

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 9, 36, 37, 38, 39, and 43

RIN 3038–AE25

Swap Execution Facilities and Trade Execution Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: On November 30, 2018, the Commodity Futures Trading Commission (“CFTC” or the “Commission”) published a “Swap Execution Facilities and Trade Execution Requirement” notice of proposed rulemaking (“NPRM”) in the Federal Register. While the Commission has adopted certain proposals from the NPRM, in light of feedback the Commission received in response to the remaining proposals in the NPRM, the Commission has determined to not proceed with those unadopted proposals relating to the regulation of swap execution facilities (“SEFs”) and to the SEF trade execution requirement (“Determination”). In separate final rules, the Commission has adopted the following portions of the NPRM: (1) two exemptions, pursuant to Commodity Exchange Act (“CEA”) section 4(c), from the trade execution requirement in CEA section 2(h)(8); and (2) final rules related to audit trail requirements for post-trade allocations, SEF financial resource requirements, and SEF chief compliance officer requirements (collectively, the “Final Rules”). As such, this withdrawal does not impact or alter any of those sections of the NPRM that are being adopted in the Final Rules, as described further in footnote 1 below. In light of the Determination, the Commission has decided to withdraw the unadopted portions of the NPRM.

Voting Draft – As approved by the Commission on 12/7/2020

(subject to technical corrections)

DATES: The Commission is withdrawing proposed rules published in the Federal Register on November 30, 2018 (83 FR 61946) as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments previously submitted in response to the NPRM remain on file at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 and may also be accessed via the CFTC Comments Portal: <https://comments.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Associate Chief Counsel, Division of Market Oversight, (202) 418-5344, rsmith@cftc.gov, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661; or David E. Aron, Special Counsel, Division of Data, (202) 418-6621, daron@cftc.gov, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On November 30, 2018, the Commission published the NPRM, which proposed a comprehensive foundational shift in the regulatory framework for SEFs.¹ In particular, the NPRM, if adopted, would have, among other things, (i) required that certain swaps broking entities, including interdealer brokers, and aggregators of single-dealer platforms register as SEFs pursuant to the registration requirement under CEA section 5h(a)(1);² (ii) broadened the scope of the trade execution requirement, but provided certain exemptions; (iii) allowed a SEF to offer flexible execution methods for swaps subject to the trade execution requirement; and (iv) established disclosure-based trading and execution rules applicable to any SEF execution method. In conjunction with flexible execution methods, the Commission also

¹ See the NPRM, 83 FR 61946 (Nov. 30, 2018), available at: <https://www.cftc.gov/sites/default/files/2018-11/2018-24642a.pdf>.

² 7 U.S.C. 7b-3(a)(1).

Voting Draft – As approved by the Commission on 12/7/2020

(subject to technical corrections)

proposed limits on the scope of trading-related communications (“pre-execution communications”) that SEF participants may conduct away from a SEF’s trading system or platform, as well as proficiency requirements for certain SEF employees who facilitate trading. Additionally, the Commission proposed amendments to impartial access rules that would provide a SEF with greater flexibility to structure its access requirements, and to tailor its rule enforcement program and disciplinary procedures and sanctions, to its trading operations and market. The proposed rules also would have made non-substantive amendments and various conforming changes to other Commission regulations.

In response to the NPRM, the Commission received fifty-six comment letters from SEFs, market participants, industry trade associations, public interest organizations, and other interested parties. The NPRM comprehensively sought to amend the SEF regulatory framework. For example, one commenter characterized the NPRM as a “fundamental reconstruction of the “SEF ecosystem,” and [the NPRM would] change many of the ways in which market participants interact with, and trade on, SEFs. This reconstruction of the existing ecosystem would present tall operational challenges and impose substantial costs on all market participants....”³ Several commenters expressed concern at the magnitude of changes behind the NPRM. Therefore, to avoid potential and unintended adverse market impacts caused by comprehensive and far-reaching changes, several commenters preferred that the Commission adopt a more “targeted” approach.

The Commission, at the time, proposed the NPRM based on particular views regarding the need for a comprehensive revamping of the regulatory framework for SEFs. In light of feedback the Commission received in response to the NPRM, and upon further consideration, the

³ Futures Industry Association (“FIA”) Letter at 7.

Voting Draft – As approved by the Commission on 12/7/2020

(subject to technical corrections)

Commission believes that rather than comprehensively amending the fundamentals underpinning the SEF regime, the Commission should instead work to improve the SEF framework through targeted rulemakings that address distinct issues. The Commission agrees with commenters that this approach will help the Commission avoid unintended adverse market impacts caused by the comprehensive and far-reaching changes of the NPRM.

Therefore, the Commission has determined to withdraw the unadopted portions of the pending NPRM in order to allow the Commission to propose and adopt targeted rulemakings to address specific SEF issues or requirements.⁴

Issued in Washington, DC, on **XXXXXX, XX**, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

⁴ Concurrently with this withdrawal, the Commission is adopting the Final Rules to implement various proposals from the NPRM. One of the Final Rules adopted two CEA section 4(c) exemptions from the trade execution requirement. Specifically, this final rulemaking adopted proposed § 36.1(c) and § 36.1(e), which were respectively re-numbered as § 36.1(b) and § 36.1(c) in the adopting release. *See* Exemption from Swap Execution Requirement, [\[Insert cite/link to Final Rules\]](#). The other adopted various proposals related to audit trail requirements for post-trade allocations, SEF financial resource requirements, and SEF chief compliance officer requirements. In particular, these final rules addressed the proposals for §§ 37.205(a) and (b)(2); §37.1301; §37.1302; § 37.1303; § 37.1304; § 37.1305; § 37.1306; §37.1307; and § 37.1501. *See* Swap Execution Facilities, [\[Insert cite/link to Final Rules\]](#). This withdrawal does not impact or alter any of the Final Rules.