6351-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 37

RIN Number 3038-AE79

Post-Trade Name Give-Up on Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing a rule to prohibit "post-trade name give-up" practices related to trading on swap execution facilities.

DATES: Comments must be received on or before **INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: You may submit comments, identified by "Post-Trade Name Give-Up on Swap Execution Facilities" and RIN number 3038-AE79, by any of the following methods:

- The agency's website: *http://comments.cftc.gov*. Follow the instructions for submitting comments.
- Mail: Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the

Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act,[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission Regulation 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this proposed rule will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Special Counsel, (646) 746-9792, *astamoulis@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing to amend part 37 of the Commission's regulations to prohibit "post-trade name give-up" practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d) of the Commission's regulations would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed

[1] 5 U.S.C. 552.
[2] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

anonymously and intended to be cleared. The proposed regulation would also require SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure. The Commission is proposing this prohibition on post-trade name give-up after considering the comments received in response to its November 2018 request for public comment regarding the practice (the "Name Give-Up Release").[3] The Commission believes that prohibiting the practice of post-trade name give-up for cleared swaps would promote swaps trading and competition on SEFs, as well as promote fair competition among market participants. Additionally, it would advance the congressional objectives underlying the prohibition against swap data repositories disclosing the identity of cleared swap counterparties. The Commission also preliminarily believes that post-trade name give-up for cleared swaps may be inconsistent with the requirement that SEFs provide market participants with impartial access to trading on SEFs.

II. Background

The Commission issued the Name Give-Up Release to seek public comment on the practice of post-trade name give-up on SEFs for swaps intended to be cleared. As described in the release, some SEFs facilitate this practice by disclosing the identities of swap counterparties to one another after a trade is matched anonymously. A SEF may effectuate such disclosure through either its own trade protocols[4] or through a third-party service provider that it utilizes to process and route transactions to a derivatives clearing

[3] Post-Trade Name Give-up on Swap Execution Facilities, 83 FR 61571 (Nov. 30, 2018) ("Name Give-Up Release").

[4] For swaps executed anonymously on a SEF electronic order book, where participants may enter anonymous bids and offers, the disclosure of a counterparty's identity may occur through an electronic notification provided by the SEF after the trade is matched and executed. In certain voice-based SEF trading systems, a SEF employee who matches bids and offers may provide such notification to the counterparties.

organization ("DCO") for clearing.[5] Prior to the issuance of the Name Give-Up Release, the Commission had been aware of views that such disclosure deters some market participants from trading on SEF platforms that employ the practice. In the Name Give-Up Release, the Commission questioned the necessity of the practice with respect to cleared swaps that are anonymously executed on a SEF. While the Commission acknowledged that the practice may be necessary for trading in uncleared swaps, *i.e.*, to manage counterparty credit risk,[6] it stated that the rationale with respect to cleared swaps is "less clear cut."[7] The Commission also summarized some of the general views on post-trade name give-up of various industry participants and requested public comment on the merits of the practice and whether the Commission should prohibit it.[8]

The Commission received thirteen comment letters to the Name Give-Up Release, many of which expounded further on the views summarized in the release.[9] The majority of commenters opposed the practice of post-trade name give-up for anonymously-executed swaps submitted to clearing, and requested that the Commission adopt an

[5] Post-trade name give-up may occur through third-party middleware and associated trade processing services that provide counterparties with various trade details captured from SEF trading systems, including the identity of the party on the other side of a trade. The Commission has provided that SEFs may use such third-party services to route trades to DCOs if the routing complies with § 37.702(b). *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33535 (June 4, 2013) ("SEF Core Principles Final Rule"). Third-party trade processing services commonly used for SEF trades include those offered by IHS Markit. IHS Markit submitted a comment letter in response to the Name Give-Up Release. Although it did not express a particular view on the merits of post-trade name give-up practices, IHS Markit did confirm that its derivatives processing platform supports fully anonymous SEF trading that may be selected by a SEF for any SEF trade – a so called "no-name give up workflow option." IHS Markit Letter at 1-2.

[6] For uncleared swaps, post-trade name give-up enables a market participant to perform a credit-check on a potential counterparty prior to finalizing the transaction. Due to the bilateral nature of an uncleared swap agreement, the practice also allows counterparties to manage credit exposure and payment obligations with respect to those transactions.

[7] Name Give-Up Release at 61571.

[8] *See* Name Give-Up Release at 61572.

[9] All comment letters submitted in response to the Name Give-Up Release are available through the Commission's web site at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2935*.

explicit prohibition.[10] One comment letter, from the Securities Industry and Financial Markets Association ("SIFMA") on behalf of a majority of its swap dealer members who have expressed a view,[11] expressed support for the practice and concern about the effects of a prohibition.[12] The Commission has reviewed and considered these comment letters in issuing this proposed rulemaking.

A. Comments Concerning the Necessity of Post-Trade Name Give-Up for Cleared Swaps

Nearly all of the comment letters to the Name Give-Up Release asserted that post-trade name give-up is not justified for swaps submitted to a DCO for clearing.[13] Some commenters acknowledged that the practice may be necessary for uncleared swaps, which expose counterparties to bilateral credit risk,[14] but noted that the clearing process mitigates that risk.[15] Commenters further asserted that straight-through processing makes post-trade name give-up unnecessary.[16] According to commenters, straight-through processing promotes clearing efficiency, and therefore, obviates the need for

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[10] The following commenters support a prohibition on post-trade name give-up: Americans for Financial Reform ("AFR"); Better Markets; David Blinkly; Federal Home Loans Banks ("FHLBanks"); FIA Principal Traders Group ("FIA PTG"); Investment Company Institute ("ICI"); Managed Funds Association ("MFA"); Robert Rutkowski; SIFMA Asset Management Group ("SIFMA AMG"); UBS Securities ("UBS"); and Vanguard.

[11] SIFMA, however, acknowledged in its comment letter that the views among its swap dealer members on post-trade name give-up are not uniform. SIFMA Letter at 1.

[12] The Commission notes that this letter is separate and distinct from the letter submitted by SIFMA AMG, and the views espoused by SIFMA in this letter contrast with the views represented by SIFMA AMG, which supported a prohibition on post-trade name give-up. SIFMA AMG members represent various U.S. and global asset management firms. SIFMA AMG Letter at 1, n.1.

[13] AFR Letter at 4; Better Markets Letter at 2; Blinkly Letter at 1; FHLBanks Letter at 2; FIA PTG Letter at 1; ICI Letter at 2-3; MFA Letter at 2; Rutkowski Letter at 4; SIFMA AMG Letter at 14; Vanguard Letter at 10. UBS stated that the practice should end absent a "compelling" justification. UBS Letter at 1.

[14] FHLBanks, for example, stated that the disclosure of counterparty identity for uncleared swaps is necessary to generate and update trading records, calculate counterparty credit risk exposures, issue margin calls, and conduct other related operational tasks. FHLBanks Letter at 2.

[15] FHLBanks Letter at 2; FIA PTG Letter at 1; ICI Letter at 2; MFA Letter at 2; ICI Letter at 3. *See also* FIA PTG Letter at 1 (stating that clearing leaves no credit, operational or legal exposures between the counterparties).

[16] FHLBanks Letter at 2; ICI Letter at 3; MFA Letter at 2-3; SIFMA AMG Letter at 14.

counterparties to fulfill swap-related legal or operational tasks that would require disclosing their identities.[17] The Managed Funds Association ("MFA") stated that it "strongly believes that there is no legitimate commercial, operational, credit or legal justification for name give-up on SEFs for anonymously-executed cleared swaps."[18] SIFMA, to the contrary, asserted that "even in connection with cleared swaps, there are frequently operational, credit/settlement, and legal considerations that necessitate [post-trade name give-up]."[19]

B. Comments Concerning Effects on Competition and Liquidity

Commenters support prohibiting post-trade name give-up based on concerns that disclosing a counterparty's identity after a trade is executed can lead to harmful "information leakage."[20] MFA stated that prior to trading on a SEF with post-trade name give-up a participant must be comfortable with any participant on the venue potentially learning of its trading activity, because the participant has no control over who it will be matched with.[21] SIFMA Asset Management Group ("SIFMA AMG") stated that information leakage resulting from post-trade name give-up occurs in an "uncontrolled" manner that allows others in the market to anticipate a participant's objectives.[22] The Federal Home Loan Banks ("FHLBanks"), the Investment Company Institute ("ICI"), and Vanguard similarly commented that such disclosure could expose a counterparty's

