

BLACKROCK®

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Submitted via electronic filing: <https://comments.cftc.gov/>

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

Re: CFTC Proposals on Swap Execution Facilities and the Trade Execution Requirement (Proposed Rule – RIN 3038-AE25)

Dear Mr. Kirkpatrick:

BlackRock, Inc. (together with its affiliates, “**BlackRock**”)¹ appreciates the opportunity to respond to the Commodity Futures Trading Commission’s (“**CFTC**” or “**Commission**”) proposal to amend existing requirements and propose new requirements pertaining to swap execution facilities (“**SEF**”s) and the trade execution requirement as set forth in the Commodity Exchange Act (“**CEA**”) (the “**Proposed Rules**”).²

BlackRock has been very supportive of the paradigm shift in the OTC derivatives markets from voice executed, bilateral trades to electronically executed, centrally cleared trades. As we have seen in other asset classes, BlackRock believes that properly managed electronic trading venues for swaps will ultimately provide the deepest liquidity, enhanced transparency, and the best trading experiences and outcomes for our clients. While market forces will eventually push more and more swap trading onto electronic platforms, the CFTC’s rules regarding SEFs and SEF use will impact the speed and scope of that shift. We commend the Commission’s engagement with market participants in this important policy area.

To better assist the shift to greater volumes and more effective electronic trading of swaps, we offer three specific suggestions on the Proposed Rules.

1. Trade Execution Requirement

Under the Proposed Rules, the Commission proposes to adopt a revised interpretation of CEA section 2(h)(8) and eliminate the current MAT process for swaps becoming subject to the trade execution requirement. Under the Proposed Rules, once *any* SEF or DCM lists a swap that is subject to the clearing requirement for trading on its facility, market participants

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers, and other financial institutions, as well as individuals. BlackRock offers products and services through many different distributors, including broker-dealers, investment advisers, and other financial services firms.

² Swap Execution Facilities and Trade Execution Requirement Proposed Rule 83 Fed. Reg. 61496 (Nov. 30, 2018) (“SEF Proposal”).

would only be allowed to execute the swap on a SEF, a DCM or an Exempt SEF. While we support the promotion of swap trading on SEFs, we have concerns that there are insufficient controls under the Proposed Rule before a swap would become subject to the trade execution requirement. Merely having a single SEF list a swap should not be sufficient to subject the swap to the trade execution requirement.

If adopted as proposed, even if only a single SEF offered the swap, the Proposed Rule would require market participants to connect to that SEF upon the trade execution requirement becoming applicable. There are often valid reasons why market participants do not want to connect to a particular SEF: operational issues; incompatible technology; cybersecurity concerns; or unattractive or disadvantageous trading rules or practices on the SEF, to name a few. Further, in our experience once a swap is subject to the trade execution requirement, SEFs are often unwilling to engage in or prioritize efforts to improve or enhance a swap listing.

We therefore suggest that a SEF be required to establish the viability of a swap as a SEF-traded product before the trade execution requirement is imposed. The best proof that a swap is viable as a SEF-traded product is that trades by end-users in the swap are actually occurring on SEFs. A swap that is subject to mandatory clearing and listed on a SEF would be *eligible* to become subject to the trade execution requirement, but would not actually become subject to the requirement unless and until some meaningful percentage of the notional volume in that swap over a meaningful period of time had been SEF-executed by end-users. For example, a volume threshold, such as 15% of all the cleared notional volume in that swap being traded by end-users on one or more SEFs over the prior 6 month period, would have to be met before the swap became subject to the trade execution requirement.

With an appropriate volume test, we do not believe other conditions to the applicability of the trade execution requirement would need to be implemented, however we do strongly believe the CFTC should adopt an implementation period of at least 180 days post the volume test being met before the trade execution requirement is imposed. Market participants will need time to connect to the SEF and otherwise prepare to trade the swap on a SEF.

We also recommend that the Commission adopt rules providing for relief from the trade execution requirement in certain circumstances. For example, if a SEF offering a swap subject to the trade execution requirement is unable to operate for any reason, either temporarily or permanently, market participants should be permitted, at least temporarily, to trade off SEF – even if other SEFs offering the swap are operating as usual. As noted above, market participants may favor certain SEFs over others for various reasons and should the one SEF a market participant is connected to go down, the market participant should not be forced to immediately connect to other SEF(s) offering the swap or cease trading.

