

October 24, 2023

Via Electronic Submission

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

Re: Comment Letter on Proposed Rulemaking Relating to SEF Swap Confirmation Requirements RIN 3038-AF34, 88 FR 58145 (August 25, 2023)

Dear Mr. Kirkpatrick:

Cboe SEF, LLC (**Cboe SEF**) appreciates the opportunity to provide its comments to the Commodity Futures Trading Commission (**Commission**) regarding the above-referenced proposed rulemaking (**Proposal**) relating to swap confirmation requirements for swap execution facilities (**SEFs**). The Proposal seeks public comment regarding the proposal to codify [No-Action Letter 17-17](#) to enable SEFs to incorporate by reference terms arising from underlying, previously negotiated agreements between the counterparties in an uncleared swap confirmation without being required to obtain the underlying, previously negotiated agreements.

Cboe SEF supports the Proposal and agrees with the Commission's decision to codify No-Action Letter 17-17. Collecting underlying, previously negotiated agreements is operationally and technologically difficult and impractical – nor is there any benefit to doing so when a SEF and the Commission may request those documents from SEF participants at any time.

Cboe SEF further responds to the Commission's question of whether it should allow a SEF to issue a confirmation for an uncleared swap transaction that does not, as currently contemplated under § 37.6(b), include all the terms of the transaction, for example by only including in the confirmation the terms agreed to on the SEF. Cboe SEF believes that the Commission's current practice (as codified in the Proposal) is the best manner for providing confirmations for an uncleared swap transaction.

Cboe SEF currently lists foreign-exchange non-deliverable forward (**NDFs**) for trading and the confirmations that Cboe SEF issues incorporate by reference the terms of the underlying previously-negotiated freestanding agreements (including, without limitation, master agreement, master confirmation agreement and incorporated industry definitions) between the parties governing the Transaction (**Master Agreement**). Importantly, Cboe SEF's Transaction Confirmations incorporate by reference the terms set forth on the Template Terms for Non-Deliverable FX Transactions in respect of the relevant CCY Pair as recommended by the Emerging Markets Traders Association and in effect as of the Trade Date of the Transaction (**NDF Template Terms**). Cboe SEF's rulebook further provides that in the event of any inconsistency between the NDF Template Terms and the terms of the Master Agreement, the terms of the Master Agreement will prevail.



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Given the over-the-counter nature of the FX NDF market, it is critical to be able to incorporate by reference such industry definitions, templates, etc. as well as the counterparties' separately negotiated underlying agreements. For this reason, Cboe SEF believes it is best for the Commission to not permit uncleared swap confirmations to exclude terms from underlying, previously-negotiated freestanding agreements.

\* \* \*

Cboe SEF is available to provide any further input desired by the Commission regarding the issues discussed in the Proposal and to work cooperatively with the Commission to address them. Please contact Michael Margolis ([mmargolis@cboe.com](mailto:mmargolis@cboe.com) or 312-786-7153) or Scot Halvorsen ([shalvorsen@cboe.com](mailto:shalvorsen@cboe.com) or 551-697-0389) if you have any questions regarding our comments.

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