[17] FHLBanks Letter at 2 (stating that the clearing process occurs within "moments" after execution); MFA Letter at 2-3 (stating that straight-through processing ensures that the anonymously-executed swap is quickly submitted to, and accepted or rejected by, a DCO).
[18] MFA Letter at 2.
[19] SIFMA Letter at 6 (furthermore asserting that post-trade name give up "helps enable parties to address operational errors and resulting risks").
[20] Better Markets Letter at 2; FHLBanks Letter at 2; ICI Letter at 3-4; MFA Letter at 4; SIFMA AMG Letter at 15; Vanguard Letter at 10.
[21] MFA Letter at 4 (describing post-trade name give-up as "an unattractive proposition that undermines the anonymous nature of the trading protocol").
[22] SIFMA AMG Letter at 15.

trading positions, strategies, and/or objectives.[23] ICI further asserted that dealers would benefit by using this information to anticipate a buy-side client's trading intentions and potentially offer less favorable terms and pricing to that client in subsequent bilateral swap transactions.[24] FHLBanks stated that such disclosure is particularly problematic for end users who use swaps to hedge their business exposure.[25]

Commenters who oppose post-trade name give-up asserted that concerns about information leakage have broadly hindered participation and competition on SEFs.[26] MFA stated that post-trade name give-up has precluded buy-side participants who are concerned with the prospect of information leakage from accessing the "unique" liquidity pools and trading protocols available on SEFs that practice post-trade name give-up.[27] In contrast, according to MFA, dealers have access to all SEFs, which provides them with certain informational advantages over other market participants.[28] Several commenters, including MFA, believe that "incumbent" dealers that are traditional swap liquidity providers continue to insist that SEFs facilitate the practice of post-trade name give-up in order to discourage additional competition in the dealer-to-dealer SEF market.[29]

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[23] FHLBanks Letter at 2; ICI Letter at 3; Vanguard Letter at 10 (stating that counterparty identity disclosure additionally exposes trading practices and other sensitive information).

[24] ICI Letter at 4. *See also* Better Markets Letter at 2 (noting that disclosure confers "trading advantages" upon dealers that collect and analyze this information).

[25] FHLBanks Letter at 3.

[26] MFA Letter at 2 (identifying post-trade name give-up as a "significant impediment" to investors' ability to trade on anonymous order books where post-trade name give-up is practiced); FHLBanks Letter at 2-3 (stating that post-trade name give-up has discouraged buy-side participants from trading on SEFs using the practice); ICI Letter at 4 (suggesting that buy-side participants avoid harms caused by information leakage by avoiding SEFs that require post-trade name give-up of intended-to-be-cleared swaps); UBS Letter at 1 (stating that post-trade name give-up dis-incentivizes certain market participants from trading on anonymous limit order book SEFs);

[27] MFA Letter at 4.

[28] *Id.*

[29] AFR Letter at 4 (asserting that post-trade name give-up allows dealers to retaliate against other competing liquidity providers or otherwise provides additional ways to discourage competition); Better Markets Letter at 2 (stating that a "handful" of dealers have prevented SEFs from eliminating the practice

Many commenters stated that prohibiting post-trade name give-up would promote greater participation and competition in the swaps market, thereby potentially improving swap liquidity. FHLBanks, for example, believes that a prohibition would increase competition, reduce market fragmentation, and increase participation on central limit order books, which would lead to deeper liquidity pools and better pricing.[30] Better Markets and MFA similarly asserted that a prohibition would increase swap liquidity by diversifying the pool of SEF participants to include new liquidity providers.[31] ICI and SIFMA AMG also suggested that buy-side participants would be likely to participate on SEFs they had previously avoided if post-trade name give-up were prohibited.[32] Commenters further claim that increasing competition and participation on SEFs with a post-trade name give-up prohibition would establish a more efficient swaps trading market[33] with less information asymmetry among market participants.[34]

SIFMA's letter, on the other hand, argued that prohibiting post-trade name give-up is unnecessary and would harm liquidity in the swaps market. SIFMA stated that many market participants trade willingly on a SEF trading platform with post-trade name give-up.[35] SIFMA noted that buy-side participants who are concerned by post-trade name give-up already have the option of using "fully anonymous" central limit order book

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in order to limit access to liquidity from a small number of dealers); Blinkly Letter at 1 (stating that the practice helps to preserve "dealer control" of profits in the swaps markets); FIA PTG Letter at 1 (stating that the practice allows incumbent liquidity providers to monitor the presence of new liquidity providers seeking to enter the cleared swaps market); MFA Letter at 4 (referring to the practice as a "policing mechanism" to deter buy-side participation); Rutkowski Letter at 5 (same comment as AFR).

[30] FHLBanks Letter at 3.

[31] Better Markets at 2; MFA Letter at 6.

[32] *See* ICI Letter at 2, 4; SIFMA AMG Letter at 15.

[33] ICI Letter at 2; SIFMA AMG Letter at 15.

[34] MFA Letter at 6.

[35] SIFMA Letter at 5 (disputing the belief that participants who trade anonymously also want to remain anonymous post-execution).

platforms that some SEFs currently offer.[36] SIFMA further noted, however, that trading on these platforms is currently minimal, which SIFMA argues reflects a lack of market demand for fully anonymous trading.[37] SIFMA argued, therefore, that prohibiting post-trade name give-up would be "unfair" to participants who choose not to trade fully-anonymously.[38] SIFMA also argued that a "bifurcated market" dynamic with post-trade name give-up is needed to promote liquidity in the swaps market.[39] In the dealer-to-dealer market, where dealers hedge their risks from dealer-to-client trading, SIFMA stated that pre-trade anonymity allows dealers to stream liquidity without attribution and observe available liquidity on the SEF, while post-trade name give-up helps them to price their liquidity based on client relationships, which involves assessing how that liquidity and underlying capital is allocated among clients over time and across different liquidity pools.[40] Counterparty disclosure, according to SIFMA, allows dealers to price that liquidity more accurately and offer better pricing.[41] SIFMA asserted that prohibiting post-trade name give-up would undermine these benefits, precluding dealers from providing such client-based pricing, and would limit their ability to choose how to manage risk.[42]

ICI, MFA, and SIFMA AMG disputed SIFMA's claim that capital and liquidity allocation requires the continued use of post-trade name give-up.[43] SIFMA AMG

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[36] *Id*.
[37] *Id*. at 3 (asserting that the lack of liquidity on those SEF platforms demonstrates that "a substantial cross-segment" of participants prefer to trade with post-trade name give-up).
[38] *Id*.
[39] SIFMA Letter at 4-5 (explaining that dealers provide liquidity to clients and hedge residual risks in the dealer-to-dealer market).
[40] *Id*. at 4.
[41] *Id*. at 5 (stating that dealers are "incentivized and able to provide their best pricing to clients with whom they have strong relationships").
[42] *Id*. (noting that dealers are "comfortable" trading their client risks in existing liquidity pools).
[43] ICI Letter at 3 (describing the allocation explanation as "not a compelling reason"); MFA Letter at 3; SIFMA AMG Letter at 14.

expressed skepticism about the ability of SEF systems or platforms with anonymous trading to provide that benefit, given that pre-trade anonymity does not allow dealers to choose their counterparty nor allocate their capital or liquidity to a specific counterparty.[44] MFA similarly commented that if a dealer wanted to allocate capital or liquidity to a specific counterparty, then it would use a disclosed SEF trading platform, not one that facilitates anonymous execution.[45] ICI argued that allowing certain participants to enter into swaps only with counterparties that are "preferred customers" does not promote liquidity, fairness, or competition.[46] MFA also disagreed with SIFMA's claim that market liquidity would be adversely impacted by a prohibition. MFA believes that if a dealer chooses to offer less liquidity, then the increased competition arising from a prohibition on post-trade give-up would offset that loss.[47] MFA further noted that a liquidity reduction has not transpired in other markets that feature fully anonymous trading.[48]

SIFMA also claimed that dealers may be unwilling or unable to participate in fully anonymous SEF trading environments without post-trade name give-up because such environments would allow SEF buy-side participants to "game" the market more successfully.[49] Several other commenters, however, stated that such behavior is not only

[44] SIFMA AMG Letter at 14.
[45] MFA Letter at 3.
[46] ICI Letter at 3.
[47] *Id*.
[48] *Id*.
[49] SIFMA Letter at 3. As described in the Name Give-Up Release, dealers are reportedly concerned that buy-side clients who participate on dealer-to-dealer order books may undercut prices from dealers by posting aggressive bids or offers and then soliciting dealers through a request for quote on a dealer-to-client platform, hoping to motivate dealers to provide more favorable quotes based on those aggressive prices posted in the order book. Name Give-Up Release at 61572.

unlikely,[50] but is also prohibited under the Commodity Exchange Act ("CEA" or "Act"), Commission regulations, and SEF rules;[51] and that post-trade name give-up is, in any case, not an appropriate mechanism to address such potential market abuse.[52]

III. Discussion

Based on its preliminary consideration of public comments and experience with implementing the SEF framework over the course of several years, the Commission proposes to prohibit post-trade name give-up practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d)(1) would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed rule, however, further specifies that the prohibition would not apply where such disclosure is otherwise required by the CEA or the Commission's regulations.[53] Proposed § 37.9(d)(2) would require a SEF to establish and enforce rules that prohibit any person, including through a third-party service provider,

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[50] FIA PTG, MFA, and SIFMA AMG asserted that no evidence exists that this behavior occurs in other markets with fully anonymous trading. FIA PTG Letter at 1; MFA Letter at 3; SIFMA AMG Letter at 14-15. FHLBanks and MFA noted that this behavior would carry reputational risk, and therefore, is unlikely to occur. FHLBanks Letter at 3, n.7; MFA Letter at 3. *See also* MFA Letter at 2 (stating that a SEF participant would otherwise defy self-interest by posting such aggressive bids or offers, given that other order book participants would quickly execute against those bids or offers).