In addition, as more swaps become subject to the trade execution requirement, the Commission may need to provide relief for certain types of package transactions. For example, relief would be required for packages involving swaps subject to the trade execution requirement where the swaps comprising the package are not all offered on the same SEF, or where the SEFs offering all such swaps are not technologically ready to offer trading of such swaps as a package.

2. SEF Fees

The Proposed Rules would amend section 37.202(a) (2) to eliminate the current requirement that a SEF establish comparable fee structures for ECPs and ISVs receiving comparable access to the SEF. As noted in the Proposed Rule³, the CFTC has already clarified that this requirement “neither sets nor limits fees that a SEF may charge”, and that a SEF “may establish different categories of ECPs and ISVs ... but may not discriminate with respect to fees within a particular category”. The Commission also notes in the Proposed Rule that it has observed that SEFs have “established different fee levels for different categories of market participants or different types of trading activity, whether imposed directly through a trading fee schedule or indirectly through the use of trading incentive or discount programs.”⁴

BlackRock believes the current rule and CFTC guidance are appropriate and that relaxing the requirement to merely one under which the SEF must “establish fee structures in a fair and non-discriminatory manner” would be detrimental to market participants and inhibit the use of SEFs.

We believe it is better for the market participants to have transparency into the fee structures and volume discounts offered by a SEF. Trading incentives and volume discounts should apply indiscriminately to all market participants [within a particular category]. Uniform fee structures would make for better and healthier markets than having privately negotiated fee arrangements that could effectively result in partial or limited access for certain market participants, which would inhibit the use of and growth of liquidity on SEFs.

3. Single Dealer Aggregation Platforms

The Proposed Rule defines a “Single Dealer Aggregation Platform” as a “trading system or platform that aggregates multiple Single-Dealer Platforms and, thus, enables multiple dealer participants to provide executable bids and offers, often via two-way quotes, to multiple non-dealer participants on the system or platform.”⁵ In the Proposed Rule the Commission states that such platforms should register as SEFs since they meet the SEF definition in CEA section 1a(50).⁶

Certain order management systems (OMS) used by asset managers and other market participants allow the user to view current bid and ask levels from a dealer for a particular financial asset. The OMS may provide this information simultaneously for more than one dealer. While not currently available, in the future the OMS used by BlackRock may include live indicative two-way quotations from dealers for products such as NDFs or FX forwards, and allow the user to “click” to send a message to a dealer requesting to execute a transaction at the indicated level. The dealer could accept or reject the request to trade.

We ask that the Commission clarify that order management systems which include functionality such as that described above should not be viewed as Single-Dealer Aggregation Platforms, since the interactions and functionality with any one dealer would not constitute a “Single Dealer Platform”. The OMS would not create a “one-to-many system or platform” for a

³ SEF Proposal at 61993.

⁴ SEF Proposal at 61996.

⁵ SEF Proposal at 61956.

⁶ *Id.*

dealer, as the quotes provided by a dealer and ability to interact with the dealer on those quotes would only be available to the single OMS user.

Each user of an OMS system would have its own instance of the OMS, and the dealers would be providing individualized levels for that particular OMS user. Dealers would be able to provide different levels to different OMS users, or decide not to provide levels at all to certain OMS users. While an OMS user such as BlackRock would be acting on behalf of multiple underlying principals when using the OMS, the BlackRock employee using the OMS is the decision maker and the dealers view the levels as being provided to a single user – BlackRock. We note this approach is consistent with how the Proposed Rules would treat an asset manager, but not the clients of the asset manager, as the “market participant”.⁷

We thank the Commission for providing BlackRock with the opportunity to comment on the Proposed Rule. Please contact the undersigned if you have any questions or comments regarding BlackRock’s views.

Sincerely,

Supurna VedBrat
Global Head of Trading

Tom Clark
Head of U.S. Public Policy Group

Sachiyo Sakemi
Managing Director

⁷ SEF Proposal at 61955.