

Ms. Vanessa Countryman

June 10, 2022

Page 1



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Vanessa A. Countryman

Secretary

Securities and Exchange Commission

100 F Street NE

Washington, D.C. 20549-1090

Re: Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, RIN 3235-AK93, File No. S7-14-22, 87 Fed. Reg. 28872 (May 11, 2022)

Dear Ms. Countryman:

Tradeweb Markets Inc. ("**Tradeweb**"), which operates regulated electronic trading platforms globally in both the fixed income and equity markets, appreciates this opportunity to provide the Securities and Exchange Commission (the "**Commission**" or the "**SEC**") with comments in response to the above-captioned release (the "**Proposal**"). The proposed rules ("**Proposed Rules**") promulgated in the Proposal would create a regime for the registration and regulation of security-based swap execution facilities ("**SBSEFs**") and address other issues relating to security-based swap ("**SBS**") trading and execution.

Tradeweb is a leading global operator of electronic marketplaces for rates, credit, equities and money markets. Founded in 1996, Tradeweb provides access to markets, data and analytics, electronic trading, straight-through-processing and reporting for more than 40 products to clients in the institutional, wholesale and retail markets. Advanced technologies developed by Tradeweb enhance price discovery, order execution and trade workflows while allowing for greater scale and helping to reduce risks in client trading operations. Tradeweb operates two swap execution facilities ("**SEFs**") regulated by the Commodity Futures Trading Commission ("**CFTC**"): (1) TW SEF LLC, a request for quote ("**RFQ**") electronic platform that primarily facilitates dealer-to-customer swaps trades and (2) DW SEF LLC, a voice brokered and electronic central limit order book ("**CLOB**") platform that primarily facilitates dealer-to-dealer swaps trades. As the only organization that operates SEFs serving the full spectrum of markets, and as organization that will operate a registered SBSEF, Tradeweb is uniquely positioned to provide valuable perspective on the Proposal.

I. Introduction

We support the Commission’s decision to re-propose rules establishing a regime for the registration and regulation of SBSEFs. As noted above, Tradeweb has operated two registered SEFs for almost 10 years. We have deep experience with respect to the CFTC’s SEF rules, day-to-day operations of SEFs and the swaps markets, generally. We have applied these insights to our review of the Proposal and we are generally supportive of the Commission’s decision to, in large part, harmonize the proposed SBSEF regulatory regime with the CFTC’s existing SEF regulatory regime. We believe the Commission is correct in noting that the entities most likely to register as SBSEFs are those that are already registered with the CFTC as SEFs and that close alignment of the regulatory regimes will likely result in cost savings and other efficiencies for prospective SBSEF registrants and SBS market participants.¹ However, we believe that the Proposed Rules can be improved in a number of ways, including by:

- allowing registered SEF operators that intend to register as SBSEFs to utilize, to the greatest extent possible, their existing SEF systems, policies and procedures to comply with applicable SBSEF rules and registration requirements;
- providing for a Commission-led notice and comment rulemaking with respect to “made available to trade” (“**MAT**”) determinations;
- narrowing the cross-border applicability of the Proposed Rules by (a) providing that ANE Transactions (as defined below) are not be subject to the Proposed Rules’ trade execution or SBSEF registration requirement and (b) exempting foreign trading venues recognized as comparable by the CFTC from SBSEF registration; and
- including a compliance timeline of at least 12 months following the effective date of any final rule.

II. Comments on potential efficiencies with respect to the application of the Proposed Rules to current SEF operators

As noted above, we agree with the Commission’s belief that many of the entities that will seek to register as SBSEFs are already registered SEFs.² The Proposal states that such entities will “presumably see efficiencies in utilizing the same systems, policies, and procedures to trade both swaps and SBS” and “would likely need to make only minor adjustments to their rules and trading procedures to support trading of SBS in addition to the trading of swaps.”³ We agree that current SEF operators can rely upon their experience with SEF registration and operation to comply with the Proposed Rules. In this regard, we respectfully request that the Commission should provide in any final rule that, wherever practicable and to the greatest extent

¹ SEC Release No. 34-94615 (May, 11, 2022), 87 Fed. Reg. 28,872, 28,8875 (May 11, 2022) (the “**Proposing Release**”).

² Proposing Release at 28,882.

³ Proposing Release at 28,937.

possible, such firms can leverage their existing SEF systems, processes, policies and procedures to comply with applicable SBSEF rules and registration requirements.

For example, the Commission should allow a registered SEF to use its existing SEF documentation and registration materials, supplemented by an addendum to cover additional Commission requirements in any final rule and account for changes otherwise necessary to account for SBS products, to satisfy the SBSEF registration requirements. The Commission should also allow a dual registrant to maintain one set of policies and procedures (*e.g.*, rulebook, internal operations and compliance manuals) for both its SEF and SBSEF capacities, provided that such materials cover all applicable CFTC and Commission requirements. This approach would lessen the costs of compliance for platform operators and reduce confusion among market participants by eliminating the potential for substantially redundant documentation. We note that we have provided just a few examples of potential efficiencies, and that any final rule should allow a prospective SBSEF registrant to leverage, to the greatest extent possible, its existing SEF resources. Ultimately, this approach would allow both the SEC and prospective SBSEF registrants to benefit from the substantial work already completed in the context of SEF registration and operation.