[51] FHLBanks Letter at 3, n.7 (characterizing market "gaming" as "intentional manipulation of the market"); MFA Letter at 3 (noting legal and regulatory risks of "gaming" the market); ICI Letter at 3 (noting that existing CFTC rules and SEF rules regarding market conduct and trading practices address "gaming" concerns).

[52] SIFMA AMG Letter at 15 (stating that the Commission's rules on disruptive trading practices and SEF market oversight more appropriately address such behavior than post-trade name give-up). The Commission notes that, notwithstanding the concerns articulated by SIFMA related to potential market "gaming," to the extent that any such behavior violates the CEA or Commission regulations, it is subject to investigation and disciplinary action by SEFs and enforcement action by the Commission. SEFs are required to conduct ongoing monitoring and surveillance to monitor and detect fictitious posting of bids and offers on their trading platforms, as well as prosecute trading violations through established SEF disciplinary programs.

[53] This would include, for example, requirements relating to a SEF's obligation to disclose counterparty identities to a derivatives clearing organization or swap data repository.

from effectuating such a disclosure. Finally, proposed § 37.9(d)(3) clarifies that the prohibition would not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap.

The Commission believes that this proposed rule would advance the statutory objectives of promoting swaps trading on SEFs and promoting fair competition among market participants. The Commission additionally believes that it would advance the congressional objectives underlying the existing prohibition against swap data repositories disclosing the identities of cleared swap counterparties. Finally, the Commission also preliminarily believes that post-trade name give-up may impede the policy objectives underlying the impartial access requirement applicable to SEFs.

The Commission emphasizes that the prohibition as proposed applies to a limited scope of trading platforms, *i.e.*, only those that facilitate anonymous trading of cleared swaps. The Commission views the practice of post-trade name give-up as an ancillary post-trade protocol—the prohibition of which limits neither the manner in which participants post bids and offers, nor how those bids and offers interact with one another. The prohibition is also not meant to mandate or favor "all-to-all" trading platforms. Rather, it is meant to encourage more diverse participation and greater competition on existing pre-trade anonymous SEF platforms for cleared swaps. Under the proposed rule, name-disclosed execution methods would still be permitted, and post-trade name give-up would continue to be permitted for uncleared swaps.

A. Promoting Swaps Trading on SEFs and Fair Competition Among Market Participants

CEA section 8a(5) authorizes the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act.[54] Further, CEA section 5h(e) establishes that the goal of the SEF regulatory regime is to promote swaps trading on SEFs and promote pre-trade price transparency in the swaps market.[55] CEA section 3(a) identifies swaps trading to be part of a "national public interest" that, among other things, provides a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.[56] CEA section 3(b) further specifies that the CEA's purpose is to "foster" that interest by promoting fair competition among market participants.[57] For the reasons discussed below, the Commission believes that prohibiting the practice of post-trade name give-up for swaps that are anonymously executed on a SEF and are intended to be cleared is reasonably necessary to advance the objectives of the aforementioned provisions of the Act.

The Commission believes that despite available liquidity for cleared products on certain SEF platforms, the range and number of active participants on such platforms may be limited due to market participants' concerns about information leakage and anticompetitive behavior made possible by post-trade name give-up.[58] The Commission believes that fully anonymous trading (*i.e.*, without post-trade name give-up) would

[54] 7 U.S.C. 12(a)(5).
[55] 7 U.S.C. 7b–3(e).
[56] 7 U.S.C. 5(a) (stating that the transactions subject to the CEA are affected with a national public interest).
[57] 7 U.S.C. 5(b).
[58] *See supra* notes 26-29 and accompanying text. *See also infra* note 73.

likely encourage more participants to trade on those platforms.[59] Greater participation, in turn, would advance the goals of promoting trading and competition on SEFs. The Commission also believes that the proposed rule may advance the CEA's goal of fostering "fair competition" among market participants by reducing opportunities for information leakage. Furthermore, the Commission preliminarily believes that encouraging a greater number, and a more diverse set, of market participants to anonymously post bids and offers on these affected SEFs may promote greater interaction and competition between market participants, which should allow these platforms to act as more efficient mechanisms for price discovery.

B. SDR Information Privacy Requirements

CEA section 21(c)(6) requires a swap data repository ("SDR") to maintain the privacy of any and all swap transaction information that it receives from a swap dealer, counterparty, or any other registered entity. The Commission implemented this requirement under § 49.17 of the Commission's regulations to address the scope of access that market participants may have to swap transaction data held by an SDR. For swaps executed anonymously on a SEF and cleared in accordance with the Commission's straight-through processing requirements, § 49.17(f)(2) explicitly limits this access by prohibiting a counterparty to a swap from accessing (i) the identity of the other counterparty or its clearing member; or (ii) the legal entity identifier of the other

[59] The majority of comment letters submitted in response to the Name Give-Up Release, as well as prior market participant commentary, indicate a strong interest among certain market participants who are not currently trading on these SEF platforms to do so if post-trade name give-up is prohibited. *See, e.g.*, Transcript of CFTC Market Risk Advisory Committee Meeting (Apr. 2, 2015) ("2015 MRAC Meeting Transcript") at 133 *et seq., available at https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html*.

counterparty or its clearing member.[60] In implementing this rule, the Commission clarified that this swap transaction information is subject to the statutory privacy protections because, in the Commission's view, swap counterparties would not know one another's identity if the swap is submitted to clearing via straight-through processing.[61]

The Commission believes that post-trade name give-up undercuts the intent of this requirement and the congressional objectives underlying CEA section 21(c)(6).[62] Allowing a SEF to disclose a counterparty's identity is contrary to the purpose of prohibiting access to this information at an SDR under § 49.17(f)(2), given that a counterparty can obtain this knowledge from another source. Therefore, prohibiting post-trade name give-up would help to advance the objectives underlying the statutory privacy protections under CEA section 21(c)(6) and the Commission's regulations thereunder that apply to this information.

C. Impartial Access

CEA section 5h(f)(2)(B)—a provision within statutory SEF Core Principle 2—requires a SEF to establish and enforce trading, trade processing, and participation rules that, among other things, provide market participants with impartial access to the

[60] 17 CFR 49.17(f)(2).
[61] Swap Data Repositories—Access to SDR Data by Market Participants, 79 FR 16673-16674 (Mar. 26, 2014).
[62] The congressional objective to maintain the privacy of trading information, including trader identities, is also apparent elsewhere in the CEA. *See, e.g.*, CEA Section 8(a), 7 U.S.C. 12(a) (prohibiting the Commission from publication of data and information that would disclose the business transactions or market positions of any person and trade secrets or names of customers). *See also* § 1.59(b)(1)(ii) of the Commission's regulations prohibiting self-regulatory organization employees from disclosing material, non-public information obtained in the course of the employee's employment. In addition, § 1.59(d)(ii) separately prohibits an employee, governing board member, committee member or consultant from disclosing material, non-public information obtained through special access related to the performance of their duties. The Commission promulgated § 1.59 based on its stated belief that the concept underlying CEA section 8(a) should apply with equal force to employees and governing members of self-regulatory organizations. *See* Activities of Self-Regulatory Organization Employees and Governing Members Who Possess Material, Non-Public Information, 50 FR 24533, 24535 (June 11, 1985).

