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May 22, 2020

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

Re: Swap Execution Facility Requirements and Real-Time Reporting Requirements, RIN 3038-AE94, 85 Fed. Reg. 9407 (Feb. 19, 2020)

Dear Secretary 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 above-referenced proposed rule (the “Proposal”) to amend certain parts of the Commission’s regulations relating to the execution of package transactions on swap execution facilities (“SEFs”), execution of block trades on SEFs, and the resolution of error trades on SEFs.

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.

The comments contained herein reflect the perspective of the TP ICAP SEFs. TP ICAP SEFs generally support the Proposal, as discussed below. The TP ICAP SEFs appreciate the Commission’s efforts to codify or incorporate existing Commission staff no-action relief through an Administrative Procedure Act compliant rulemaking with public notice and comment. Having

several important issues addressed through regulation will simplify compliance with the Commission's rules, as well as provide regulatory certainty that market participants can rely on formally-promulgated regulations, as compared to staff-issued no-action relief or guidance. For example, the TP ICAP SEFs rely on Commission regulations and staff no-action letters in their rulebooks. Reliance on staff action – particularly time-limited staff action – complicates the administration of the SEF, requiring additional monitoring of participants for compliance with the Commodity Exchange Act (“CEA”) and Commission regulations, and thus adding to the regulatory costs and burdens associated with swap trading.

Package Trades

The TP ICAP SEFs generally support the increased flexibility set forth in the proposed amendments to Part 37 of the Commission's rules to allow the swap components of certain categories of “package transactions” to be executed on-SEF through flexible means of execution pursuant to proposed Rule 37.9(c)(2), rather than through the required methods of execution under Commission Rule 37.9 for “Required Transactions.”¹ The TP ICAP SEFs support the Commission's proposal to allow SEFs not to offer an Order Book (as defined in Part 37) for the swap components of the package transactions covered by this proposed amendment: (i) made available to trade (“MAT”)/Non-MAT uncleared package transactions; (ii) MAT/Non-Swap Instrument package transactions; and (iii) MAT/Non-Exclusive CFTC Swap package transactions.

The TP ICAP SEFs believe the proposed approach demonstrates, to quote CFTC No-Action Letter No. 17-55, an appropriate balance between the “utility of package transactions against the policy goals of the trade execution requirement” and reflects an assessment “that trading certain categories of package transactions on a SEF or DCM, in a manner that is fully compliant with the CEA and the Commission's regulations, remains unfeasible.”²

Furthermore, the TP ICAP SEFs have long supported flexible rules with respect to swap execution, consistent with the CEA's SEF definition allowing trade execution “through any means of interstate commerce.”³ The TP ICAP SEFs believe that the changes in proposed Rule 37.9(c)(2) bring the regime closer to the flexible framework envisioned by Congress in 2010, and will assist in the liquidity formation and trade execution of package transactions, further promoting the trading of swaps on SEFs.

The TP ICAP SEFs wish to provide the following specific responses to questions related to whether a SEF should still be required to offer an Order Book for certain package transactions. Generally, the TP ICAP SEFs do not believe that SEFs should be required to offer an Order Book for any package transaction that includes a Non-MAT leg or uncleared package transactions. These package transactions are not Required Transactions, as defined in Rule 37.9(a), and because they

¹ Swap Execution Facility Requirements and Real-Time Reporting Requirements, 85 Fed. Reg. 9407, 9421 (Feb. 19, 2020) (hereinafter “Proposed Rule”).

² CFTC Letter No. 17-55 (Oct. 31, 2017).

³ CEA § 1a(50) (7 U.S.C. § 1a(50)).

are not subject to the trade execution requirement in CEA Section 2(h)(8),⁴ the SEF should not be required to offer an Order Book.

(16) Should the Commission still require SEFs to offer an Order Book for MAT/Non-MAT (Uncleared) package transactions as defined in § 37.9(d)(2)?

No. The uncleared leg of the package transaction is a “Permitted Transaction,” which does not require an Order Book under the Commission’s regulations. For that reason, SEFs should not be required to offer an Order Book for MAT/Non-MAT (Uncleared) package transactions.

(17) Should the Commission still require SEFs to offer an Order Book for the swap components of MAT/Non-Swap package transactions as defined in § 37.9(d)(3)?

No. Like the response to question (16), the non-swap leg of the package transaction is not a “Required Transaction,” and therefore, does not require an Order Book under the Commission’s regulations. For that reason, SEFs should not be required to offer an Order Book for MAT/Non-Swap package transactions.

(18) Should the Commission still require SEFs to offer an Order Book for MAT/Non-Exclusive CFTC Swap package transactions as defined in § 37.9(d)(4)?

