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Mr. Christopher Kirkpatrick
Secretary
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
RIN 3038-AE79, 84 Fed. Reg. 72262 (Dec. 31, 2019)

Dear Mr. Kirkpatrick:

ICAP Global Derivatives Limited ("IGDL") and tpSEF, Inc. ("tpSEF") (collectively the "TP ICAP SEFs") welcome the opportunity to provide the Commodity Futures Trading Commission (the "Commission") with comments on the Commission's proposal to adopt new Rule 37.9(d), which would prohibit post-trade name give-up practices on Swap Execution Facilities ("SEFs") (the "Proposal" or the "Proposed Rule").[1] We appreciate the Commission's careful review of comments prior to finalizing any rule, specifically where the rule may have unintended negative consequences to the orderly functioning of the current markets.

## I. TP ICAP Background and Summary

The TP ICAP SEFs operate globally and offer execution services across all five major asset classes: rates; credit; foreign exchange ("FX"); commodities; and equities. The TP ICAP SEFs are part of TP ICAP Group ("TP ICAP"). With offices in 24 countries, TP ICAP is one of the world's leading providers in the intermediation of investment, cash and risk management products. TP ICAP brings participants in the world's markets together and enables them to execute trades successfully and run their businesses with greater certainty and lower risks. Companies in TP ICAP operate a variety of voice, hybrid, electronic, volume matching, algorithmic matching and risk mitigation platforms.

As discussed in detail below, the TP ICAP SEFs believe that the scope of the Proposal is too broad, specifically as applied to intended to be cleared swaps. Additionally, the TP ICAP SEFs disagree with certain aspects of the Proposal that may have the unintended consequence of disrupting well-functioning SEF transaction flow, particularly for package transactions. Finally, the Proposed Rule may threaten existing liquidity on SEFs and may result in a shift of liquidity

[1] Post-Trade Name Give-Up on Swap Execution Facilities, 84 Fed. Reg. 72262 (Dec. 31, 2019). We refer to post-trade name give-up practices as "Name Give-Up" in this letter.

off-SEF and to offshore platforms. At the outset it is important to note that the Proposal will only impact the Dealer-to-Dealer SEFs. As such, we believe the Commission should permit markets to develop organically rather than attempt to force such development via regulatory fiat, particularly in view of the numerous no-action letters that had to be issued following finalization of the current SEF rules and the unintended negative impact to the markets resulting from those rules.

## II. Prohibiting Name Give-Up For Intended to Be Cleared Transactions Is Too Broad

The scope of the Proposed Rule is too broad because it includes all cleared swaps. Currently, intended to be cleared swaps that are not part of the Commission's clearing mandate make up a significant portion of the swaps cleared in the U.S. - these swaps are voluntarily cleared.[2] Indeed, TP ICAP SEFs understand that, quite often, the intention to clear a voluntarily cleared swap is not communicated to the SEF prior to execution. Rather, the counterparties to such swaps often submit the swap to clearing themselves post-execution. As such, it would be difficult, if not impossible, to impose a restriction on the disclosure of counterparty identity post-execution when it is not known whether the transaction will be submitted for clearing.

Additionally, if the counterparties to such a swap decide not to submit the swap to clearing, then counterparty identities must be disclosed to avoid any potential credit issues. Therefore, to the extent the Commission does impose a prohibition on Name Give-Up for cleared swaps anonymously executed on a SEF, it should limit any such prohibition to mandatorily cleared swaps.[3] The Commission should not apply a prohibition on Name Give-Up on intended to be cleared or voluntarily cleared swaps that may be voluntarily submitted for clearing by the counterparties to a transaction post-execution on a SEF.

Finally, the proposed broad prohibition does not accommodate the necessity of Name Give-Up in transactions that are executed and cleared across time zones. To illustrate, LCH SwapClear closes at Midnight London Time (19:00 New York Time) and does not open again until 04:00 London Time (23:00 New York Time). This time period encompasses much of the trading day in Asia. Thus, transactions executed in Asian markets, or that involve Asian-market counterparties, during these hours must be executed on a fully disclosed bilateral basis and will remain bilateral until the clearing house system reopens, which may be after a weekend or a holiday. During this time, Name Give-Up would be necessary for the parties to manage counterparty credit risk until the trade can be submitted to the clearing house.