market.[63] The Commission implemented this statutory requirement by adopting § 37.202. Section 37.202(a) requires a SEF to provide any eligible contract participant ("ECP")[64] with impartial access to its market(s) and market services, provided that the facility has, among other things, criteria governing such access that are impartial, transparent and applied in a fair and non-discriminatory manner.[65] In adopting § 37.202, the Commission explained that "impartial" means "fair, unbiased, and unprejudiced."[66] The Commission further stated the requirement would allow participants to "compete on a level playing field" and allow additional liquidity providers to participate on SEFs, thereby improving swaps pricing and market efficiency.[67]

Statutory SEF Core Principle 2 allows a SEF to adopt access limitations, but any such limitations must be consistent with the impartial access requirements.[68] For example, the Commission has stated that certain fee-based limitations would be permissible based on "legitimate business justifications."[69] While a SEF may impose different access criteria among different groups of ECPs, the Commission also stated that "similarly situated" ECPs must be treated in a similar manner.[70]

In practice, SEFs have adopted certain access limitations that affect a participant's ability to utilize a trading platform, such as prerequisites for trading on certain platforms

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[63] 7 U.S.C. 7b-3(f)(2)(B).
[64] CEA section 2(e), 7 U.S.C. 2(e), limits swaps trading on SEFs to "eligible contract participants," as defined under CEA section 1a(18), 7 U.S.C. 1a(18).
[65] 17 CFR 37.202(a). This requirement also applies to any independent software vendor.
[66] SEF Core Principles Final Rule at 33508.
[67] *Id.*
[68] *Id.* (a SEF may use its own reasonable discretion to determine its access criteria, provided that the criteria are impartial, transparent and applied in a fair and non-discriminatory manner, and are not anti-competitive).
[69] *Id.* at 33509 (stating that a SEF may offer different access fees under § 37.202(a)(3) pursuant to legitimate business justifications).
[70] *Id.*

or interacting with certain participants. Some of these prerequisites reflect the nature of the swap involved, such as whether the swap is cleared or uncleared.[71] A SEF may apply such access limitations on its participants based on legitimate business justifications.[72] In any case, a SEF's access limitations must be applied in a fair and non-discriminatory manner, and should not be intended to prevent or disincentivize participation on a SEF.

The practice of post-trade name give-up in isolation may not be discriminatory because participants would generally be eligible to onboard to the SEFs and trade on systems or platforms that equally subject all participants to post-trade identity disclosure. However, the practice may have resulted in a discriminatory effect against certain market participants.[73] The practice, in turn, may have deterred these participants from joining or trading in a meaningful way on SEFs that facilitate post-trade name give-up, thereby limiting competition on these SEFs. The Commission preliminarily believes that this undermines the policy goals of the impartial access requirement to ensure that market participants can compete on a level playing field and to allow additional liquidity providers to participate on SEFs.[74] Market participants who prefer post-trade name give-up may argue that a prohibition instead discriminates against them, but the Commission's

[71] For example, a SEF may limit trading access for uncleared swaps to those market participants who have existing underlying documentation to execute such swaps with other potential counterparties. Such prerequisites have been found to be in violation of impartial access requirements when applied to trading cleared swaps, however. *See infra* note 75.

[72] For example, SEFs have been permitted to require participants to have certain trading enablements in place with a minimum percentage of other participants on the platform prior to trading uncleared swaps. This approach allows participants to appropriately manage bilateral counterparty risk of uncleared swaps, while also allowing the SEF to promote active and orderly trading by ensuring that a requisite number of participants can interact with one another.

[73] *See supra* notes 26-29 and accompanying text; 2015 MRAC Meeting Transcript at 133 *et seq.* The Commission notes that some market participants have asserted that post-trade name give-up has enabled anticompetitive behavior and unfair competition. *See supra* note 29 and accompanying text; MRAC Meeting Transcript at 133 at 169, 171.

[74] *See supra* note 67 and accompanying text.

preliminary assessment is that promoting a fully anonymous trading environment would better fulfill the goals of impartial access on SEFs.

The Commission believes that – with respect to operational, credit and settlement, and legal issues in particular – there is generally no imperative for post-trade name give-up if a swap is executed on a SEF and submitted to a DCO for clearing.[75] The Commission, however, recognizes that post-trade name give-up could be necessary for certain cleared swaps that are components of a package transaction that includes an uncleared component that creates bilateral credit, operational, or legal exposures that the counterparties must manage on an ongoing basis.[76] The Commission is therefore requesting additional public comment on the necessity and scope of an exception to the proposed rule for package transactions. With respect to SIFMA's assertion that certain other circumstances may still arise that would require counterparty disclosure,[77] the Commission generally agrees with other commenters that straight-through processing should obviate that need.[78] Nevertheless, the Commission is requesting additional public

[75] The Commission notes that mechanisms or agreements used to address bilateral counterparty risk have been viewed as inconsistent with impartial access when applied to cleared swaps because they limit a participant's ability to trade on SEFs without justification. For example, Commission staff previously viewed a SEF's application of such "enablement mechanisms" with respect to cleared swaps as "prohibited discriminatory treatment" that is inconsistent with the impartial access requirements under § 37.202. Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities at 1-2 (Nov. 14, 2013).

[76] *See* MFA Letter at 6; SIFMA Letter at 6.

[77] SIFMA Letter at 6.

[78] *See supra* notes 16-18 and accompanying text. The Commission has previously stated that the "acceptance or rejection for clearing in close to real time is crucial for both effective risk management and for the efficient operation of trading venues." Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21285 (Apr. 9, 2012). Commission staff has also issued guidance that discusses appropriate practices to ensure prompt and efficient clearing. Staff Guidance on Swaps Straight-Through Processing (Sept. 26, 2013). In instances where a swap containing an error has been accepted for clearing, a SEF may facilitate the correction of the error without disclosing a counterparty's identity, such as by facilitating the execution and submission of an offsetting swap to clearing. *See* CFTC Letter No. 17-27, Re: No-Action Relief for Swap Execution Facilities and

comment on whether any operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for an intended-to-be-cleared swap, outside of those swaps that are components of certain package transactions.

IV. Request for Comment

The Commission requests comment on all aspects of proposed § 37.9(d) including, but not limited to, responses to the comments provided in the Name Give-Up Release. In particular, the Commission requests comments on whether the proposed regulation would advance the statutory and regulatory goals and the requirements discussed in the previous section. In commenting on the potential effects of the proposed rule, the Commission requests background information, actual market examples, best practice principles, and expectations for possible impacts on competition, market structure, and liquidity. The Commission encourages commenters to provide supporting data, statistics, and any other relevant information.

In addition, the Commission requests comment on the following questions:

(1) Does post-trade name give-up undermine the Commission's stated goals of impartial access to (i) ensure market participants can compete on a level playing field, and (ii) allow additional liquidity providers to participate on SEFs? Please explain why or why not, and include any supporting data.

(2) Should the Commission narrow the scope of the proposed prohibition on post-trade name give-up to apply only to swaps that are required to be cleared under section 2(h)(1) of the Act, or alternatively, only to swaps that are subject to the trade execution requirement under section 2(h)(8) of the Act? Why or why not?

Designated Contract Markets in Connection with Swaps with Operational or Clerical Errors Executed on a Swap Execution Facility or Designated Contract Market (May 30, 2017) at 1, n.2.

(3) How, if at all, would a prohibition on post-trade name give-up affect pre-trade price transparency on a SEF operating an anonymous central limit order book?

(4) How would the proposed prohibition on post-trade name give-up affect existing liquidity on SEFs? How would the proposed prohibition affect liquidity on central limit order books? Would the proposed prohibition indirectly affect liquidity on name-disclosed request for quote systems? If so, how? In particular, please provide substantiating data, statistics, and any other quantifiable information related to any such comments.

(5) Please explain the nature of any potential new liquidity on SEFs that may result from the proposed prohibition. For example, would liquidity increase due to a greater number of market participants trading and/or would liquidity increase due to additional market makers competing on affected SEFs?

(6) How, if at all, would the proposed prohibition on post-trade name give-up affect trading protocols such as auctions, portfolio compression, and/or workup sessions?

(7) Is trading on a SEF platform with post-trade name give-up for anonymously executed, intended-to-be-cleared swaps preferable to a fully-disclosed platform for a swap dealer's capital allocation purposes? If so, why?

(8) Please describe how post-trade name give-up currently helps swap dealers make markets in swaps, if at all.

(9) If the Commission were to prohibit post-trade name give-up as proposed in this notice, then how might that affect the prices that swap dealers quote to buy-side participants on SEFs operating name-disclosed, request for quote platforms?

(10) How does the price for a given swap listed on a SEF operating an anonymous central limit order book compare to the price for an equivalent swap listed on a SEF operating a name-disclosed request for quote system? How does the practice of post-trade name give-up relate to any such difference in price?

