

October 24, 2023

Via electronic submission to CFTC comments portal

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

Re: Uncleared Swap Confirmations: Incorporation by Reference of Underlying Previously Negotiated Agreements (RIN 3038–AF34)

Dear Mr. Kirkpatrick,

The Wholesale Markets Brokers' Association, Americas ("WMBAA")¹ appreciates the opportunity to comment on the U.S. Commodity Futures Trading Commission ("CFTC") staff request for comment regarding proposed regulation 37.6(b)(1) concerning uncleared swap confirmations and the incorporation by reference of underlying previously negotiated agreements (the "Proposed Rule").² As interdealer brokers and operators of global trading venues for financial instruments, including swap execution facilities ("SEFs"), WMBAA members have a significant interest in the Proposed Rule and any possible rulemakings that would govern the operations and activities of SEFs.

As operators of multiple SEFs, we support the Proposed Rule's codifying existing CFTC staff no-action relief outlined in CFTC Staff Letter 14-108, which provided relief for SEFs from confirmation and recordkeeping requirements set forth in CFTC Regulations 37.6(b), 37.1000,

¹ The WMBAA is an independent industry body representing the largest inter-dealer brokers. The members of the group – BGC Partners, GFI Group, Tradition, and TP ICAP – operate globally, including in the North American wholesale markets, in a broad range of financial products, and have received registration as swap execution facilities. The WMBAA membership collectively employs approximately 4,000 people in the United States; not only in New York City, but in Stamford and Norwalk, Connecticut; Chicago, Illinois; Jersey City and Piscataway, New Jersey; Raleigh, North Carolina; Miami and Juno Beach, Florida; Burlington, Massachusetts; and Dallas, Houston and Sugar Land, Texas. Our members and their employees arrange trades that enable sophisticated market participants to manage their commercial and market risk.

² See Letter from Wholesale Markets Brokers' Association Americas, Request for Relief from Certain Requirements under Parts 37 and 45 Related to Trade Confirmations for Swaps Not Required or Intended to be Cleared (March 12, 2014); Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements (March 15, 2015); Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements (March 8, 2017).

² Swap Confirmation Requirements for Swap Execution Facilities, 88 Fed. Reg. 58145 (Aug. 25, 2023).

37.1001, and 45.2.³ The WMBAA's support in securing the no-action relief played a vital role in providing regulatory certainty to market participants in the realm of uncleared swap confirmations.²

This staff no-action relief has allowed market participants to efficiently reference and incorporate previously negotiated agreements in their swap confirmations, ultimately streamlining the confirmation process and reducing transaction uncertainty and operational risks. Codifying the principles established in CFTC Staff Letter 14-108 into the regulatory framework through the Proposed Rule is a prudent and necessary step forward.

Adopting the Proposed Rule will not only provide legal clarity but also maintain the integrity and efficiency of the uncleared swap market. Further, codifying the no-action relief will align the regulatory framework with the industry's current practices, promoting consistency and reducing compliance burdens. We commend the CFTC for recognizing the practical complexities faced by market participants with respect to complying with footnote 195 of the CFTC SEF Core Principles final rule.

Specific Comments

The WMBAA would like to voice support for the following proposed amendments to regulation 37.6(b).

First, the WMBAA supports the proposed amendment which would enable SEFs to incorporate reference terms for underlying agreements by reference in an uncleared swap confirmation without being required to obtain the underlying, previously negotiated agreements.

Second, the WMBAA supports amending the required timing under regulation 37.6(b) to require confirmation of all terms of a swap transaction to take place "as soon as technologically practicable" after the execution of the swap transaction on the SEF. This adjustment acknowledges the need for flexibility in the uncleared swap confirmation process, while accommodating technological constraints.

Third, the WMBAA supports amending regulation 37.6(b) with respect to SEF-provided confirmations. More specifically, the WMBAA supports the amendment to regulation 37.6(b) to clarify that the SEF-provided confirmation shall legally supersede any *conflicting* terms in a previous agreement. This clarification appears essential in maintaining certainty in swap transactions, reducing legal uncertainties, and streamlining the confirmation process.

Finally, the WMBAA supports the Commission's approach of not incorporating the conditions that currently exist in staff no-action relief, namely requiring (1) participants to provide copies of the underlying previously negotiated freestanding agreements to the SEF on request; and

³ CFTC Letter No. 14-108, Staff No-Action Position Regarding SEF Confirmations and Recordkeeping Requirements under Certain Provisions Included in Regulations 37.6(b) and 45.2 (Aug. 18, 2014).

(2) the SEF to request from participants the underlying previously negotiated freestanding agreements on request from the CFTC and requiring the SEF to furnish such documents to the CFTC as soon as they are available.

Consultation with the SEC on Regulation SEC

To the extent the CFTC consults with the US Securities and Exchange Commission on the promulgation and implementation of its security-based SEF rules (“Proposed Regulation SE”), the WMBAA encourages the SEC to adopt corresponding changes to its proposed rule 812, which was modeled after CFTC rule 37.6.

Conclusion

The CFTC’s request for comments on various aspects of proposed regulation 37.6(b)(1) and the timing of swap transaction confirmation align with the need for a more practical, efficient and legally sound confirmation process in the swaps market.

The WMBAA supports the general codification of the no-action relief provided in CFTC Staff Letter 14-108 as proposed in the amendments to regulation 37.6(b) and described in the proposed rulemaking. This action will provide further clarity and stability to market participants without the operational and technological burdens that would otherwise apply to SEFs under the current rules.

* * *

The WMBAA appreciates the CFTC’s efforts in seeking public input on this matter. We thank the CFTC staff’s willingness to consider our opinions and welcome the opportunity to discuss these issues further.

Sincerely,



William Shields
Wholesale Markets Brokers Association, Americas