III. Comments on the MAT determination process

Proposed Rule 816 sets out the process by which an SBS is considered MAT and thus subject to the mandatory trade execution requirement.⁴ Consistent with the CFTC's rules applicable to SEFs, the Proposed Rules empower SBSEFs to make MAT determinations. Under Proposed Rule 816(b), in making a MAT determination, the SBSEF must consider: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; and (6) the usual number of resting firm or indicative bids and offers.⁵

As we have noted in response to the CFTC's 2018 proposed SEF rules, we do not believe that a trading venue should be solely responsible for identifying the types of products that should be subject to a trade execution requirement.⁶ Instead, we believe that a Commission-led process is more appropriate. A Commission-led process would ensure that the views of all relevant market participants (including SBSEFs) are considered in making a MAT determination, which we also understand is a key concern raised by other commenters to this Proposal and the CFTC's SEF proposal.⁷ In addition, the Commission is likely to have better access to data

⁴ Proposed Rule 816.

⁵ Proposed Rule 816(b).

⁶ See Tradeweb Letter (March 14, 2019), Swap Execution Facilities and Trade Execution Requirement; Proposed Rule – RIN 3038-AE25, 83 Fed. Reg. 61946 (Nov. 30, 2018), *available at* <https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=62084&SearchText=tradeweb> (“SEF Proposal Comment Letter”).

⁷ For example, we note that ISDA's comment letter to this Proposal similarly requests that market participants be engaged in the MAT determination process.

regarding the overall SBS market than any individual trading venue will have. We therefore respectfully request that the Commission provide, in any final rule, that MAT determinations are made by the Commission following a notice and comment rulemaking process that takes into account the views of SBSEFs and other market participants.

IV. Comments on the cross-border applicability of the Proposal

Proposed Rules 832 and 833 address the cross-border applicability of the Proposal. We appreciate that the Commission focusing on this topic, particularly given the global nature of SBS trading, the ability to transact in SBS on venues in various jurisdictions and the frequency with which counterparties in different jurisdictions may transact with each other.⁸ However, as described below, there are a few areas where we believe the Commission can revise its Proposed Rules to focus on the U.S. SBS markets, provide appropriate deference to home jurisdiction regulators and thereby facilitate liquid SBS markets that are necessary for the proper functioning of SBSEFs.

- a. ANE Transactions should not be subject to the Proposed Rules' trade execution or SBSEF registration requirement.

Proposed Rule 832 provides that the trade execution requirement—that is, the requirement that an SBS that is subject to mandatory clearing to also be executed on an exchange or SBSEF if such SBS is MAT⁹—will not apply to an SBS unless at least one counterparty to the SBS is a “covered person.”¹⁰ Pursuant to the Proposed Rules, covered persons would include, with respect to a particular SBS: (1) any person that is a U.S. person; (2) a non-U.S. person whose performance under the SBS is guaranteed by a U.S. person; or (3) a non-U.S. person who, in connection with its SBS dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute (“ANE”) a transaction (an “ANE Transaction”).¹¹ The Proposal further states that a foreign trading venue (a “foreign SBS trading venue”) could be required to register as an SBSEF under the Proposed Rules if it has “members who are covered persons . . . with respect to SBS transacted on that venue, whether or not the SBS that they trade are subject to the [] trade execution requirement.”¹²

We do not believe that it is appropriate for the Proposed Rules' trade execution requirement or SBSEF registration requirement to apply where the only U.S. nexus is ANE activity in the U.S. Rather, we believe that applying the Proposed Rules to ANE Transactions are likely to result in confusion among market participants and platform operators inasmuch as

⁸ See Proposing Release at 28,922.

⁹ Proposed Rule 816.

¹⁰ Proposed Rule 832.

¹¹ Proposed Rule 832(a).

¹² Proposing Release at 28,924.

non-U.S. counterparties and platform operators frequently do not know whether a transaction involves U.S. ANE activities. As a SEF and prospective SBSEF operator, we believe that regulatory certainty and clear jurisdictional boundaries are essential to the proper functioning of SBS markets and trading venues. Without such clarity, market participants may be unsure which rules apply to a particular SBS transaction, or may determine that (potentially conflicting) rules from two jurisdictions (that is, the United States and the non-U.S. jurisdiction where the counterparty is located) both apply. In such a case, market participants may, for example, reasonably ask where an ANE Transaction should be executed if both the U.S. rules and the non-U.S. jurisdiction rules contain a trade execution requirement requiring that SBS to be executed on an SBS trading venue registered with a regulator in that jurisdiction. Market participants faced with the possibility of violating the rules of a jurisdiction may instead decide to not transact in SBS at all.