(11) Are there certain cleared swap classes for which post-trade name give-up serves a particularly important role for swap dealers for market-making or hedging purposes that would be adversely affected by a prohibition?

(12) How many and what types of additional liquidity providers (*e.g.*, funds, proprietary trading firms, high-frequency traders) might join affected SEFs if post-trade name give-up were prohibited? Would these new participants be particularly interested in trading certain kinds of swap transactions (*e.g.*, spread trades)? Would these new participants be floor traders, swap dealers, or another type of entity?

(13) What other effects would a prohibition on post-trade name give-up have on the swap market?

(14) Should the Commission provide an exception to the prohibition on post-trade name give-up for swaps that are components of package transactions involving an uncleared swap? To what extent are such package transactions anonymously traded, given the involvement of an uncleared swap at the outset?

(15) If the Commission provides an exception with respect to package transactions, should it include an exception for package transactions involving any non-swap instrument, including Treasury securities? Should such an exception apply to the

swap components if such non-swap instrument components are also executed anonymously and intended to be cleared?

(16) Excluding swaps that are components of certain package transactions, what, if any, operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for a swap that is intended to be cleared?

(17) Are there any alternatives to the proposed prohibition on name give-up that would better achieve the regulatory objectives stated above? For example, could these objectives be better accomplished through additional guidance or enforcement activity to address applications of post-trade name give-up that are inconsistent with the impartial access requirement?

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[79] requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide an analysis regarding the economic impact on those entities. The regulation proposed herein will affect SEFs. The Commission has previously determined that SEFs are not "small entities" for the purpose of the RFA.[80] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulation proposed herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

[79] 5 U.S.C. 601 *et seq*.
[80] *See* SEF Core Principles Final Rule at 33548.

The Paperwork Reduction Act ("PRA")[81] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. The Commission has previously received a control number from OMB that includes the collection of information associated with Part 37 of the Commission's regulations. The title for this collection of information is "Core Principles and Other Requirements for Swap Execution Facilities, OMB control number 3038-0074."[82] Collection 3038-0074 is currently in force with its control number having been provided by OMB. However, the rule proposed herein does not impose any new recordkeeping or information collection requirements, and therefore contains no requirements subject to the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[83] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other

[81] 44 U.S.C. 3501 *et seq*.
[82] *See* OMB Control No. 3038-0074, *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0074*.
[83] 7 U.S.C. 19(a).

public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

The Commission is proposing to amend part 37 of the Commission's regulations to prohibit "post-trade name give-up" practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d) of the Commission's regulations would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed regulation would also require SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure.

The baseline for this consideration of costs and benefits with respect to the proposal herein is the status quo, which includes the existing practice of post-trade name give-up for cleared swaps on some SEFs, and the current regulatory requirements that do not explicitly prohibit post-trade name give-up for cleared swaps that are executed anonymously. The Commission emphasizes that the proposed prohibition will not apply to uncleared swaps or SEF trading systems and platforms that are not pre-trade anonymous. Proposed § 37.202(d)(3) clarifies that the prohibition would not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap. Some swaps trading on SEFs today occurs on "disclosed" trading systems and platforms that provide the identities of potential counterparties to one another before execution occurs. Such is the case, for example, with certain request for quote systems offered by SEFs.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all swaps activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[84]

The Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the proposed rule in qualitative terms. The lack of data and information to estimate those costs and benefits is attributable in part to the nature of the proposed rule and uncertainty about the potential responses of market participants to the implementation of the proposed rule. The Commission recognizes that potential indirect costs and benefits of the proposed prohibition on post-trade name give-up, *i.e.*,

[84] Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. 7 U.S.C. 2(i). Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank.

those relating to effects on trading behavior, liquidity, and competition, may be impossible to accurately predict or quantify prior to implementation of the proposed rule.

1. Costs

The Commission's preliminary assessment is that the direct costs for SEFs of implementing and complying with proposed § 37.9(d) would not be material. Proposed § 37.9(d)(1) would prohibit SEFs from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. Only SEFs that currently practice post-trade name give-up for cleared swaps would be required to take action to comply with proposed § 37.9(d)(1), and the Commission's preliminary understanding is that the costs of adjusting affected SEF protocols in order to comply would be negligible.[85] However, the Commission requests that SEFs that presently employ post-trade name give-up for cleared swaps comment on this proposal and provide estimates of any direct costs they would incur in complying with proposed § 37.9(d)(1). Proposed § 37.9(d)(2) would require SEFs to establish and enforce rules to prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. Complying with § 37.9(d)(2) would require a SEF to file such rules with the Commission in accordance with part 40 of the Commission's regulations. The Commission estimates

[85] *See, e.g.*, Peter Madigan, "CFTC to Test Role of Anonymity in SEF Order Book Flop," Risk.net (Nov. 21, 2014) (according to one SEF official, "the revealing of the name is a legacy behavior and it's not necessary that we reveal it. Should we be told not to by the regulators, we will flick a switch and the world will go on. It will not be a profound change and it's not going to require re-engineering the system"), *available at http://www.risk.net/risk-magazine/feature/2382497/cftc-to-test-role-of-anonymity-in-sef-order-book-flop*. *See also supra* note 5 (SEFs that use IHS Markit services to route trades can select an already available "no-name give up workflow option").

that filing such rules may take up to 50 hours which is unlikely to be a major cost burden on SEFs. The Commission anticipates that the direct cost of complying with proposed § 37.9(d) for market participants and third-party service providers should be at or near zero.

With respect to potential indirect costs of the proposed rule, SIFMA has suggested that a prohibition on post-trade name give-up may impair the ability of incumbent liquidity providers to manage risk and provide liquidity which in turn would be "likely to worsen pricing that dealers can offer to clients."[86] Although the Commission is aware of the concerns raised by SIFMA, it is not, at this time, convinced that prohibiting post-trade name give up would increase the costs of trading swaps for end users and other swap dealer clients. The Commission preliminarily believes that negative pricing effects on SEFs would be unlikely to result, as competition from new market participants and incumbent liquidity providers that continue to provide liquidity should offset this possibility. However, the Commission requests additional comments relating to the risks and costs of such an outcome. The Commission also requests public comment regarding any additional indirect costs of the proposed rule.

2. Benefits

The Commission believes that implementing the proposed rule may improve liquidity on SEFs, particularly on affected SEF order books. The practice of post-trade name give-up has reportedly deterred a significant segment of market participants from making markets on or otherwise participating on affected SEFs. The Commission expects that some of these market participants would choose to participate on these SEFs if the Commission were to prohibit the practice, leading to increased liquidity. Increased

[86] SIFMA Letter at 4.

liquidity could benefit market participants by making it easier to execute transactions, especially larger transactions, quickly and without undue price impact. As discussed below, Commission staff has reviewed several empirical event studies, which focus specifically on the effect of post-trade anonymity on market liquidity. Most of these studies, such as those discussed below, document an improvement in liquidity. The Commission notes that the markets that are the subjects of these studies are not the same as U.S. swaps markets and are mostly not dealer-oriented markets. Some of the markets studied are also deeper and more liquid than the U.S. swaps market. The Commission requests public comment on the validity or applicability of the papers discussed below, as well as any other studies that may be instructive.

One of the early empirical studies focused on the implementation of post-trade anonymity on the London Stock Exchange after the introduction of a central counterparty to electronic equity trading in February 2001.[87] Prior to this change, the market was pre-trade anonymous, but the two parties involved in a trade were informed about each other's identities once the transaction was completed. The authors found that post-trade anonymity resulted in higher market depth and lower spreads and execution costs. Liquidity improvements were more pronounced for small stocks and stocks with higher trading concentration, which are expected to exhibit large exogenous information asymmetries. Such stocks may be more analogous to swap markets than larger stocks with less trading concentration. Post-trade anonymity seemed to benefit mostly those who traded repeatedly and traded the largest volumes. The authors argue that "bilateral disclosure of trader identities harms traders who are known to account for a sizable

[87] Freiderich, S. and R. Payne (2014), "Trading anonymity and order anticipation," *Journal of Financial Markets*, 21, 1-24.

portion of total volume and who trade repeatedly in the same direction because it facilitates anticipation of their orders."[88]

Another study explored a post-trade anonymity reform introduced by the Oslo Stock Exchange between 2008 and 2010. During this period, the 25 most traded stocks on the Oslo Stock Exchange were periodically selected to trade fully anonymously, while the broker identities of traders involved in transactions on all other stocks were released to all market participants after each transaction. This study found that post-trade anonymity led to lower bid-ask spreads and higher volume. These results seemed to be driven by increased trading from institutional investors, who split their orders into multiple smaller transactions potentially to reduce information leakage and price impact. The author found that "anonymity increases liquidity in part by reducing the liquidity providers' adverse selection costs. However, the increase in stock liquidity is also partly driven by a reduction in liquidity provider revenues."[89]

Another study examined the 2008 transition of equity trading in Helsinki, Reykjavik, and the five most traded stocks in Stockholm where broker codes were removed from all real-time market data feeds. It also examined the 2009 reversal of this change. The findings suggested that liquidity, measured by quoted spreads, price impact, and limit order book depth, "improves when anonymous post-trade reporting is introduced, and liquidity worsens when anonymous post-trade reporting is reversed."[90]

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[88] *Id.*

[89] Meling, T. G., "Anonymous Trading in Equities" (2018 working paper), *available at https://ssrn.com/abstract=2656161*.

