MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

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Via Electronic Submission: https://comments.cftc.gov

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

Re: Post-Trade Name Give-Up on Swap Execution Facilities (File No. S7-24-15; RIN Number 3038-AE79)

Dear Mr. Kirkpatrick:

Managed Funds Association[1] ("**MFA**") welcomes the opportunity to comment on the Commodity Futures Trading Commission's (the "**Commission**") proposed rule on "Post-Trade Name Give-Up on Swap Execution Facilities" ("**Proposed Rule**").[2] We applaud the Commission for issuance of the Proposed Rule, and we urge the Commission to proceed with its prompt adoption.

For years, MFA has advocated for the elimination of post-trade name give-up ("**Name Give-Up**") for swaps that are executed anonymously on a swap execution facility ("**SEF**") and intended to be cleared. Name Give-Up has no legitimate justification for any swap that is anonymously executed and intended to be cleared, and elimination of this practice would provide an open, competitive, and level playing field for all SEF market participants.[3] We strongly agree with the Commission

[1] MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

[2] 84 Fed. Reg. 72262 (Dec. 31, 2019), available at: https://www.govinfo.gov/content/pkg/FR-2019-12-31/pdf/2019-27895.pdf ("**Proposed Rule Release**").

[3] *See* MFA Position Paper: *Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market*, dated March 31, 2015, available at: https://www.managedfunds.org/wp-content/uploads/2015/04/MFA-Position-Paper-on-Post-Trade-Name-Disclosure-Final.pdf. *See also* MFA Petition for Rulemaking to Amend Certain CFTC Regulations in Parts 1 (General Regulations under the Commodity Exchange Act), 39 (Derivatives Clearing Organizations, Subpart B – Compliance with Core Principles) and 43 (Real-Time Public Reporting), submitted to Mr. Christopher Kirkpatrick, Secretary of the Commission, on October 22, 2015, available at: https://www.managedfunds.org/wp-content/uploads/2015/10/CFTC-Petition-for-SEF-Rules-Amendments-MFA-Final-Letter-with-Appendix-A-Oct-22-2015.pdf. See also MFA letter to the Commission on its request for comment on "Post-Trade Name Give-Up on Swap Execution Facilities", submitted to Mr. Christopher Kirkpatrick, Secretary of the Commission, on March 15, 2019,

that implementation of the Proposed Rule "would promote swaps trading and competition on SEFs, as well as promote fair competition among market participants".[4] Therefore, we were extremely heartened to see that, in response to the Commission's request for comment on Name Give-Up,[5] nearly all market participants expressed the same concerns and supported prohibiting this practice.[6]

It is clear that finalizing the proposed prohibition on Name Give-Up is necessary to strengthen the Commission's swaps trading regime and to further the Commission's goals of impartial access.[7] MFA and other market participants are aligned in the view that Name Give-Up is a significant artificial barrier that prevents access to SEFs that have historically served the "dealer-to-dealer" segment of the market ("**IDB SEFs**"). In addition, we agree with the Commission's desire to "encourage more diverse participation and greater competition on existing pre-trade anonymous SEF platforms for cleared swaps".[8] Therefore, we strongly support the Proposed Rule and encourage its prompt adoption to fulfill the regulatory objectives of the Commission and Congress.

1. Name Give-Up Undermines Impartial Access

Question 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.

MFA strongly believes that, by deterring participation of eligible buy-side firms on IDB SEFs, Name Give-Up contravenes the impartial access mandate under Title VII of the Dodd-Frank Act.[9] Section 733 of the Dodd-Frank Act[10] and Commission rule 37.202[11] require all market participants

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available at: https://www.managedfunds.org/wp-content/uploads/2019/03/MFA-Letter-on-CFTC-Comment-Request-on-Post-Trade-Name-Give-up-on-SEFs-Final.pdf.

[4] Proposed Rule Release at 72263.

[5] *See* Commission request for comment on "Post-Trade Name Give-Up on Swap Execution Facilities", 83 Fed. Reg. 61571 (Nov. 30, 2018), available at: https://www.govinfo.gov/content/pkg/FR-2018-11-30/pdf/2018-24643.pdf ("**Request for Comment**").

