MFA

September 25, 2026

Via Electronic Submission

Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Re: Swap Execution Facility Order Book Requirement for Permitted Transactions (RIN 3038-AF79)

Dear Mr. Kirkpatrick:

MFA[1] appreciates the opportunity to comment on the U.S. Commodity Futures Trading Commission's ("**Commission**" or "**CFTC**") proposal ("**Proposal**") to remove the requirement that swap execution facilities ("**SEFs**") offer an Order Book ("**Order Book**")[2] for transactions not subject to the trade execution requirement ("**Permitted Transactions**"), while retaining that requirement for transactions subject to the trade execution requirement ("**Required Transactions**").[3]

1 Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 An "Order Book" means ""(i) an electronic trading facility; (ii) a trading facility; or (iii) a trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers." 17 C.F.R. § 37.3(a)(3).

3 Swap Execution Facility Order Book Requirement for Permitted Transactions, 91 Fed. Reg. 55030 (Aug. 26, 2026), available at: https://www.govinfo.gov/content/pkg/FR-2026-08-26/pdf/2026-17416.pdf.

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MFA supports the Proposal. We agree that requiring SEFs to maintain Order Book functionality for Permitted Transactions has produced little discernible benefit while imposing potentially meaningful costs. The Proposal would codify the position reflected in CFTC No-Action Letter No. 25-24 ("**NAL No. 25-24**")[4] and provide greater regulatory certainty.

The Commission should not, however, use this rulemaking to reconsider the execution requirements for Required Transactions. That question raises distinct legal, policy, and market-structure considerations and, if pursued, should be addressed through a separate rulemaking supported by an appropriate record.

I. Executive Summary

MFA's views are summarized as follows:

- We support eliminating the Order Book Requirement for Permitted Transactions.
- The Commission should preserve the existing requirements for Required Transactions, which rest on different legal, policy, and market-structure considerations.
- In particular, the Commission should preserve RFQ-to-3 as a baseline protection for Required Transactions because it promotes competitive execution, pre-trade price transparency, and interaction with multiple liquidity providers.
- The Proposal's regulatory text, cost-benefit analysis, and supporting data are confined to Permitted Transactions; a final rule extending to Required Transactions would not be a logical outgrowth of the Proposal.
- Any reconsideration of those requirements should occur through a separate rulemaking supported by an appropriate evidentiary record.

II. Background

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act added section 5h to the Commodity Exchange Act ("**CEA**"), establishing registration requirements and core principles for SEFs. The Commission implemented section 5h through part 37 of its regulations, which it adopted in part to advance the statutory goals set out in CEA section 5h(e) of

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4 CFTC Division of Market Oversight, No-Action Position with Respect to the Swap Execution Facility Minimum Trading Functionality under Commission Regulation 37.3(a)(2) (July 30, 2025), available at: https://www.cftc.gov/PressRoom/PressReleases/9101-25.

promoting the trading of swaps on SEFs and promoting pre-trade price transparency in the swaps market.[5]

Commission Regulation 37.3(a)(2) prescribes the minimum trading functionality a SEF must provide, requiring that a SEF shall, at a minimum, offer an Order Book for each swap it lists for trading. Part 37 distinguishes between two categories of transactions. A Required Transaction is a transaction involving a swap that is subject to the trade execution requirement under CEA section 2(h)(8); for the execution of a Required Transaction, a SEF must offer either an Order Book or a request-for-quote system that transmits a request to no fewer than three unaffiliated market participants and that operates in conjunction with an Order Book. A Permitted Transaction is any transaction that does not involve a swap subject to the trade execution requirement; a SEF may offer any method of execution for a Permitted Transaction, and market participants may, but are not required to, execute Permitted Transactions on a SEF.[6]

In 2018, the Commission proposed a comprehensive restructuring of the SEF framework that would, among other things, have eliminated the requirement that SEFs be strictly required to provide a central limit Order Book to register or maintain registration ("**Order Book Requirement**").[7] The Commission adopted two final rules relating to that proposal in February 2021 and then voted to withdraw the unadopted portions, including the proposed elimination of the Order Book Requirement.[8]

In June 2025, a SEF that lists only Permitted Transactions requested relief from the Order Book Requirement. On July 30, 2025, the Division of Market Oversight issued NAL No. 25-24, stating that it would not recommend an enforcement action against a SEF that does not offer an Order Book in connection with Permitted Transactions, and the Securities and Exchange Commission ("**SEC**") staff subsequently provided a comparable position for security-based swap

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5 Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (June 4, 2013).

6 17 C.F.R. §§ 37.3(a)(2), 37.9(a)(1)-(2), 37.9(c); Proposal at 55031.

7 Swap Execution Facilities and Trade Execution Requirement, 83 Fed. Reg. 61946 (Nov. 30, 2018) ("**2018 SEF Proposal**").