## III. Name Give-Up Should Not Be Prohibited For Package Transactions

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[2] *See* CFTC Rule 50.4 (Classes of swaps required to be cleared); 17 CFR § 50.4. Only certain interest rate swaps ("IRS") and credit default swaps ("CDS") are currently subject to the clearing mandate in the U.S. Many other products are voluntarily cleared and such clearing has increased in recent years. The prohibition on Name Give-Up may circumvent other established processes for mandating certain requirements on a given class of swaps. In addition, market participants may choose to not clear certain swaps and trade them off-SEF if Name Give-Up is prohibited.

[3] Of course, the TP ICAP SEFs do not believe any prohibition on Name Give-Up is necessary in the first instance as discussed below.

As a general matter, a package transaction is a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; and (3) where the execution of each component is contingent upon the execution of all other components.[4]

Package transactions may involve swaps that have been "made available to trade" ("MAT") along with various permitted instruments, and may take various forms, all of which may be executed on a SEF. Some of the package types include MAT/MAT Cleared Packages; MAT/Non-MAT Cleared Packages; MAT/Non-MAT Uncleared Packages; and U.S. Dollar ("USD") Swap Spreads, or U.S. Treasury Spreads.

Package transactions executed on SEFs often account for a fair amount of the overall transaction volume. By way of example, we understand that between January 1, 2019 and December 31, 2019, nearly 70% of U.S. Dollar interest rate swap transactions executed on Dealer-to-Dealer SEFs were U.S. Treasury swap spreads.[5] Only a small percentage (we estimate less than 5%) of transactions effected on Dealer-to-Dealer SEFs are outright swaps.[6] By way of further example, for package transactions involving USD interest rate derivatives, during a typical 6 month period we have observed the following:

- Approximately 25% of Interest Rate Swaps are part of a package transactions (U.S. Treasury swap spreads make up the majority);
- Approximately 10% of Interest Rate Options are part of a package transaction;
- Approximately 20% of Overnight Index Swaps ("OIS") are part of a package transaction;
- Approximately 15% of Basis Swaps are part of a package transaction;
- Approximately 60% of Forward Rate Agreements ("FRAs") are part of a package transaction;
- Approximately 50% of Inflation Swaps are part of a package transaction; and
- Approximately 55% of Cross-Currency Basis Swaps are part of a package transaction.

[4] *See, e.g.*, IGDL Rulebook, Definitions (CFTC Package Transaction).
[5] *See also* Statement of Commissioner Dan M. Berkovitz on Amendments to Certain Swap Execution Facility Requirements and Real-Time Reporting Requirements ("For example, U.S. Dollar Spreadover package transactions account for nearly seventy percent of interest rate swaps trading in the inter-dealer swap market. No-action letters for these package transactions have expired and market participants now actively trade the swap component of these packages through required methods of trading.").
[6] By comparison, we understand that approximately 60% of the swaps traded on Dealer-to-Customer SEFs are outrights, meaning the products traded on a Dealer-to-Customer SEF differ materially from those on Dealer-to-Dealer SEFs.

As the foregoing demonstrates, a significant portion of the swaps transacted on Dealer-to-Dealer SEFs are part of a package transaction that necessitate disclosure of the counterparty identities. For example, for USD Swap Spreads the counterparties to the swap component exchange the U.S. Treasury bilaterally away from the SEF so disclosure is needed in order to consummate the transaction. In addition, transactions involving a MAT swap component and a Non-MAT Uncleared swap component require disclosure in order to consummate the transaction and avoid potential counterparty credit issues. As such, there should be no prohibition on Name Give-Up for package transactions where any component of the transaction is not MAT.[7]

## IV. Prohibiting Name Give-Up May Shift Liquidity Off-SEF and to Offshore Platforms

To the extent the Commission prohibits Name Give-Up on SEFs, market participants may seek out platforms where Name Give-Up is permitted. In addition, there could be a shift of liquidity from U.S. markets to offshore markets that permit Name Give-Up.

Prior Commission action through its cross-border guidance has resulted in market fragmentation and the prohibition on Name Give-Up may further exacerbate such fragmentation.[8] In addition, it is unclear from the Proposal how Name Give-Up on multilateral trading facilities ("MTFs") and organised trading facilities ("OTFs") that have been granted an exemption from SEF registration by the Commission would be treated going forward. In other words, it would be an odd result to prohibit Name Give-Up on SEFs and have exempt MTFs and OTFs that can permit Name Give-Up.

In short, to the extent market participants prefer to operate in a Name Give-Up environment, the Proposal would provide an impetus for such market participants to transition their liquidity from SEF to offshore venues where there is no prohibition on Name Give-Up, a result that would be inconsistent with the intent to promote SEF liquidity and SEF trading.

