



March 9, 2020

Via Electronic Submission

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Post-Trade Name Give-Up on Swap Execution Facilities, RIN 3038-AE79¹

Dear Mr. Kirkpatrick:

The Healthy Markets Association² appreciates the opportunity to offer our support to the above-referenced Proposal to prohibit the practice of post-trade name give-up on swaps that are anonymously executed on SEFs that are intended to be cleared. The Commission should finalize and implement the Proposal without delay.

Under the Proposal, the Commission would:

prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed regulation would also require SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure.³

Name give-up practices are the selective leakage of valuable, confidential trading-related information. In fact, SIFMA has explained that dealers who receive the

¹ *Post-Trade Name Give-Up on Swap Execution Facilities*, Commodity Futures Trading Comm'n, 84 Fed. Reg. 72262 (Dec. 31, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-12-31/pdf/2019-27895.pdf> ("Proposal").

² The Healthy Markets Association is an investor-focused not-for-profit coalition working to educate market participants and promote data-driven reforms to market structure challenges. Our members, who range from a few billion to hundreds of billions of dollars in assets under management, have come together behind one basic principle: Informed investors and policymakers are essential for healthy capital markets. To learn more about Healthy Markets or our members, please see our website at <http://healthymarkets.org>.

³ Proposal, at 72262.



information would use it in their provision of trading services and pricing.⁴ SIFMA has expressly admitted that knowing the identity of a counterparty to a transaction will impact the dealers' trading activity, even though the counterparty risk has been set to be anonymously managed through the clearing process. Put another way, SIFMA has admitted that firms (1) will use the name of a counterparty (2) to change their trading decisions, (3) in a discriminatory way.

Any buy-side firm that would want to trade on a SEF -- even anonymously -- would have to be willing to accept that its valuable, confidential trading-related information may be shared with another market participant who could exploit that information. Put simply, the buy-side firm would have to be willing to give up control over its confidential trading-related information to a third party who may take advantage of that information.

SIFMA and those who have expressed support for the retention of name give-up would turn this reality on its head and claim that buy-side firms are thus voluntarily choosing to disclose their identities. For example, SIFMA has asserted that

[Buy-side firms] *choose to trade* with that knowledge and, in fact, value this feature. Simply because participants in these pools prefer to submit their prices into the order book anonymously, this should not be misinterpreted to imply that their preference or intent is to have their identity kept from the counterparty with whom a trade is consummated.⁵

Importantly, those who suggest that this "feature" has value to the buy-side have offered no evidence that the buy-side actually desires it. To the contrary, the vast majority of comment letters from the buy-side and its advocates,⁶ including Healthy Markets, have asserted that the "feature" of having confidential trading-related information selectively leaked into the marketplace is harmful. It isn't the buy-side that is opposing this Proposal, it's the dealers and their advocates who have admitted that they seek to exploit the information.

But aside from regulatory comments, the buy-side has been voting with its feet. Unwilling to accept the significant commercial risk associated with the selected disclosure of their

⁴ Letter from Kenneth Bentson, Jr., SIFMA, to Christopher Kirkpatrick, Commodity Futures Trading Comm'n, at 4-5, Mar. 2, 2020, available at <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62350&SearchText=> ("The relatively worse pricing on PTNGU order books and lack of trading in fully anonymous order books underscores the point: dealers are incentivized and able to provide their best pricing to clients with whom they have a relationship, and dealers do not have relationships with anonymous parties on order books.") ("SIFMA Letter").

⁵ SIFMA Letter, at 5 (emphasis added).

⁶ See, e.g., Letter from Carlotta King, Managed Funds Association, to Christopher Kirkpatrick, Commodity Futures Trading Comm'n, Mar. 2, 2020, available at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3066&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=8.



valuable, confidential trading-related information, buy-side firms currently comprise almost no meaningful participation in the broker-to-broker SEFs where name give-up practices persist.

By strongly discouraging buy-side firms from participating on SEFs, name give-up practices run directly counter to purposes of Title VII of the Dodd-Frank Act, and particularly the impartial access mandate under Section 733 of the Act and Commission Rule 37.202.⁷ If the purposes of Title VII are to be fulfilled, buy-side firms and other non-dealers should be permitted to have their anonymous, cleared SEF trading remain anonymous to the dealers who have admitted that they will seek to exploit their knowledge of those firms' identities.

Conclusion

We urge the Commission to adopt and implement the Proposal without delay. Thank you for your consideration. Should you have any questions or would like to discuss these matters further, please contact me at (202) 909-6138.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Gellasch", written in a cursive style.

Tyler Gellasch
Executive Director

⁷ *Core Principles and Other Requirements for Swap Execution Facilities*, Commodity Futures Trading Comm'n, 78 Fed. Reg. 33476, 33587 (June 4, 2013), available at <https://www.govinfo.gov/content/pkg/FR-2013-06-04/pdf/2013-12242.pdf>.