8 Swap Execution Facilities and Trade Execution Requirement, 86 Fed. Reg. 9304 (Feb. 12, 2021).

execution facilities.[9] The Proposal would codify NAL No. 25-24 by amending Regulation 37.3(a)(2) so that the Order Book Requirement applies only to Required Transactions.[10]

III. The Commission Should Finalize the Proposal Without Expanding it Beyond Permitted Transactions

MFA supports the Commission's decision to focus the Proposal on Permitted Transactions. The Proposal reflects more than a decade of market experience and acknowledges that Order Books have not become a meaningful execution mechanism for many products that are not subject to the trade execution requirement. According to the Commission, Order Book trading in Permitted Transactions has been minimal, and certain platforms reported virtually no use of an Order Book for these products. The Commission further notes that maintaining Order Book systems entails ongoing technology, infrastructure, maintenance, and compliance costs.[11]

The Commission's observations are consistent with the characteristics of many Permitted Transactions. These products may trade infrequently, reflect customized risk-transfer needs, or otherwise lack the continuous two-sided interest necessary to support active Order Book trading. In these circumstances, requiring every SEF to maintain an Order Book regardless of actual market demand is difficult to justify. Importantly, the Proposal does not prohibit SEFs from offering Order Books for Permitted Transactions. Rather, it removes a regulatory mandate and permits market participants and trading venues to determine whether an Order Book is useful for particular products. As the Commission recognizes, SEFs remain free to offer Order Books where market demand exists.

MFA agrees that the ability to reinstate an Order Book in response to customer demand mitigates the risk that some swaps markets may be unable to move onto an Order Book if future interest develops. Because the Commission's cost analysis relies on that option, we ask the Commission to make clear in the adopting release that SEFs remain free to reinstate such functionality.[12]

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9 *See* SEC Division of Trading and Markets, Order Book and Annual Compliance Report Data Structuring for Security-Based Swap Execution Facilities (Feb. 27, 2026), available at: https://www.sec.gov/files/tm/no-action/bsef-no-action-relief-022726.pdf.

10 Proposal at 55031-32, 55037. *See also* LSEG FX SEF, Request for Relief from Minimum Trading Functionality for Swap Execution Facilities (June 30, 2025).

11 *Id.* at 55033, n.27 and n.28.

12 Proposal at 55035-36, n.51.

IV. Codifying the Existing No-Action Relief Promotes Regulatory Certainty

MFA also supports the Commission's decision to codify the relief reflected in NAL No. 25-24. The Commission correctly notes that reliance on staff no-action relief is inherently less certain than a Commission rule adopted through notice-and-comment rulemaking. No-action relief can be modified or withdrawn and does not bind the Commission itself. Codification therefore provides greater certainty to SEFs and market participants while preserving an opportunity for public input.

Where the Commission has observed the practical effects of no-action relief and concludes that relief is appropriate as a matter of policy, formal rulemaking is generally preferable to continued reliance on staff letters. We therefore support the Commission's effort to align its regulations with current market realities and provide a durable regulatory framework.

V. The Commission Should Preserve the Distinction Between Permitted Transactions and Required Transactions

Although we support the Proposal, we are concerned that certain questions posed in the release could be interpreted as inviting reconsideration of the execution framework governing Required Transactions. In particular, the Commission asks whether it should eliminate the requirement that SEFs offer an Order Book for Required Transactions.[13]

We respectfully submit that this question falls outside the central rationale for the Proposal. The Commission's justification for relief rests on findings that Order Books for Permitted Transactions have seen little use, may not be well suited to products that trade episodically, and impose maintenance costs that may outweigh corresponding benefits. Those observations do not necessarily apply to Required Transactions.

Required Transactions occupy a unique position within the post-crisis derivatives framework. Congress established a trade execution requirement for swaps that are subject to mandatory clearing and made available to trade, as part of a broader framework intended to increase transparency and competition in standardized swaps markets. The execution requirements applicable to Required Transactions were specifically designed to advance those objectives through mechanisms that promote pre-trade transparency and multiple-to-multiple interaction.

Whether to modify the requirements for Required Transactions presents a substantially different question from whether SEFs should maintain largely inactive Order Books for Permitted Transactions. Many of the benefits associated with post-crisis SEF trading arose not merely

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13 Proposal at 55033.

because standardized swaps migrated onto SEFs, but because SEFs were required to provide execution functionality designed to promote competition, pre-trade transparency, and multiple-to-multiple interaction. RFQ-to-3 remains a central component of that functionality.

VI. The Commission Should Preserve RFQ-to-3 as a Baseline Protection for Required Transactions

The Commission acknowledges that removing the RFQ-to-3 requirement may result in less pre-trade price transparency. This is consistent with the experience of MFA members, who have observed that the RFQ-to-3 requirement has resulted in greater price competition among liquidity providers, motivating them to differentiate their offerings by streaming firm and competitive prices, which increases pre-trade price transparency for investors. This increased price competition and pre-trade transparency have led to meaningful benefits for investors and other buy-side firms in terms of lower transaction costs and better liquidity. In our view, the Commission's proposal should seek to preserve the current benefits by ensuring multiple-to-multiple execution and a minimum level of pre-trade price transparency. Therefore, MFA requests that the Commission retain the RFQ-to-3 requirement for swaps that are subject to the trade execution requirement to ensure a baseline level of pre-trade price transparency on SEFs. By doing so, the Commission would preserve the current benefits of RFQ-to-3 for trading liquid and standardized swap products on SEFs, while permitting customer choice among alternative execution methods that provide comparable protections—impartial access, a minimum level of pre-trade price transparency, multiple-to-multiple execution, and competition among liquidity providers.

