

October 24, 2023

*Submitted Electronically*

Mr. Christopher Kirkpatrick  
Secretary  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st St., N.W.  
Washington, DC 20581

**Re: Swap Confirmation Requirements for Swap Execution Facilities (RIN 3038-AF34)**

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (“ISDA”)<sup>1</sup> appreciates the opportunity to submit these comments on the Commodity Futures Trading Commission’s (“CFTC or Commission”) notice of proposed rulemaking for swap confirmation requirements for swap executions facilities (“Proposal”) published in the Federal Register on August 25, 2023.<sup>2</sup>

We strongly support the Commission’s proposal to codify its current no-action position<sup>3</sup> that relieves swap execution facilities (“SEFs”) of the obligation to obtain copies of underlying, previously negotiated agreements between trade counterparties, and that enables SEFs to incorporate such terms by reference when issuing swap confirmations. As we have stated in our previous comment letters,<sup>4</sup> when providing trade confirmations to counterparties, SEFs should only be required to list the terms of the trade agreed to on their platforms (and not any previously-negotiated agreements). The obligation to supplement such key economic terms with previously-negotiated agreements should fall to the counterparties, who are familiar with such terms and have them readily available at their disposal.

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<sup>1</sup> Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s website: [www.isda.org](http://www.isda.org).

<sup>2</sup> 88 Fed. Reg. 58145 (Aug. 25, 2023), <https://www.cftc.gov/sites/default/files/2023/08/2023-17747a.pdf>.

<sup>3</sup> CFTC NAL 17-17.

<sup>4</sup> [ISDA Response to Project KISS](#); [ISDA Response to SEF Proposal](#).

We also agree with the Commission’s proposal to extend the timing requirement for SEFs to issue confirmations to “as soon as technologically practicable” rather than “at the same time of execution.” As the Commission correctly points out, this change is necessary to account for block trades that are executed outside of the SEF’s trading system or platform, but pursuant to the rules of the SEF—and the SEF is therefore unaware of the execution until the counterparties report the trade of the SEF.<sup>5</sup>

Finally, we are supportive of the Commission’s proposal to make clear that SEF-provided confirmations shall legally supersede any *conflicting* terms in a previous agreement, rather than the entire agreement. Such an approach strikes the right balance between ensuring that the terms agreed to on the SEF are enforceable, while at the same time, also acknowledging the various documentation and agreements that underlie swap agreements.

We appreciate the opportunity to submit our comments in response to the Proposal. Our members are strongly committed to maintaining the safety and efficiency of the U.S. swaps markets and hope that the Commission will consider our suggestions, as they reflect the extensive knowledge and experience of trading professionals within our membership.

Please do not hesitate to contact me or Nicolette Cone, Associate General Counsel ([ncone@isda.org](mailto:ncone@isda.org)), should you have any questions.



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<sup>5</sup> 88 Fed. Reg. 58145, 58149 (Aug. 25, 2023).