

CLIENT ALERT

CFTC Chairman Targets Swap Trading Reforms

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In a speech at the Futures Industry Association EXPO conference, Chairman Heath Tarbert of the CFTC announced plans to make targeted changes to the agency's swap trading rules. As discussed below, the Chairman plans to issue a proposed rule reducing or eliminating the practice of post-trade name give-up. He also signaled a reluctance to make wholesale changes to the regulatory infrastructure governing swap trading on CFTC-registered swap execution facilities ("SEFs"). The Chairman's comments likely mean that the CFTC may address portions, but not the entirety, of an ambitious proposal from November 2018 to re-write the rules governing swap trading on SEFs.¹

The Future of Post-Trade Name Give-up

According to the Chairman, the CFTC will soon propose to reduce or eliminate the practice of disclosing swap counterparties to each other after a trade has been matched anonymously, and submitted for clearing (commonly referred to as "**post-trade name give-up**"). In November 2018, the CFTC published a request for comment on the practice of post-trade name give-up, and it appears that having considered the comments, the CFTC has decided to propose a rule that limits or prohibits such disclosures entirely.²

The practice of post-trade name give-up originated prior to the Dodd-Frank Act when the majority of swaps traded on anonymous platforms were uncleared. Consequently, a party needed to know its counterparty in order to manage bilateral risks such as credit exposure. However, due to certain Dodd-Frank Act reforms, many of the swap products

¹ Willkie's summary of the CFTC's November 2018 proposed rule is [available here](#).

² The Willkie summary of the November 2018 SEF proposed rule also addresses the CFTC's November 2018 request for comment related to post-trade name give-up.

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traded on anonymous platforms are now required to be cleared. For cleared swaps, a participant's counterparty is the central clearing counterparty ("**CCP**"), meaning that there is no bilateral credit risk exposure to manage.

The practice of post-trade name give-up has become controversial across certain buy-side and sell-side firms. Buy-side firms argue that the practice is no longer necessary for credit purposes, and that sell-side firms use the practice in an anti-competitive manner to limit liquidity to the buy-side. Although certain sell-side firms claim that post-trade name give-up allows firms to allocate liquidity in a more efficient manner, the Chairman's announcement of a proposed rule reducing or eliminating the practice may signal agreement with the views of the buy-side. The exact details of the proposal have yet to be announced, but Willkie is actively monitoring developments on this topic.

More Limited Changes to Swap Trading Rules

Chairman Tarbert explained that he is reluctant to re-evaluate much of the regulatory infrastructure for trading swaps on SEFs. As noted above, in November 2018, the CFTC issued a proposed rule that would significantly change the rules governing swap trading on SEFs.

One of the primary stated purposes of the November 2018 proposal was to provide more flexible execution methods for swaps that are required to be executed on a SEF (a "**Required Transaction**"). For example, the CFTC proposed to eliminate the requirement that market participants execute a Required Transaction through an electronic order book or a request for quote sent to at least three unaffiliated market participants ("**RFQ-3**"). This aspect of the November 2018 proposal would provide SEFs with more control over how Required Transactions are traded on their platforms.

The Chairman's reluctance to re-evaluate the regulatory infrastructure for trading on SEFs suggests that the CFTC may not propose modifications to the current order book or RFQ-3 trading requirements for Required Transactions. Rather, the CFTC may opt for more limited refinements to the SEF trading requirements. The Chairman has yet to provide any further specifics regarding what he intends to address, but Willkie will continue to monitor potential rule changes related to swap trading requirements.

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