MFA supports continued innovation and customer choice in SEF execution methods. For the reasons described above, however, additional protocols should supplement, rather than displace, the existing minimum protections for Required Transactions. The Commission therefore should retain RFQ-to-3 and should not permit Required Transactions to be executed through methods that provide less competitive interaction or pre-trade price transparency. At a minimum, any reconsideration of RFQ-to-3 should occur through a separate rulemaking that evaluates relevant market data, the experience of market participants, and the effects of alternative protocols on competition, liquidity, transaction costs, and price discovery.

VII. The Administrative Record Supporting the Proposal Does Not Extend to Required Transactions

Beyond these policy considerations, the administrative record supporting the Proposal is confined to Permitted Transactions and does not appear sufficient to support a final rule modifying the Order Book Requirement for Required Transactions.

The proposed regulatory text itself preserves the requirement for Required Transactions. Proposed Regulation 37.3(a)(2) would provide that a SEF shall, at a minimum, offer an Order Book for Required Transactions as defined in Regulation 37.9(a)(1).[14] The Commission has not proposed alternative text, identified the other provisions of part 37 that would require conforming amendments, or explained how the execution methods prescribed in Regulation 37.9(a)(2) and the related requirements in Regulation 37.9(b) would operate in the absence of an Order Book. A final rule eliminating the requirement for Required Transactions therefore would not be a logical outgrowth of the Proposal.

The Commission's consideration of costs and benefits under CEA section 15(a) is similarly limited to Permitted Transactions.[15] The Commission states that it has not identified any likely effects of the proposed amendments on financial integrity in the swap markets, and likewise none on sound risk management practices. Its price discovery analysis rests expressly on the preliminary view that price discovery is not currently occurring in Order Books for Permitted Transactions as addressed within the Proposal.[16] Each of those conclusions follows from the observed disuse of Order Books for Permitted Transactions. None has been developed for, or can simply be transposed to, Required Transactions, where Order Book and request-for-quote execution is actively used and where the Commission's own release records that the substantial majority of Order Book trading occurs.[17]

Question (3) asks whether the Commission should eliminate the Order Book Requirement for Required Transactions, but provides no supporting analysis, data, proposed regulatory text, or cost-benefit discussion. A question posed in that form does not provide adequate notice of such a significant change or a sufficient opportunity for meaningful comment. A final rule adopting that change also would not be a logical outgrowth of the Proposal.

The Commission's regulatory history reinforces this distinction. Its 2018 proposal to eliminate the Order Book Requirement formed part of a comprehensive restructuring of part 37 and generated substantial concerns regarding pre-trade transparency, competition among liquidity providers, execution costs for end users, and the preservation of multiple-to-multiple trading on SEFs.

The Commission withdrew that portion of the 2018 proposal without resolving those issues. It has now stated that relevant comments on the 2018 proposal must be resubmitted in this

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14 Proposal at 55037 (proposed revision to 17 C.F.R. 37.3(a)(2)).

15 7 U.S.C. 19(a); Proposal at 55034-36.

16 Proposal at 55036.

17 *Id.* at 55032.

proceeding to be considered. That instruction confirms that the prior record is not before the Commission and underscores why this narrow rulemaking is not a substitute for a comprehensive proceeding.[18]

The Commission need not resolve these questions here. It should preserve the distinction between Permitted and Required Transactions in the final rule. If the Commission wishes to reconsider the framework for Required Transactions, it should do so through a separate rulemaking addressing pre-trade transparency, multiple-to-multiple interaction, competition, liquidity, transaction costs, price discovery, and impartial access. Such a proceeding would permit the Commission to develop an appropriate record and allow market participants to comment on specific alternatives and their likely consequences.

VIII. Conclusion

MFA supports eliminating the Order Book Requirement for Permitted Transactions and codifying CFTC No-Action Letter No. 25-24. The Commission should preserve the existing Order Book and RFQ-to-3 requirements for Required Transactions. Any reconsideration of those requirements should occur through a separate rulemaking supported by proposed regulatory text, an appropriate evidentiary record, and analysis of the potential effects on transparency, competition, liquidity, transaction costs, and market structure.

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MFA appreciates the opportunity to comment on the Proposal. Please do not hesitate to contact Matthew Daigler (mdaigler@mfaalts.org) or the undersigned (jhan@mfaalts.org) with any questions regarding this letter.

Sincerely,

/s/ Jennifer W. Han

Jennifer W. Han
Chief Legal Officer & Head of Regulatory Affairs
MFA

Cc: The Hon. Michael S. Selig, Chairman
DJ Hennes, Acting Director, Division of Market Oversight

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18 Proposal at 55032, n.15 (stating that comments made on the 2018 SEF Proposal that are relevant to this rule proposal "should be resubmitted as comments to this rule proposal in order to be considered").