## V. Prohibiting Name Give-Up Will Not Alter How Swap Liquidity Is Provided

The Proposal notes that some market participants contend that prohibiting Name Give-Up "will promote greater participation and competition in the swaps market, thereby potentially improving swap liquidity" and "increase swap liquidity by diversifying the pool of SEF participants to include new liquidity providers."[9] However, the market participants that advance this argument are not liquidity providers, but rather liquidity takers fulfilling investor needs, which is the antithesis of a liquidity provider. This argument fails to acknowledge that a well-functioning market with liquidity needs Swap Dealers as liquidity providers that stand ready to make a market in a swap when requested by a buy-side or end-user market participant. The prohibition on Name Give-Up will not change this fundamental tenet of market structure. Further, Name Give-Up is not restricting new liquidity providers, commonly referred to as "proprietary trading firms" from entering the market or trading more. Rather, it would seem that the regulatory burdens of Swap

[7] Of course, the TP ICAP SEFs do not believe any prohibition on Name Give-Up is necessary in the first instance as discussed in this letter.

[8] *See, e.g.*, Regulatory Driven Market Fragmentation, ISDA (Jan. 30, 2019) available at https://www.isda.org/2019/01/30/regulatory-driven-market-fragmentation/.

[9] Proposal at 72264.

Dealer registration may pose a significant barrier to the entry of new liquidity providers. As discussed throughout this letter, there are other means available to the Commission to promote increased trading on SEFs.

## VI. Name Give-Up Serves an Important Purpose in the Swaps Market and Other Markets

The disclosure of counterparty identity is necessary for off-exchange futures transactions, such as block trades and the exchange of derivatives for related positions. These off-exchange futures transactions, where there is name give-up, are permitted alongside other execution methods in order to allow counterparties to properly manage risk and liquidity. Such name give-up is permitted pursuant to the rules of the futures exchanges and has served participants in the futures markets well in order to hedge risk and engage in transactions similar to the package transactions discussed above. There is no reason a similar dynamic cannot exist in the SEF markets.

Indeed, name give-up is being utilized in other applications in the market in order to innovate and evolve a given market. For example, Barclays recently announced that it is working with electronic trading platform Trumid Financial LLC to support the marketplace for trading company debt.[11] The platform is described as an "attributed trading protocol, in which parties that transact online know one another's identities beforehand, unlike many electronic trades which are done anonymously."[12] This trading protocol allows dealers to recommend trades to specific customers based on market developments and prior trading with the customer. This is similar to how the swaps markets function where a Swap Dealer closely follows market developments, which serve the investment and hedging needs of the buy-side and end-user customers. Prohibiting Name Give-Up will remove the ability of Swap Dealers to provide efficiently-priced and tailored liquidity in the markets.

While there are important historic market practices and developing market innovations that support Name Give-Up, in the Proposal, the Commission looks to certain outdated academic studies in order to support the position that prohibiting Name Give-Up will provide benefits to prices in the swap markets.[13] These studies do not appear to be on point, as they relate to markets for equities. Swaps and swap markets - and related package transactions - are fundamentally different than trading and transaction flow in the equities markets. Swap markets are characterized by bespoke transactions that are tailored to meet specific hedging needs, low and sporadic liquidity, large notional values, and risk management. Quite simply, a comparison of the swaps market to the market for securities should not be viewed as instructive on the issue of post-trade name give-up.

## VII. Markets Should Be Allowed to Evolve Naturally

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[11] *Barclays, Looking to Help Sales Staff, Works With Startup Trumid*, Bloomberg News (Feb. 19, 2020) available at https://news.bloomberglaw.com/securities-law/barclays-looking-to-help-sales-staff-works-with-startup-trumid.

[12] *Id.*

[13] Proposal at 72269. By way of example the Proposal cites a study of equity trading on the London Stock Exchange in 2001 and the Oslo Stock Exchange between 2008 and 2010. It is unclear how this bears any resemblance or relation to the swaps market of 2020.

The SEF markets are still in their nascent phase and are developing. As Chairman Tarbert has noted, SEF trading "is a part of the market that is itself evolving."[14] In this vein, the Commission's recent proposal relating to package transactions, block trades and error trades permits the trading of swap components of packages by means of any execution method on a SEF.[15] We submit that prohibiting Name Give-Up at this point would "forc[e] the market too far ahead of its natural evolutionary process."[16]

The SEF markets are still developing, and it would be best to let that evolution occur naturally. It is not possible to foresee how forms of execution may evolve over time. Therefore, as the Commodity Exchange Act ("CEA") requires, and the Commission has recognized, SEFs must have flexibility with respect to their methods for trade execution. If Name Give-Up were to fall by the wayside due to competition, its demise would happen more gradually, so that participants would be able to evolve their trading practices with better foresight. Forced regulatory prohibitions will be disruptive and will not advance the Commission's stated goal to increase SEF liquidity.

