

Public Statements & Remarks

Joint Statement of Chairman Heath P. Tarbert, Commissioner Rostin Behnam, and Commissioner Dan M. Berkovitz in Support of Final Rule Restricting Post-Trade Name Give-Up

June 25, 2020

As we have previously stated,^[1] it is a fundamental principle of exchange-style trading systems that the buyer and seller of a given financial instrument have no reason to know—and do not know—one another's identity.^[2] This levels 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.^[3] As a result, markets with pre- and post-trade anonymity are generally not only fairer, but also feature greater liquidity, a more diverse set of market participants, and greater competition.^[4]

In the swaps market, a number of swap execution facilities (“SEFs”) provide for post-trade disclosure of the name of the counterparty, a practice that is known as “name give-up.” This protocol is a vestige of the pre-Dodd-Frank era, when few swaps were centrally cleared and market participants needed to know their counterparty's identity to manage the associated credit risk. Given the advent of central clearing, many have appropriately questioned the continuing need for post-trade name give-up for cleared swaps. Others have gone further, criticizing the practice as anticompetitive, an obstacle to broad and diverse participation on SEFs, and potentially inconsistent with numerous provisions of the Commodity Exchange Act (“CEA”) and Commission regulations.

In 2019, after considering responses to a request for comment on the issue,^[5] the Commission issued a proposed rule (“Proposal”) to restrict name give-up such that trades that are executed anonymously on-SEF and cleared would remain anonymous after execution.^[6] Public comments on the Proposal reflected a variety of differing viewpoints and interests. The agency carefully considered all comments in crafting the final rule we voted to approve today.

We believe the final rule reflects a balanced approach, is workable, and will improve overall market vibrancy. The rule prohibits name give-up for swaps that are executed anonymously and intended to be cleared. However, it does not apply to swaps that are not intended to be executed anonymously, such as trades done via a name-disclosed request for quote. The rule also includes a limited exception for package transactions^[7] with at least one component that is an uncleared swap or a non-swap instrument. This exception reflects current technological and operational realities that require counterparty disclosure for the non-swap or non-cleared swap component of such trades.^[8] In addition, the rule includes a phased implementation schedule to allow SEFs and market participants time to adjust to the changes.

We believe the rule's fundamental objective—protecting trading anonymity where it is possible to do so—is key to two statutory goals for the SEF regime: (1) promoting swaps trading on SEFs^[9] and (2) promoting fair competition among market participants, including through impartial access to a SEF's trading platform.^[10] Indeed, we hope the rule will 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.

The issue of name give-up can be a bit of a lightning rod, sometimes inciting passionate disagreements between stakeholders. We and CFTC staff stand ready to work with market participants and market operators to resolve any new issues that may arise as the rule is implemented. We hope that all parties to this debate can constructively move forward together toward the goals of sound derivatives regulation and robust financial markets.

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- [1] Joint Statement of Chairman Heath Tarbert, Commissioner Rostin Behnam, and Commissioner Dan Berkovitz in Support of Proposed Rule Restricting Post-Trade Name Give-Up (Dec. 18, 2019).
- [2] 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.”).
- [3] 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). This can prevent price discrimination based on the identity of the counterparty.
- [4] 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* 1-24 (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); Treasury Market Practices Group, *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* (Jul. 11, 2019) (stating that emergence of new types of market participants in the fully anonymous U.S. Treasury securities market has “likely improved overall liquidity through enhanced order flow and competition”).
- [5] CFTC Request for Comment on Post-Trade Name Give-Up on Swap Execution Facilities, 83 Fed. Reg. 61,571 (Nov. 30, 2018).
- [6] Post-Trade Name Give-Up on Swap Execution Facilities, 84 Fed. Reg. 72,262 (Dec. 31, 2019).
- [7] The rule defines a “package transaction” as “consist[ing] of two or more component transactions executed between two or more counterparties where: (i) execution of each component transaction is contingent upon the execution of all other component transactions; and (ii) the component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.”
- [8] As noted in the preamble to the final rule, we urge SEFs and their participants to work towards an infrastructure that ultimately does support anonymous post-trade processing for packages including certain cleared non-swap components (e.g., U.S. Treasuries). The preamble to the final rule also notes the Commission’s intention to monitor market developments and evaluate the continued need for the package transaction exception in the future.
- [9] CEA § 5h(e), 7 U.S.C. § 7b-3(e). In this regard, the CFTC intends to complete a preliminary study of the state of swaps markets one year after the initial phase of the rule takes effect, and to follow up with further study after the rule has been in effect for three years.
- [10] CEA § 3(b), 7 U.S.C. § 5(b) (listing fair competition among market participants as a goal of the CEA); CEA § 5h(f)(2)(B)(i) (requiring a SEF to establish and enforce rules to provide participants impartial access to the market).

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