No. Like the response to questions (16) and (17), the Non-Exclusive CFTC Swap leg of the package transaction is not a “Required Transaction,” and therefore, does not require an Order Book under the Commission’s regulations. For that reason, SEFs should not be required to offer an Order Book for MAT/Non-Exclusive CFTC Swap package transactions.

Error Trades

The TP ICAP SEFs support the Commission’s proposal to establish a principles-based approach for SEF error trade policies that incorporates relief from the required methods of execution under proposed Rule 37.9 for Required Transactions for trades intended to resolve error trades.⁵ While the TP ICAP SEFs have operated under the relief afforded by CFTC No-Action Letter No. 17-27 since its publication,⁶ the adoption of a regulation without the specific conditions in that staff letter would provide further flexibility for SEFs to determine the most suitable error trade rules for their markets and participants.

The TP ICAP SEFs have supported an industry group’s proposal that the Commission’s regulations should provide direction for how SEFs handle swaps rejected for clearing due to clerical or operational errors or for swaps in which a readily correctible error is identified after execution and clearing. The Commission’s proposed approach in proposed Rule 37.9(e)(2) provides some flexibility, consistent with the Commodity Exchange Act’s principles-based

⁴ 7 U.S.C. § 2(h)(8).

⁵ Proposed Rule, *supra* note 1, at 9409.

⁶ CFTC Letter No. 17-27 (May 30, 2017).

approach with SEF core principles, for each SEF to maintain rules and procedures that are fair, transparent, consistent and allow for timely resolution of an error trade.⁷ The TP ICAP SEFs believe this is an appropriate approach to implementing the related statutory provision with the regulatory certainty of a Commission rule, while preserving discretion for SEFs to formulate the specific approach most appropriate for their customers.

Furthermore, the TP ICAP SEFs support the concept in proposed Rule 37.9(e)(2)(i) that SEFs must have error trade rules and procedures that require market participants to provide prompt notice to the SEF of an error trade and, as applicable, the corresponding correcting trade and offsetting trade. SEF market participants are sophisticated institutions; they are not retail counterparties. Whether through an error trade correction process or other form of notice, it is appropriate for the SEF to require its market participants to provide prompt notice to the SEF of an error trade.

Block Trades

The TP ICAP SEFs support the Commission's proposed amendments in Rule 43.2 to the definition of "block trade" in order to allow market participants to utilize a SEF's non-Order Book trading system or platform while still allowing swap block trades to "occur away" from a SEF. The existing framework was developed in a manner contemplated for the regulation of listed futures markets and, as the Commission is aware, has created operational challenges for SEFs. The proposed revision to the "block trade" definition not only allows swap block trades that are "intended to be cleared" to be executed on a SEF's non-Order Book trading system or platform (as is currently provided for in NAL No. 17-60), but the proposed definition would also permit swap block trades that are not "intended to be cleared" to be executed on a SEF.

This approach does not serve the CEA's public policy goal of encouraging swap trading on SEFs. As discussed above, the TP ICAP SEFs do not support placing any limits on the types of execution methods that may be utilized by SEFs for block trades. The Commission should recognize that SEFs have the greatest knowledge of the liquidity and market characteristics to make such determinations. Placing restrictions on the permitted modes of execution methods that are employable for block trades is inconsistent with the statute, which was clear that limiting modes of SEF execution was not the intent of Congress. The Commission should defer to the SEFs in a manner consistent with principles-based regulation to determine the methodology that they wish to offer for executing block trades.

Continued Codification of SEF No-Action Letters

Consistent with the approach set forth in the Proposal, the TP ICAP SEFs encourage the Commission to move forward with the codification of other longstanding staff no-action letters into its Part 37 regulations. As noted in an industry group response⁸ to the Commission's 2018

⁷ Proposed Rule, *supra* note 1, at 9423.

⁸ See Letter from Shawn Bernardo, Chairman, Wholesale Markets Brokers Association, Americas to Mr. Christopher Kirkpatrick, Secretary, Commodity Futures Trading Commission, March 15, 2019.

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SEF proposed rule,⁹ there are a number of letters related to SEFs issued by the Division of Market Oversight that have been incorporated into SEFs' rulebooks and day-to-day operations.

We look forward to working with the Commission to translate those staff actions into Commission regulations, which will give SEFs and other industry participants added clarity, certainty and reliability. In addition to the foregoing, those issues include, for example, financial resources (CFTC Letter No. 15-26 (Apr. 23, 2015)), trade confirmations (CFTC Letter No. 17-17 (Mar. 24, 2017)), and SEF audit trail requirements (CFTC Letter No. 17-54 (Oct. 31, 2017)).

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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 contact the undersigned at +1.201.557.5784.

Very truly yours,



Shawn Bernardo
Chief Executive Officer, TP ICAP SEFs

⁹ Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946 (Nov. 30, 2018).