[6] *See* Proposed Rule Release at 72263, noting that of the thirteen comment letters the Commission received on the Request for Comment, only one expressed support for the practice of Name Give-Up.

[7] *See id*., where the Commission states that it "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."

[8] *Id*. at 72265.

[9] The Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111–203, available at: https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf ("**Dodd-Frank Act**").

[10] Section 733 of the Dodd-Frank Act amends the Commodity Exchange Act to require, in pertinent part, that SEFs both establish and enforce participation rules and have the capacity to enforce those rules, including the means to provide market participants with impartial access to the market.

[11] *See* Commission final rule on "Core Principles and Other Requirements for Swap Execution Facilities", 78 Fed. Reg. 33476, 33587 (June 4, 2013), available at: https://www.govinfo.gov/content/pkg/FR-2013-06-04/pdf/2013-12242.pdf.

to have impartial access to SEFs. However, currently, buy-side firms do not have impartial access to IDB SEFs due to Name Give-Up.

In particular, the practice of Name Give-Up is a source of uncontrolled "information leakage". Because a market participant has no control over who a SEF will match it with when executing through a pre-trade anonymous trading protocol, before trading on an IDB SEF with Name Give-Up, a buy-side firm must be comfortable sharing its trading activity with every other participant on the trading venue, including other buy-side firms. This proposition effectively prevents buy-side participation.[12]

In addition, such information leakage provides informational and trading advantages to swap dealers because it enables them to have full visibility into supposedly anonymous trading activity. Therefore, dealers can use this information as a policing mechanism to deter buy-side participation.[13] The cumulative effect is that there is no meaningful buy-side participation on IDB SEFs.

Swap dealers who advocate for the retention of Name Give-Up have pointed to the limited trading activity on the one fully anonymous order book that is currently available as evidence that Name Give-Up is not a deterrent. However, this argument ignores the fact that swap dealers are not providing meaningful liquidity on this SEF, which is in stark contrast to the liquidity available on IDB SEFs. As a result, the limited trading activity on the one fully anonymous order book is not an indication of a lack of buy-side interest in transacting on a fully anonymous basis. Instead, it reflects the inability of the market to evolve organically while IDB SEFs are allowed to offer trading protocols for cleared swaps with Name Give-Up.

Therefore, MFA strongly supports the Commission in removing this artificial barrier to buy-side participation on IDB SEFs. Adoption and implementation of the Proposed Rule will make the SEF marketplace more attractive to buy-side firms by allowing more flexible and efficient execution of swaps. Thus, the Proposed Rule is a critical step in achieving the regulatory objectives of impartial access, promoting swaps trading on SEFs, and enhancing price transparency in the U.S. swaps market.

2. Name Give-Up is an Anti-Competitive Practice, and Eliminating It Would Improve Pre-Trade Price Transparency, Liquidity and Competition

Question 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?

[12] In contrast, when a buy-side firm trades on a SEF and discloses its identity and trading interests in the name-disclosed RFQ market, the buy-side firm has control of the associated "information leakage" because it can choose to whom it sends an RFQ.

[13] *See e.g.*, Karen Brettell, "Banks' pressure stalls opening of US derivatives trading platform," *Reuters* (Aug. 27, 2014), available at: https://www.reuters.com/article/usa-derivatives-banks-idUSL1N0QW1T220140827; and "Meet the new OTC market-makers," *Risk* (Feb. 27, 2014), available at: https://www.risk.net/derivatives/2331122/meet-new-otc-market-makers.

Question 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.

Question 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?

Implementing the Proposed Rule and prohibiting Name Give-Up would have a significant and positive effect on pre-trade price transparency and liquidity.

As discussed above, the practice of Name Give-Up has limited investor access to IDB SEFs. This limited access reduces pre-trade transparency regarding available bids and offers and limits investor choice of trading protocols. Name Give-Up also creates information asymmetries as only dealers have full access to all of the SEFs in the market. For these reasons, it is unsurprising that dealers favor retaining Name Give-Up for anonymously executed cleared swaps.[14]

In contrast, eliminating Name Give-Up will facilitate investors selectively accessing additional liquidity pools and trading protocols. Improving investor access will increase the diversity, breadth, and depth of liquidity on SEFs, and thereby, reduce the potential for market volatility and disruptions. Other asset classes that offer anonymous trading protocols without Name Give-Up (such as the U.S. Treasuries market) have realized these benefits. By increasing liquidity, MFA believes that price discovery and pre-trade transparency will improve, while reducing information asymmetries. Moreover, new liquidity providers may be able to enter the market more easily, which will diversify sources of liquidity and increase competition. While the current SEF regime has improved conditions for investors, it has failed to provide buy-side market participants with access to the unique trading protocols and liquidity available on IDB SEFs.