[90] Dennis, P. J, and Sandas, P., "Does Trading Anonymously Enhance Liquidity?" (2019 working paper), *available at https://ssrn.com/abstract=2516933*. The original change in post-trade transparency was reversed for all stocks, except the five most traded stocks in Helsinki.

However, results were weaker during the reversal, which the authors attribute to other contemporaneous factors.

A study exploring the effects of post-trade anonymity on the German electronic trading platform Xetra showed that concealing broker identities from their counterparties resulted in lower execution costs.[91]

An empirical study focusing on the information content of broker identities provided a potential explanation for the improvement in liquidity documented in many of the aforementioned event studies. It showed that the disclosure of broker identities allowed information leakage, even though participants sometimes used multiple brokers and mixed signal strategies to potentially hide their trading intentions.[92] The authors of this study suggested that the documented improvement in liquidity, associated with greater anonymity, may have come at the expense of information efficiency, as prices potentially adjusted to order flow information more slowly under increased anonymity. Because this study relied on Finnish data during the period of 2000 to 2001, the authors also conjectured that algorithmic trading could potentially allow informed investors to hide their orders better, but it could also enable proprietary traders to uncover informed order flow.

Some studies did not find that implementing post-trade anonymity improved liquidity. One such study, investigating the impact of post-trade anonymity from the perspective of liquidity providers in a dealer market, showed that the 2003 introduction of post-trade anonymity on the Nasdaq platform did not improve best quotes. The author

[91] Hachmeister, A. and Schiereck, D., "Dancing in the dark: post-trade anonymity, liquidity and informed trading" (2010), *Review of Quantitative Finance and Accounting*, 34, 145-177.
[92] Linnainmaa, J., Saar, G., "Lack of anonymity and the inference from order flow" (2012), *Review of Financial Studies*, 25, 1414-1456.

concluded that "introducing anonymity on [the] Nasdaq platform did not lead to an increase in competition between market makers."[93]

Moreover, a study on the South Korea Exchange argued that revealing the ex-post order flow of major brokers to the entire market led to an improvement in liquidity. It investigated the effects of public disclosure of the identities of the top five brokers and their trades. Notably, this disclosure occurred just twice per day. Trading volume was higher in the setting without post-trade anonymity. Moreover, while realized spreads were lower when broker identities were disclosed, price impact costs were higher. The authors argued that "these findings strongly indicate that providing broker IDs induces more competition among liquidity providers that lowers the realized spread and, as indicated by higher market impact costs, provides more rapid dissemination of information, which in turn provides market efficiency."[94]

Commission staff also reviewed several theoretical studies, which presented models with various levels of post-trade transparency in different settings and could offer some insight on post-trade anonymity, although they did not directly compare it to the case of bilateral disclosure of counterparty identities right after each trade. The predictions of these models were mixed. One theoretical study, focused on the post-trade public disclosure of insiders in equity markets, argues that public disclosure of insider trades accelerates the price discovery process and reduces trading costs.[95] These predictions suggested that post-trade anonymity could strengthen asymmetric information

[93] Benhami, K., "Liquidity providers' valuation of anonymity: The Nasdaq Market Makers evidence" (2006 working paper), *available at https://www.cass.city.ac.uk/__data/assets/pdf_file/0005/78737/2Benhami.pdf*.
[94] Pham, T. P., et al., "Intra-day Revelation of Counterparty Identity in the World's Best-Lit Market," (2016 working paper), *available at https://ssrn.com/abstract=2644149*.
[95] Huddhart, S., J., Hughes and Levine, "Public Disclosure and Dissimulation of Insider Trades" (2001), *Econometrica*, 69, 665-681.

in the market, subsequently reducing liquidity by exacerbating the market maker's adverse selection problem. However, another study argued that the effect of anonymity on liquidity could also be positive, if the information acquisition is endogenous, because then anonymity could potentially bolster market participants' incentives to acquire information.[96]

Another study on the disclosure of insider trades developed a model where the insider is risk averse and showed that the insider is encouraged to trade less aggressively on his private information, weakening both informational efficiency and market liquidity.[97] This finding suggests that post-trade anonymity could encourage informed traders to trade more aggressively on their private information, facilitating price discovery and improving market liquidity. Another study suggested that the presence of order anticipation strategies, often referred to as "back running," alters the trading strategies of institutional and retail investors, in an effort to avoid being detected.[98] The authors predicted that fundamental investors introduce random noise in their strategies to avoid being detected. However, surprisingly, when the accuracy of the back runners' signals is high their profits may be reduced, especially if there are many of them.

The practice of post-trade name give-up was explicitly addressed in a theoretical study that was cited in a comment letter to the Name Give-Up Release from Americans for Financial Reform ("AFR").[99] This study modeled the investor choice between over-

[96] Rindi, B., "Informed Traders as Liquidity Providers: Anonymity Liquidity and Price Formation," (2008), *Review of Finance*, 12, 497-532.
[97] Buffa, A. M., "Insider Trade Disclosure, Market Efficiency, and Liquidity" (2014 working paper), *available at https://ssrn.com/abstract=1102126*.
[98] Yang, L. and Zhu, H., "Back-Running: Seeking and Hiding Fundamental Information in Order Flows" (2019), *The Review of Financial studies*, forthcoming, *available at https://ssrn.com/abstract=2583915*.
[99] AFR Letter at 4-5.

the-counter ("OTC") markets and electronic order books, and assessed the value of OTC markets for market quality and total welfare.[100] The authors showed that, although the presence of OTC markets increases total volume and decreases the average spread, it can still harm total welfare[101] if the adverse selection costs are low, *i.e.*, in markets with limited informed speculators and high trading activity in OTC markets. This is because "uninformed" investors (*i.e.*, profit-indifferent, hedging traders) are more likely to be offered lower spreads in OTC markets, while spreads widen for "informed" investors (speculators). The practice of post-trade name give-up allows dealers, who offer liquidity both through requests for quotes and in the electronic order book, to detect the trading motives of their counterparties and lower their adverse selection costs. "Given low OTC market share in swaps, eliminating [post-trade name give-up] is predicted to increase welfare, decrease total volume and widen average spread. Specifically, spreads on swaps exchanges are predicted to decline while the OTC spreads are expected to increase."[102]

The Commission finds these studies potentially instructive, along with assertions provided by the majority of commenters, to indicate that overall liquidity may be improved by proposed § 37.9(d). Moreover the Commission is concerned with assertions that the status quo facilitates information asymmetries and hinders access and participation on affected SEF trading systems for many market participants. The Commission believes that the proposed rule may benefit market participants by reducing these information asymmetries and could increase participation on these SEF platforms.

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[100] Lee, T. and Wang, C., "Why Trade Over-the-Counter? When Investors Want Price Discrimination" (2019 working paper), *available at https://ssrn.com/abstract=3087647*.
[101] Welfare is the expected sum of all market participants' payoffs.
[102] *Id.* at 26-27.

The Commission requests additional public comment regarding potential benefits of the proposed rule.

3. Section 15(a) Factors

a. Protection of Market Participants and the Public

The proposed rule is intended to protect market participants and the public by advancing the statutory goals of promoting swaps trading on SEFs and fostering fair competition among market participants. Further, the Commission believes the practice of post-trade name give-up may be inconsistent with the policy goals of the SEF impartial access requirements which are intended to allow participants to compete on a level playing field and allow additional liquidity providers to participate on SEFs.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The proposed rule is intended to enhance competitiveness in the swap markets by removing an effective barrier to participation on SEFs for many market participants who are concerned with the prospect of information leakage. The Commission expects participation on SEFs to increase as a result, leading to greater competition.

c. Price Discovery

The Commission believes that the proposed rule may encourage a greater number of market participants to anonymously post bids and offers on affected SEFs, which may promote greater interaction and competition between market participants, thereby allowing these platforms to act as more efficient mechanisms for price discovery.

d. Sound Risk Management Practices

Similarly, increased participation and competition on SEFs and decreased information asymmetry among market participants is likely to enhance SEF trading as a mechanism for risk management.

e. Other Public Interest Considerations

Post-trade name give-up is inconsistent with Commission regulations intended to protect the privacy of a swap counterparty's trading information. Prohibiting post-trade name give-up would help to effectuate the statutory privacy protections under CEA section 21(c)(6) that apply to this information.

