



October 24, 2023

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

Submitted via CFTC Comment Portal: <https://comments.cftc.gov/>

**Re: Swap Confirmation Requirements for Swap Execution Facilities
RIN number 3038-AF34, 88 FR 58145**

Dear Mr. Kirkpatrick:

Bloomberg SEF LLC¹ appreciates the opportunity to provide the Commodity Futures Trading Commission (the “Commission”) with our comments regarding the Commission’s proposal to amend its swap execution facility (SEF) regulations related to uncleared swap confirmations, as well as associated technical and conforming changes (the “Proposal”).²

We support the Proposal and the Commission’s efforts to update the Commission’s rules to codify the existing no-action relief for uncleared swaps and provide guidance regarding the timing of the issuing of confirmations by a SEF. We appreciate the Commission’s continued attention to this issue, and we respectfully provide the following comments:

Question 6. Is the Commission’s proposal to require a SEF to confirm the terms of a swap transaction “as soon as technologically practicable” after the execution of the transaction on the SEF an appropriate time frame? Should the Commission require that the SEF issue the confirmation by no later than a specified time for swap block trades that are executed away from the SEF but pursuant to the SEF’s rules, such as within 10 minutes of execution as this is consistent with various SEF rulebooks that require swap block trades executed away from the SEF to be reported to the SEF within 10 minutes of execution?

We support the Commission clarifying the timing for confirmations of block trades.

¹ Bloomberg SEF LLC is a wholly owned subsidiary of Bloomberg L.P. operating a swap execution facility (“BSEF”) that is registered with, and regulated, by the CFTC. BSEF supports credit, rate, and foreign exchange asset classes.

² Swap Confirmation Requirements for Swap Execution Facilities (August 25, 2023), available at <https://www.cftc.gov/sites/default/files/2023/08/2023-17747a.pdf>.

Question 8. Does the proposed amendment provide sufficient legal certainty with respect to any contradictory terms that may be contained within previous agreements that are incorporated into an uncleared swap confirmation by reference?

The proposed amendment to §37.6(b) is sufficiently clear that the terms of a swap confirmation issued by a SEF shall legally supersede any conflicting terms of a previous agreement. However, the Commission should also clarify that the rules of the SEF shall also legally supersede, with respect to the transaction, any conflicting terms of a previous agreement, whether or not specifically addressed in the confirmation. In other words, to the extent there is anything in the rules of the SEF that conflicts with the terms of any previous agreement, the SEF rulebook would govern the transaction and supersede the previous agreement. We believe this provides additional clarity that both the rules of the SEF and the specific terms stated in the swap confirmation issued by a SEF govern the terms of the trade and supersede any conflicting terms of a previous agreement.

Question 9. For uncleared swaps, to avoid any conflict between the terms of the swap and the SEF's confirmation, should the Commission require that the SEF's confirmation specifically state that the terms of the confirmation legally supersede any conflicting terms in underlying previously negotiated agreements that have been incorporated by reference?

We believe that the Commission should require that a SEF's confirmation specifically state that the terms of the confirmation legally supersede any conflicting terms in underlying previously-negotiated agreements that have been incorporated by reference.

As the Commission notes in the release, as a condition of relying on the no-action position in NAL No. 17-17, SEFs must already have a "rule in its rulebook that states that in the event of any inconsistency between a SEF confirmation and the underlying previously-negotiated freestanding agreements, the terms of the SEF confirmation legally supersede any contradictory terms..." and "the SEF must also have a rule that requires the SEF's confirmations to state the same."³

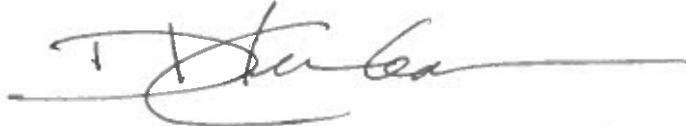
We support the Commission codifying the existing no-action relief and believe the Commission should require the specified language in the SEF's confirmation.

³ CFTC Letter No. 17-17 at 4, Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (March 24, 2017).

Conclusion

We appreciate your willingness to consider comments on this issue and would be pleased to discuss any questions that you may have with respect to this letter. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Derek Kleinbauer", written over a horizontal line.

Derek Kleinbauer
President
Bloomberg SEF LLC