Some dealers have expressed concerns that eliminating Name Give-Up may have adverse consequences for liquidity. This concern assumes dealers would fundamentally alter current trading practices, such as by transitioning trading activity away from the anonymous trading protocols that IDB SEFs offer. In our view, it is unlikely that dealers would choose to use name-disclosed trading protocols for dealer-to-dealer hedging activity. Therefore, we would not expect any negative impacts on the existing liquidity on IDB SEFs. Competitive market forces would also ensure that, in the unlikely event an individual dealer reduced its offering, other dealers would quickly step into its place. Experience in other asset classes does not provide any evidence of liquidity deterioration when trading venues offer anonymous trading without Name Give-Up (nor does the Commission's analysis of available empirical studies).

MFA also notes that we do not believe that prohibiting Name Give-Up would result in a deterioration of liquidity on either a CLOB or RFQ system. Investors will continue to use

[14] *See e.g.,* Peter Madigan, "CFTC to Test Role of Anonymity in SEF Order Book Flop", *Risk* (Nov. 21, 2014), available at https://www.risk.net/derivatives/2382497/cftc-test-role-anonymity-sef-order-book-flop.

disclosed trading protocols, and will determine the trading protocol that is best suited for their particular transaction.

3. Narrowing the Scope of the Proposed Name Give-Up Prohibition is Undesirable and would Contravene the Discussed Goals and Benefits

Question 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?

Questions 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?

Question 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?

Question 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?

Questions 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?

MFA opposes the Commission narrowing the scope of the proposed Name Give-Up prohibition either to: (1) limit it to swaps required to be cleared or subject to the trade execution requirement; or (2) create an exception for package transactions. Limiting the scope of the prohibition would mute the overall effectiveness of the Proposed Rule.

Name Give-Up has no legitimate justification for any swap that is anonymously executed and intended to be cleared. The Commission's straight-through processing ("**STP**") rules ensure that all swaps that are intended to be cleared are quickly submitted for clearing (and are void *ab initio* if rejected). As a result, the counterparties to the trade do not have any exposure to each other at any stage of the process. Therefore, there is no basis for, and we strongly oppose, limiting the prohibition on Name Give-Up solely to swaps required to be cleared or subject to the trade execution requirement.

With respect to the Commission's specific questions about package transactions, MFA does not believe that an exclusion for package transactions is necessary. The proposed prohibition is specific to cleared swaps as the Proposed Rule only prohibits Name Give-Up for swaps anonymously executed on a SEF and intended to be cleared. Therefore, where a package transaction contains a cleared swap leg and another leg that is a different instrument (*e.g.*, an

uncleared swap or a non-swap instrument), the Proposed Rule would apply to only the cleared swap leg of the package transaction. The rule would still permit Name Give-Up for the leg of the package transaction that is not a cleared swap. As a result, providing an explicit exclusion is unnecessary.

4. The Proposed Prohibition would Similarly Benefit All Available SEF Trading Protocols

Question 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?

MFA believes that prohibiting Name Give-Up would benefit trading protocols such as auctions, portfolio compression, and/or workup sessions by similarly increasing buy-side access and participation.

Each of these trading protocols are used on IDB SEFs. Prohibiting Name Give-Up should not have any effect on how specific trading protocols operate, as it only affects post-trade operational workflows. To the extent that a SEF offers trading protocols on a pre-trade anonymous basis for swaps intended to be cleared, the SEF can continue to operate in exactly the same way as additional market participants are able to access them. We believe that all aspects of IDB SEFs, including the trading protocols, will benefit from increased buy-side participation and the corresponding participant diversity.

5. Our Members are Eager to Participate on and Have Access to IDB SEFs

Question 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?

