show the time (x-axis) and executed rate (y-axis) for vanilla spot-starting 5Y USD IRS swaps executed on the Bloomberg SEF (a D2C RFQ venue, "BSEF") and the ICAP SEF (a D2D venue, "IGDL") during four consecutive Wednesdays in June of 2018. The size of the "bubbles" on the charts for the BSEF and IGDL data represents the notional size of the individual transactions. The black line denotes the Bloomberg Composite. The time-period in 2018 was chosen for this analysis because the Bloomberg SDR ("BSDR") ceased operating after August 10, 2018. Accordingly, prior to August 10, 2018, D2C transactions could be identified for a portion of the SDR public data (the portion covered by BSDR reporting). D2D data from IGDL was provided by ICAP.


D2D vs. D2C IRS Execution: 6/13/2018
D2C
Number of Trades = 79
Volume = $5,916 mm
D2D
Number of Trades = 16
Volume = $1,653 mm
Fixed Rate(%)
3.02
3.01
3.00
2.99
2.98
2.97
2.96
2.95
2.94
2.93
12:00 AM
2:24 AM
4:48 AM
7:12 AM
9:36 AM
12:00 PM
2:24 PM
4:48 PM
7:12 PM
D2D (IGDL)
D2C (BSEF)
Bloomberg Composite (5-yr mid)


D2D vs. D2C IRS Execution: 6/20/2018
D2C
Number of Trades = 47
Volume = $2,405 mm
D2D
Number of Trades = 20
Volume = $2,242 mm
Fixed Rate (%)
2.96
2.95
2.94
2.93
2.92
2.91
2.9
2.89
12:00 AM
2:24 AM
4:48 AM
7:12 AM
9:36 AM
12:00 PM
2:24 PM
4:48 PM
7:12 PM
D2D (IGDL)
D2C (BSEF)
Bloomberg Composite (5-yr mid)


D2D vs. D2C IRS Execution: 6/27/2018
Fixed Rate (%)
2.90
2.89
2.88
2.87
2.86
2.85
2.84
12:00 AM
2:24 AM
4:48 AM
7:12 AM
9:36 AM
12:00 PM
2:24 PM
4:48 PM
7:12 PM
D2C
Number of Trades = 62
Volume = $4,131 mm
D2D
Number of Trades = 18
Volume = $2,088 mm
D2D (IGDL)
D2C (BSEF)
Bloomberg Composite (5-yr mid)