May 13, 2024

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

RE: Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions RIN 3038–AF29

Dear Secretary,

AEGIS SEF, LLC dba AEGIS Markets ("AEGIS") welcomes the opportunity to comment in response to CFTC Staff's questions regarding the proposal for Requirements for Designated Contract Markets and Swap Execution Facilities Regarding Governance and the Mitigation of Conflicts of Interest Impacting Market Regulation Functions. We are grateful to share our views so that they can be considered when adopting the proposed rule changes.

The number of proposed changes is voluminous. AEGIS is supportive of most of these changes. There are a handful of items below where we note differences/comments.

Public Director Composition of a (SEF or DCM) Board

The CFTC has asked for comment on increasing public Board composition from 35% to greater than 35% or at/above 51%. We do not think it wise to increase the public directors percentage of Board composition. A SEF Board needs a majority to be comprised of business commercial interests who are directly knowledgeable and familiar with the running of a swap execution facility (or DCM). Increasing the public composition percentage disconnects Board decision-making from business management & ownership. Leaving the threshold at 35% enables those who want to target something at or above that threshold the ability to do so, while leaving a significant publicly represented voice present greater than one-third.

Composition of Nominating Committee

The CFTC proposes that public directors should represent a majority of members of a Nominating Committee. This runs the risk of undermining the commercial leadership of the Exchange. It is sufficient that there is a Public Director requirement of 35% of a (SEF or DCM) Board. This representation assures that public (non-market) interest is empowered to review and have recorded their voice in making substantive input on marketplace matters. It is sufficient that Public Directors represent 100% of a (SEF or DCM) Regulatory Oversight Committee. This representation assures adequate public oversight of the SRO. However, to additionally put Public Directors on a Nominating Committee, let alone a majority of such, would undermine the proper leadership of any business. At its limit, why couldn't/wouldn't these Public Directors nominate a full slate of Public Directors for the Board, and have the entire operation run by laypeople without the requisite knowledge of how to run a swaps or designated contract market?! We believe such a requirement that representation of the nominating committee requiring any public representation, let alone a majority, is unwarranted and potentially reckless to the entire marketplace structure.

Quarterly ROC Meeting Requirement

Changing the cadence of ROC Meetings from a minimum annual requirement to a quarterly requirement is unnecessary. As an example, AEGIS's ROC meets semi-annually and has the flexibility to meet quarterly as needed to discuss Conflict of Interest matters as they arise. While meeting quarterly would not necessarily be a burdensome requirement, it would likely be inefficient. The interval chosen by ROCs in managing the Compliance function is adequately held by the latitude given by the CFTC's Core Principles.

Attendance at ROC Meetings

Limited attendance of business executives and/or non-compliance employees should be allowed for potential duties as the ROC sees fit. As an example, this may include having an accounting officer brief the ROC on budgetary resources for compliance. The appearance before a ROC can be clocked in and clocked out so that other compliance-related activities remain closed to ROC members and compliance personnel only. This is consistent with the CFTC's interest in ensuring adequate "resources and staff (to) effectively perform market regulation functions at appropriate levels."

Material Ownership Threshold

The CFTC proposes reducing the reporting threshold for a change in ownership from 50% to 10% for SEFs to match the DCM threshold. This ignores the fundamental difference between SEFs and DCMs. DCMs are Exchanges dating back to the 1800's where non-ECPs can transact a wide array of futures and other products. SEFs are swap trading facilities recently created by Dodd Frank, whose registrations are active since 2016, less than a decade old. There are 11 vacated, dormant or withdrawn SEFs, compared to 21 registered SEFs, showing the nascent phase of such facilities. Lowering the threshold for reporting down to 10% creates additional and unneeded oversight for such emerging businesses that would not be impacted by sub 50% ownership change. To contrast, the revenue which CME Group (a DCM) makes in days might be equivalent to the typical SEF revenue in a year, thus demonstrating how small a sub 50% ownership change in a SEF is compared to a DCM. While it may be appropriate for SEFs and DCMs to have similar regulations in many regards, the 10% hurdle for material ownership is not one of them.

Material Ownership Timeline

For changes in material ownership, the Proposed Rule Change notes:

"*..proposed §§ 37.5(c)(3) and 38.5(c)(3) will require notification .. no later than three months prior to the anticipated change, provided that the SEF or DCM may report the anticipated change later than three months prior to the anticipated changes if it does not know and reasonably could not have known of the anticipated change."*

We find the timing requirement to be logistically impractical and punitive. We note that other US Government Agencies/Branches are limited to a 30 day period POST deal announcement and PRE-close, not "no later than three months prior to the anticipated change".

For the CFTC to require at least 3x the period that other US government branches/agencies are given , and potentially have that period start well in advance of whether it is clear a deal will actually happen (a) is not aligned with peer agencies (b) creates a high potential of extra effort on the part of the regulators, and (c) is an unnecessary additional delay on organizations attempting to complete a transaction for their business. The qualification "*does not know or reasonably could not have known of the anticipated change*" is also problematic,

as private negotiations would require due diligence investigations, which would seemingly provide such knowledge, yet the negotiations for such a change in material ownership would be contingent on too many variables for whether a deal would close. The word “anticipated” opens up too much speculation on exactly at what point in time that a business can be certain of its ability to consummate a transaction.

Given the above concerns, we would suggest that the rule be amended to a 30 day threshold and remove the “or reasonably could not have known“ so that the rule is worded:

“proposed §§ 37.5(c)(3) and 38.5(c)(3) will require notification no later than 30 days prior to the effective date of the change, provided that the SEF or DCM may report the change inside of 30 days of the effective date if it does not know of the certainty of the change any sooner.”

Summary

AEGIS is supportive of most of the proposed changes. We note the following modifications to proposed changes:
(1) the public director composition at 35% is sufficient
(2) a requirement to add any public members to a nominating committee is unnecessary and strongly discouraged
(3) requiring quarterly ROC meetings is unnecessary and likely inefficient
(4) limited and bounded attendance by non-compliance personnel to a ROC meeting should be allowed
(5) the threshold change in SEF material ownership should remain at 50%
(6) the notice for a change in material ownership should be harmonized with other agencies/branches of the government at 30 days, and only when certainty of this change is available

Submitted,

Andrew Furman

Andrew Furman
Chief Compliance Officer
AEGIS Markets