At a minimum, buy-side firms would join IDB SEFs if the Commission proceeds with implementation of the Proposed Rule. While MFA speaks only on behalf of our members, we have heard broadly and uniformly from them that the practice of Name Give-Up is the most significant obstacle to their participation on IDB SEFs. Therefore, it is critical that the Commission proceed with the proposed prohibition to make the SEF marketplace more attractive to buy-side firms by allowing more flexible and efficient execution of both outright swaps and package transactions. Our members are eager to have the ability to transact cleared swaps anonymously; similar to how they currently trade in other asset classes (*e.g.*, equities, futures, foreign exchange, and Treasuries, among others). In addition, in response to its Request for Comment, the Commission received similar expressions of interest from a number of other trade associations that represent a wide array of market participants.[15] As a result, MFA strongly believes that prohibiting Name Give-Up would lead to greater participation by a variety of different types of market participants.

[15] *See* Proposed Rule Release at 72263, *supra* note 6.

6. Prohibiting Name Give-Up would not affect Pricing on Name-Disclosed RFQs

Question 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?

Question 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?

MFA does not believe that prohibiting Name Give-Up will adversely affect the prices on name-disclosed RFQ systems.

Based on our members' collective trading experience, nearly all SEF trading by the buy-side currently occurs on SEFs via name-disclosed RFQ. It is important to note that by prohibiting Name Give-Up for anonymously executed cleared swaps, the Commission is not mandating anonymous trading or "all-to-all" trading. Market participants can continue to use all available SEF trading protocols (including fully name-disclosed RFQ platforms) based on what will best meet their trading needs. Therefore, while MFA expects the proposed Name Give-Up prohibition to increase buy-side participation on IDB SEFs, we believe that the needs of all market participants will sustain market demand such that sufficient liquidity will remain on name-disclosed, RFQ trading protocols. As such, we do not foresee that the Proposed Rule would result in any direct or indirect negative impact on pricing on name-disclosed RFQ systems.

In addition, in Question 10, the Commission asks about potential price differences between a swap listed on an anonymous CLOB and an equivalent swap listed on a name-disclosed RFQ system. We have heard some market participants contend that the bid/ask spreads on an anonymous CLOB are wider than the indicatively quoted prices on a name-disclosed RFQ system (*i.e.*, pricing is better on the name-disclosed RFQ system). However, the comparison will likely depend on the specific instrument and size of the trade. In addition, it is important to include all of the liquidity available through pre-trade anonymous trading protocols offered on IBD SEFs. Finally, even if the pricing was similar, buy-side firms may prefer to execute certain transactions anonymously in order to prevent the information leakage discussed above.

7. Preventing Evasion

MFA notes that it is important for the Commission to ensure that SEFs (and affiliated introducing brokers) are not able to evade any prohibition on Name Give-Up by pre-negotiating or pre-arranging trades anonymously, and then disclosing counterparty identities prior to executing the trade on the SEF. Therefore, we recommend that the Commission add the below language to the final rule to address this concern:

> (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 *its employees, its affiliates, or* 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 *swaps that are not executed anonymously* ~~uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap~~. *For purposes of paragraphs (d)(1) and (d)(2) of this section, "executed anonymously" shall include a swap that is pre-negotiated or pre-arranged anonymously (including by a participant of the swap execution facility).*

CONCLUSION

MFA applauds the Commission for recognizing the pivotal nature of the Proposed Rule and the need to eliminate the practice of Name Give-Up for swaps that are anonymously executed and intended to be cleared. The Proposed Rule is a decisive step in promoting impartial access and expanding the breadth, depth, and diversity of liquidity in the swaps market. Therefore, MFA urges the Commission to proceed with prompt adoption of the Proposed Rule and the Name Give-Up prohibition.

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MFA thanks the Commission for issuance of, and consideration of our views on, the Proposed Rule. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Carlotta D. King

Carlotta D. King
Associate General Counsel
Managed Funds Association

cc: The Hon. Heath P. Tarbert, Chairman
The Hon. Brian D. Quintenz, Commissioner
The Hon. Rostin Behnam, Commissioner
The Hon. Dawn DeBerry Stump, Commissioner
The Hon. Dan M. Berkovitz, Commissioner