4. Request for Comment

The Commission invites public comment on all aspects of the cost-benefit considerations herein, including the discussion of the section 15(a) factors. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rule are reasonably quantifiable, the Commission requests that they provide data, statistics and any other information that will assist the Commission in quantification. Finally, the Commission requests comment on the academic literature related to post-trade anonymity, including comments on the validity or applicability of the papers the Commission has discussed herein and any other studies the Commission should review.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or

adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.[103]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. In particular, the Commission preliminarily believes that the proposed amendments to part 37 will promote competition on SEFs. The Commission requests comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule.

List of Subjects in 17 CFR Part 37

Swaps, Swap execution facilities.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 37 to read as follows:

[103] 7 U.S.C. 19(b).

PART 37—SWAP EXECUTION FACILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a-2, 7b-3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376.

2. In § 37.9, add paragraph (d) to read as follows:

§ 37.9 Methods of execution for required and permitted transactions.

* * * * * *

(d) *Counterparty anonymity*. (1) Except as otherwise required under the Act or the Commission's regulations, a swap execution facility shall not directly or indirectly, including through a third-party service provider, disclose the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(2) A swap execution facility shall establish and enforce rules that prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap.

Issued in Washington, DC, on December 20, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Post-Trade Name Give-Up on Swap Execution—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Joint Statement of Chairman Heath Tarbert, Commissioner Rostin Behnam, and Commissioner Dan M. Berkovitz

It is a hallmark of American exchange-style trading systems that the buyer and seller of a given financial instrument have no reason to know—and do not know—the identity of one another.[1] Trading anonymity can be viewed as a great equalizer, leveling the playing field for counterparties of all sizes and types by allowing traders to enter and exit the market without exposing their trading positions and strategies.[2] As a result, markets with pre- and post-trade anonymity are generally not only fairer, but also feature greater liquidity and greater competition between market participants.[3]

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[1] *See, e.g.*, Peter A. McKay, *CME and CBOT to Close Loophole*, Wall St. J. (Apr. 15, 2006) ("When stocks are traded on public exchanges, investors generally don't know who they are buying from or selling to. On futures exchanges, most investors expect the same thing when trading electronically.").

[2] *See, e.g.*, Peter Madigan, *CFTC to Test Role of Anonymity in SEF Order Book Flop*, Risk (Nov. 21, 2014) (noting arguments that anonymity creates a more egalitarian market); Managed Funds Association ("MFA"), *Position Paper: Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market* 8 (Mar. 31, 2015) (arguing that "markets should remain anonymous to create a level playing field for all participants"); CFTC Market Risk Advisory Committee, *Panel Discussion: Market's Response to the Introduction of SEFs* 139 (Apr. 2, 2015) ("MRAC Meeting Transcript") (noting buy-side reticence to use SEF order books with name give-up because of potential uncontrolled information leakage); *see also* Testimony of Stephen Berger, Citadel LLC, Before the Subcomm. on Commodity Exchanges, Energy, & Credit of the H. Comm. on Ag., *Hearing to Review the Impact of G-20 Clearing and Trade Execution Requirements* (June 14, 2016) (testifying on behalf of MFA) (asserting that lack of post-trade anonymity "creates an uneven playing field and impairs competition").

[3] *See, e.g.*, MRAC Meeting Transcript, *supra* note 2, at 154 (explaining that anonymous order books have facilitated liquidity and diverse participation in markets for other instruments, such as equities and futures); S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation*, 21 Journal of Financial Markets 1-

Before the adoption of central clearing for standardized swaps, post-trade disclosure of counterparty identities was the norm in swaps markets because of the need to manage counterparty credit risk. For example, Party A would ask its broker to enter into a five-year interest rate swap to exchange a fixed payment for a floating rate. The broker would find (often through another broker) Party B, who would be willing to take the other side of the swap. Post-trade, the identities of Party A and B would be revealed to one another. A five-year bilateral relationship would thus ensue, wherein both parties would need to monitor their counterparty's respective ability to make good on their obligations. But times have now changed.

The Dodd-Frank Act has encouraged—and in some instances required—centralized clearing for classes of swaps that are sufficiently standardized and liquid to be cleared through a central counterparty, *i.e.*, a derivatives clearinghouse.[4] As is the case for exchange-listed products, a cleared swap no longer exposes the respective parties to the risk of non-performance. Rather than Party A and Party B being obligated to one another under the terms of the swap, the clearinghouse steps in between the parties to the

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24 (2014) (finding that post-trade anonymity improved market liquidity, particularly for small stocks and stocks with concentrated trading, which may be more analogous to swaps); T.G. Meling, *Anonymous Trading in Equities* (2018 working paper) (also finding that post-trade anonymity improved market liquidity); P. J Dennis & P. Sandas, *Does Trading Anonymously Enhance Liquidity?* (2019 working paper) (same); A. Hachmeister & D. Schiereck, *Dancing in the Dark: Post-Trade Anonymity, Liquidity, and Informed Trading*, 34 Review of Quantitative Finance and Accounting 145-177 (2010) (same); J. Linnainmaa & G. Saar, *Lack of Anonymity and the Inference from Order Flow*, 25 Review of Financial Studies 1,414-1,456 (2012) (same).

[4] Commodity Exchange Act ("CEA") section 2(h)(8), 7 U.S.C. 2(h)(8); *see also* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform* iii (May 2009), *https://www.capmktsreg.org/wp-content/uploads/2018/10/The-Global-FInancial-Crisis-A-Plan-for-Regulatory-Reform.pdf* ("If clearinghouses were to clear CDS contracts and other standardized derivatives, like foreign exchange and interest rate swaps, systemic risk could be substantially reduced by more netting, centralized information on the exposures of counterparties, and the collectivization of losses.").

trade and takes on the counterparty credit risk of both sides.[5] Consequently, anonymous trading is now possible for large swaths of the U.S. swaps markets.

Yet a number of swap execution facilities ("SEFs") still retain a vestige of the old bilateral over-the-counter markets, even for transactions that are centrally cleared: the practice of "post-trade name give-up." That is, the SEF will provide the identity of each swap counterparty to the other after a trade has been executed anonymously. Given the advent of clearing, many have reasonably questioned the policy rationale for post-trade name give-up for cleared swaps, and still others have gone further, criticizing the practice as anticompetitive and an obstacle to broad and diverse participation on SEFs.

We support today's proposed rule ("Proposal") to prohibit post-trade name give-up for swaps that are executed anonymously via a SEF and intended to be cleared.[6] We believe that the Proposal serves two key objectives of the Commission's governing statute: (1) promoting swaps trading on SEFs[7] and (2) promoting fair competition among market participants, including through impartial access to a SEF's trading platform.[8] The Proposal could also help attract a diverse set of additional market participants who have been deterred from trading on these platforms by the practice of post-trade name give-up, but remain interested in bringing liquidity and competition to SEFs if there is a level playing field.

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[5] *See* Robert S. Steigerwald, Federal Reserve Bank of Chicago, *Central Counterparty Clearing*, in Understanding Derivatives: Markets and Infrastructure (2013) (explaining that through novation, the original contract is replaced by two contracts, with the central counterparty becoming buyer to the seller and seller to the buyer).

[6] Of note, the proposed prohibition would not apply to trading protocols that involve *pre-trade* counterparty disclosure, such as a typical request-for-quote process.

[7] CEA section 5h(e), 7 U.S.C. 7b-3(e).

[8] CEA section 3(b), 7 U.S.C. 5(b) (listing fair competition among market participants as a goal of the CEA); CEA section 5h(f)(2)(B)(i) (requiring a SEF to establish and enforce rules to provide participants impartial access to the market).