In this regard, we also note that many other jurisdictions (including those where ANE Transactions are more likely to take place) have enacted comprehensive regulations that are comparable to the Proposed Rules, as has been recognized by the CFTC.¹³ Regulatory uncertainty and conflicting regulatory requirements could ultimately inhibit SBS transactions, which would increase costs to market participants and result in operational challenges for SBSEF operators. Indeed, maintaining an SBSEF may not be feasible or practicable if regulatory conflicts and uncertainty diminish SBS volume and liquidity. For these reasons, we respectfully request that the SEC not subject ANE Transactions to the proposed trade execution requirements.

b. The Commission should exempt foreign trading venues recognized as comparable by the CFTC from SBSEF registration.

As noted above, a foreign SBS trading venue could be required to register as a SBSEF under the Proposed Rules. Proposed Rule 833 provides the process by which such a foreign SBS trading venue can request an exemption from registration requirements (with respect to registration as a broker, SBSEF or national securities exchange) and from the trade execution requirement.¹⁴ The Commission notes that, in order to grant an exemption, it must determine that an exemption is necessary or appropriate, in the public interest and consistent with the protection of investors.¹⁵ Furthermore, with respect to exemptions from the trade execution requirement, the Proposed Rules provide that the Commission may consider whether the rules of the foreign jurisdiction are comparable.¹⁶

We are concerned that foreign SBS trading venues may not be able to satisfy the Commission's requirements to receive an exemption. For example, the Proposal notes that "the

¹³ For example, the CFTC has made such comparability determinations with respect to venue regulation in the European Union, Japan and Singapore. *See* <https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs>.

¹⁴ Proposed Rule 833.

¹⁵ Proposing Release at 28,924.

¹⁶ Proposed Rule 833(b).

Commission preliminarily believes that a trade execution requirement in a foreign jurisdiction would not be comparable to the trade execution requirement under the [Proposal] if the foreign jurisdiction's rules did not require SBS products subject to that requirement to be executed through means comparable to [those] described in proposed Rule 815 (e.g., if the foreign jurisdiction allowed the use of single-dealer platforms to discharge any mandatory trading execution requirement in that jurisdiction)."¹⁷

In other words, a foreign SBS trading venue that did not require SBS subject to a trade execution requirement to be executed through a CLOB or RFQ-to-3 system would not be eligible for an exemption, notwithstanding that fact that many of these venues are exempt from compliance with the CFTC's SEF rules on the basis that the foreign regulatory regimes are comparable.¹⁸ In this regard, we note that the CFTC, appropriately in our view, recognized that there are multiple ways that a regulator can ensure appropriate pre-trade transparency and competition, such that restricting execution methods to CLOBs and RFQ-to-3 systems are not the only ways to achieve these objectives. Failing to recognize this fact in the course of making comparability determinations would incorrectly turn the statutory comparability standard into a test for identical rules.

Moreover, ensuring deep and liquid SBS markets will be essential for the proper functioning of SBSEFs. We believe that by not exempting foreign SBS trading venues from the Proposed Rules will result in disruptions in the SBS markets. Some of these foreign venues, for example, may be unwilling or unable to register with the Commission and, therefore, may restrict or cease SBS trading on their platforms. Fragmented and less liquid SBS markets will make it challenging for prospective SBSEF registrants to offer attractive trading venues to market participants. To mitigate these concerns and to further harmonize with the CFTC's approach, we respectfully request that, in any final rule, the Commission recognize that certain foreign SBS trading venues are already subject to adequate and comparable regulation, and grant exemptive relief from the Proposed Rules to foreign SBS trading venues that the CFTC has already exempt from SEF registration.

V. Comments on the compliance timeline

The Proposal does not include a compliance timeline, but the Commission notes that it intends to provide for a compliance timeline in any final rule and requests comment on what would be appropriate.¹⁹ In particular the Commission requests comment on an appropriate compliance timeline if any final SBSEF rules are substantially harmonized with the CFTC's SEF rules.²⁰ While, as noted above, we agree that SEF operators can leverage their experience with

¹⁷ Proposing Release at 28,926.

¹⁸ We also note that many of these regimes do not have separate regulations for SEFs and SBSEFs (or swaps and SBSs) as the United States does and, therefore, such exempt SEFs are likely to be the same venues that would potentially be subject to the Proposed Rules.

¹⁹ *Id.* at 28,937.

²⁰ *Id.*

SEF registration and operation in order to comply with any final SBSEF rules, we note that creating and maintaining a new platform, regardless of any similarities to existing systems, will inevitably require substantial time and resources to ensure operational, technical and regulatory compliance. In light of this concern, we respectfully request that the Commission provide a compliance timeline of at least 12 months following the effective date of any final rule.

* * *

Once again, we appreciate the opportunity to share our views on this important issue and would be pleased to discuss in further detail as and when appropriate. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Elisabeth Kirby, *Head of U.S. Market Structure*

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