## VIII. The CEA and the Proposed Prohibition on Name Give-Up

Under the CEA, SEFs have reasonable discretion in establishing the manner in which they meet regulatory obligations, including those with respect to trading practices.[17] The amendments to the CEA that were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") do not prohibit Name Give-Up. Although the Dodd-Frank Act specifically directed that the identities of swap counterparties should not be revealed by swap data repositories, Congress chose not to include any similar provision for SEFs. Thus, the text of the Dodd-Frank Act does not support the inference for authorization to prohibit Name Give-Up.

Further, the Proposal notes that a ban on Name Give-Up will advance the statutory objectives of promoting swap trading on SEFs and promoting fair competition among market participants. We believe that this argument is misplaced. In short, the Commission would better promote swaps trading by encouraging SEFs to make additional swaps available to ***trade, whether*** through a revised MAT process or use of the existing MAT process.

The Commission also states that Name Give-Up "may be inconsistent with the requirement that SEFs provide market participants with impartial access to trading on SEFs." Name Give-Up is not related to market access. SEFs are open to participation based on the rules of the SEF and market participants can chose to participate on a SEF with Name Give-Up if they would like to do so. Some entities may choose not to transact on a SEF due to a rule or method of execution, including Name Give-Up. But this is the choice of the particular entity.

Finally, Name Give-Up does not undermine the prohibition against swap data repositories disclosing the identities of cleared swap counterparties as the Proposal contends.[18] Swap Data

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[14] Statement of Chairman Heath P. Tarbert in Support of Proposed Rule on Swap Execution Facilities (Jan. 30, 2020).
[15] *See Swap Execution Facility Requirements and Real-Time Reporting Requirements*, 85 Fed. Reg. 9407 (Jan. 30, 2020).
[16] *See supra* n. 12.
[17] Section 5h(f)(1)(B) of the CEA.
[18] Proposal at 72266.

repositories make large amounts of market-sensitive data publicly available. Congress determined and specifically directed that swap data repositories should not reveal the identities of swap counterparties because it would expose those counterparties to the risk of exploitation, and destabilize markets. Name Give-Up does not result in data becoming publicly available. While Congress was certainly capable of prohibiting Name-Give Up for trades effected on SEFs and centrally cleared, it elected not to do so. If it appears to some that there is inconsistency between provisions of the statute, it is for the Congress to address.

## IX. Exceptions and Clarifications

Proposed Rule 37.9(d)(3) also raises certain issues that require the Commission to consider exceptions and additional guidance. Thus, we understand that as proposed the prohibition on Name Give-Up would apply in the following cases:[19]

- Where a swap is arranged off-SEF (*e.g.*, by an Introducing Broker) submitted for execution and clearing through a SEF to a Derivatives Clearing Organization ("DCO");
- Where a party to a swap identifies an error that requires coordination with its counterparty;
- Where a swap is a component of a package transaction involving another component that is not cleared at the same DCO; and
- Where market participants consent to Name Give-Up.

In each of these cases, a prohibition on post-trade Name Give Up would either (i) be incongruous because the counterparties will already know one another's identity at the point of execution, (ii) be contrary to the wishes of the parties to the transaction, (iii) be affirmatively harmful to existing market function in connection with packaged transactions, and/or (iv) prevent an efficient means for correcting errors. In each of these cases, it appears that Name Give-Up would be necessary, or at least that there would no reason to prohibit it. Accordingly, we believe that the Commission should consider these situations in determining the nature and scope of any final rule.

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We appreciate the opportunity to comment on the Proposal and would be pleased to meet with the Commission and Staff to further discuss our comments. If you have any questions please

[19] Still, carving out specific types of transactions from the prohibition on Name Give-Up would result in a bifurcated system, and create significant challenges for surveillance and enforcement purposes. We note that proposed Rule 37.9(d)(3) states that the prohibition on Name Give-Up would not apply "with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap." Based on this language we would anticipate that the prohibition on Name Give-Up would not apply (i): where an Introducing Broker pre-arranges trades between two parties, and gives up names in the arrangement process before execution or clearing or (ii) where in-SEF broker personnel engaged in voice RFQ processes disclose the counterparties' identities before execution (*i.e.*, during the liquidity formation process) or clearing. We would respectfully request that the Commission confirm that Name Give-Up would not apply in these scenarios pursuant to proposed Rule 37.9(d)(3).

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