The Proposal is in large part based upon responses to the Commission's November 2018 request for comment on post-trade name give-up.[9] A large majority of commenters saw no sufficient justification for the practice with respect to cleared swaps, given the absence of counterparty credit risk attending such swaps.[10] These commenters acknowledged arguments that dealers use the practice to allocate capital to preferred customers as part of an overall cross-marketing strategy. However, they either did not find this rationale legitimate or believed that it does not justify potential harms resulting from name give-up.[11]

Commenters identified several such harms. A principal concern was the risk of information leakage allowing counterparties to glean a SEF participant's trading positions and strategies.[12] Commenters also expressed concern that disclosure of counterparty identities could run counter to the "impartial access" requirement for SEFs. Under this view, SEF participants can (and purportedly do) use name give-up to discriminate against counterparties whose trading practices they believe are harmful.[13] A large majority of commenters stated that the concerns discussed above have inhibited buy-side participation on SEFs employing name give-up.[14] In their view, prohibiting the practice would enhance liquidity on SEFs. Empirical studies on the effects of post-trade

[9] CFTC Request for Comment on Post-Trade Name Give-Up on Swap Execution Facilities, 83 Fed. Reg. 61,571, 61,572 (Nov. 30, 2018).
[10] *See, e.g.*, Investment Company Institute ("ICI") Letter at 3; FHLBanks Letter at 2; Futures Industry Association Principal Traders Group ("FIA PTG") Letter at 1; MFA Letter at 2; SIFMA AMG Letter at 14; Vanguard Letter at 2; Better Markets Letter at 2, 66. This seems particularly to be the case in light of pre-trade credit check and straight-through processing requirements that minimize the time between trade execution and acceptance for clearing.
[11] *E.g.*, ICI Letter at 3; MFA Letter at 3; SIFMA AMG Letter at 14.
[12] *E.g.*, FHLBanks Letter at 3; ICI Letter at 3-4; MFA Letter at 4; Vanguard Letter at 10.
[13] *E.g.*, FIA PTG Letter at 1; ICI Letter at 3; MFA Letter at 4.
[14] *E.g.*, ICI Letter at 3-4; MFA Letter at 4; SIFMA AMG Letter at 15; *see also* MRAC Meeting Transcript, *supra* note 2 (multiple panelists and committee members arguing that name give-up impairs buy-side SEF participation).

anonymity—in U.S. securities markets and in a wide range of foreign financial markets—bolster this view.[15]

We note that one response to the request for comment argued that post-trade anonymity could prompt dealers to withdraw from SEFs. The comment expressed concerns that the prohibition could on net reduce liquidity on SEFs.[16] Yet we have seen predictions of a drought in liquidity time and time again with respect to swaps regulatory reform. For example, it was used to oppose the clearing requirement of the Dodd-Frank Act and the Commission's 2013 SEF trading rules.[17] Such predictions have not proven accurate thus far.[18]

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[15] *See supra* note 3. We note that at least one study of a U.S. securities trading platform found that post-trade anonymity had no impact on the quality of price quotes on the platform. K. Benhami, *Liquidity Providers' Valuation of Anonymity: The Nasdaq Market Makers Evidence* (2006 working paper). Another study on the South Korea Exchange found that post-trade disclosure of the order flow of major brokers to the entire market improved liquidity. T. P. Pham et al., *Intra-day Revelation of Counterparty Identity in the World's Best-Lit Market* (2016 working paper). On balance, however, the liquidity and other benefits of anonymous trading in financial markets appear well established.

[16] *See* Securities Industry & Financial Markets Ass'n ("SIFMA") Letter at 1, 3-4. We also note the argument that post-trade anonymity allows participants to "game" the market. Under this scenario, a buy-side customer may undercut prices from dealers by posting aggressive orders to a dealer-to-dealer SEF's order book, then soliciting dealers through a request for quote on a dealer-to-client SEF in the hope that the dealers will provide more favorable quotes based on the order book pricing. *See, e.g.*, Request for Comment, 83 Fed. Reg. at 61,572; Tom Osborn, *How to Game a SEF: Banks Fear Arrival of Arbitrageurs*, Risk (Mar. 19, 2014); Madigan, *supra* note 2. We urge commenters to submit any evidence or indicia that such gaming is in fact occurring in other fully anonymous markets or would occur on SEFs if the proposed prohibition were implemented. We preliminarily believe that such conduct could constitute a disruptive trading practice or market manipulation prohibited by the CEA and potentially also subject to SEF disciplinary action. Such conduct may be best addressed by regulatory or self-regulatory authorities as appropriate, rather than via SEF participant "self-help" effectuated via name give-up.

[17] *See, e.g.*, International Swaps & Derivatives Ass'n ("ISDA"), *Swap Execution Facilities: Can They Improve the Structure of OTC Derivatives Markets?* 14-15 (Mar. 2011) (arguing that proposed SEF rules would reduce liquidity); SIFMA, *SIFMA Strongly Disagrees with CFTC's Final SEF Rules* (May 29, 2013) (same); Terry Flanagan, *Wholesale Brokers Criticize CFTC*, Markets Media (Oct. 3, 2011) (same).

[18] *See, e.g.*, Lynn Riggs et al., CFTC, *Swap Trading after Dodd-Frank: Evidence from Index CDS*, at 6, 52 (Aug. 17, 2019) (finding that SEF-traded index credit default swap markets are working relatively well following the Dodd-Frank reforms, though there is always room for improvement); Evangelos Benos, Richard Payne, & Michalis Vasios, *Centralized Trading, Transparency, and Interest Rate Swap Market Liquidity: Evidence from the Implementation of the Dodd-Frank Act*, Bank of England Staff Working Paper No. 580, at 31 (May 2018) (finding liquidity improvement for swaps subject to the SEF trading mandate); ISDA Comment Letter on 2018 SEF Proposed Rule, at 2 ("Certain aspects of the current swaps trading framework work well, and there have been some enhancements in market functioning, including improved liquidity and pre- and post-trade price transparency."); ISDA, *SwapsInfo* (Sept. 30, 2019) (finding that

Thus, to be persuaded that the Proposal would have net liquidity-reducing effects, we will need convincing evidence. While we remain open to all commenters' viewpoints, we currently believe that SEF trading that starts anonymous should remain anonymous. This belief is consistent with the Commission's past views regarding a swap that is executed anonymously on a SEF.[19] Demonstrating otherwise will require more than hypothetical scenarios or anecdotal statements.

We look forward to reviewing comments on the Proposal and working with all external stakeholders to address this issue in a way that enhances SEF liquidity, ensures impartial access, and promotes increased and fair competition.[20]

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I will vote in favor of today's proposal to prohibit post-trade name give-up practices for swaps that are anonymously executed on a swap execution facility ("SEF") and cleared ("Proposal") in order for the Commission to receive further comment on the Proposal's potential market structure impact.

SEF-traded credit derivatives represented 78.4% of total traded notional and 79.7% of trade count, and SEF-traded interest rate derivatives represented 55.4% of total traded notional and 60.9% of trade count).

[19] Swap Data Repositories—Access to SDR Data by Market Participants, 79 Fed. Reg. 16,673 (Mar. 26, 2014).

[20] Our thanks to the staff of the Commission's Division of Market Oversight ("DMO"), Office of the General Counsel, and Office of the Chief Economist who drafted and reviewed this proposal, particularly Aleko Stamoulis and Vince McGonagle of DMO.

In November 2018, the Commission issued a request for public comment regarding the practice of post-trade name give-up.[1] The overwhelming majority of comment letters to that release opposed post-trade name give-up and requested that the Commission explicitly prohibit the practice. The Proposal before us today was heavily informed by those commenters' perspectives.

The Proposal rightly notes that for anonymously executed and cleared trades, the need for market participants to know the identity of their counterparties for credit risk, legal, or operational purposes was obviated by the central clearing of swaps. However, I have concerns about the government banning an established trading practice that supports liquidity in the dealer-to-dealer swaps market. Post-trade name give-up serves an important market function in enhancing swap dealers' own risk management needs resulting from their client exposures. The Commission should understand how banning post-trade name give-up could impact dealers' ability to hedge efficiently.

The Proposal assumes, without the benefit of a fulsome analysis of CFTC swap data, that banning post-trade name give-up would promote greater participation, liquidity, and fair competition on SEFs. Hoping to confirm if these assumptions are correct, the Proposal asks a series of basic questions about the differences between SEFs that are predominantly dealer-to-client platforms versus inter-dealer SEFs, including differences regarding liquidity providers, types of products actively traded, and pricing. Mandating changes to market structure in the hopes of increasing competition and liquidity, but without a full understanding of how these changes may implicate fundamental market dynamics, is a path that gives me great pause.

[1] Post-Trade Name Give-up on Swap Execution Facilities, 83 FR 61571 (Nov. 30, 2018).

I encourage all interested parties to provide written comments and data wherever possible in order to further the Commission's understanding of how banning this trading practice may positively or negatively impact the liquidity on these two historically different types of trading platforms and on the dealer-driven liquidity provision of swaps trading generally. I also encourage commenters to consider if there are alternatives to a government-imposed ban that could achieve the same regulatory objectives.

I would like to thank staff of the Division of Market Oversight for including several additional questions at my request designed to solicit targeted feedback on the potential effects of this Proposal.

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